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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 100 jurisdictions which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, 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 jurisdictions' 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 refer to www.oecd.org/tax/transparency.

Executive summary

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

2. Switzerland’s approach to exchange of information for tax purposes has changed significantly over the past two years. Having historically adopted a restrictive approach, Switzerland withdrew its reservation to Article 26 of the OECD Model Tax Convention on 13 March 2009. Since then, it has moved rapidly to update its network of DTAs having the intention that information may be exchanged, in line with the international standard. However, the new agreements recently negotiated by Switzerland have been found not to be fully in line with the standard because of an issue concerning the obligations for an EOI partner to provide certain identity information in their EOI requests. As a result, in February 2011, the Swiss government announced it would take further steps to ensure those new agreements would be applied consistently with the standard in all regards

3. Under Swiss law, companies, partnerships and foundations can be formed, with *sociétés anonymes* (SAs) and *sociétés à responsabilité limitée* (SARL) being the most popular form of corporate vehicle. To ensure the availability of relevant information, Switzerland has a legal and regulatory framework which includes obligations in its civil code, commercial code, tax laws and its laws concerning anti-money laundering / counter-financing of terrorism. In respect of trusts, whilst they may not be created under Swiss law, Switzerland is a signatory to the Hague Convention on Trusts which means that foreign trusts are recognised in Swiss law.

4. Reliable ownership, accounting and bank information for relevant entities is generally available for EOI purposes, however some issues remain in the legal framework, including in respect of ownership information for

bearer shares which can be issued by some types of Swiss companies and also with regard to foreign entities carrying on business or with a permanent establishment in Switzerland. As a result, essential element A1 is not in place. A small number of bearer savings books remain in Switzerland, although Switzerland has been very active in ensuring these are phased out after the issue was noted in the 2005 report on Switzerland by the Financial Action Task Force.

5. Access powers in Switzerland have been recently revised to reflect its commitment to exchange all foreseeably relevant information in line with the standard. Access powers under this new regime include powers for the competent authority to issue notices to require information to be produced, carry out searches and seize documents and also access information that may be held by other government authorities, including the cantonal tax authorities. There are still restrictions on obtaining bank information under Switzerland's older agreements, although this restriction will not apply for requests under its newer agreements and Switzerland continues to update its older agreements in this regard.

6. Switzerland has a strong system of rights and safeguards for taxpayers and other persons concerned by an EOI request, and in some instances these rights are protected by its Constitution. These rights do not allow exceptions to notification consistently with the standard, which may impede effective access to information in some cases.

7. Switzerland is continuing to work to quickly upgrade its information exchange network, and has negotiated several new agreements. Although some of these agreements have been drafted to include provisions that are consistent with the internationally agreed standard, Switzerland's initial interpretation concerning identification requirements for an exchange of information request is not in line with that standard. However, Switzerland has since modified its initial interpretation and has indicated that action is being taken to ensure that these agreements will be interpreted as being in line with the standard. Moreover, Switzerland has indicated that it stood ready to upgrade and develop its exchange of information agreement network generally (including TIEAs), to bring it fully in line with the standard. Switzerland's response to the determinations, factors and recommendations of the present report, as well as its practical implementation of this legal framework, will be assessed during the Phase 2 peer review scheduled for the second half of 2012 provided that Switzerland brings a significant number of its EOI agreements into line with the standard, and has taken the actions necessary to confirm all new agreements are to be interpreted as being in line with the standard.

Introduction

Information and methodology used for the peer review of Switzerland

8. The assessment of the legal and regulatory framework of Switzerland was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations and exchange of information mechanisms in force or effect as at March 2011, other materials supplied by Switzerland and information supplied by partner jurisdictions.

9. 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 Switzerland'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.

10. The assessment was conducted by an assessment team which consisted of two expert assessors: Mr. Juan Pablo Barzola, tax advisor in the International Tax Division of the Argentinean Tax Administration and Mr. Torsten Fensby, Project Manager, Denmark; and one representative of the Global Forum Secretariat: Miss Caroline Malcolm.

Overview of Switzerland¹

11. Located at the heart of Western Europe, Switzerland is surrounded by five neighbouring jurisdictions: Austria, Liechtenstein, Germany, France and Italy. The capital of Switzerland is Berne, and the largest cities are Zurich and Geneva with the country having a total population of 7.8 million. German, French, Italian and Romansh are all national languages and the currency is the Swiss franc (1 CHF equivalent to 0.78 euros as at 31 January 2011).

12. In 2010, Switzerland had a gross domestic product of 546 billion CHF (or 425 billion EUR), giving a per capita GDP of 68 758 CHF (EUR 53 631), making its standard of living amongst the highest across OECD countries. It has a competitive and highly industrialised economy, and in 2009-2010, it was ranked first in the World Economic Forum's global competitiveness index. Important industries include engineering, chemicals and pharmaceuticals as well as financial services. The European Union is Switzerland's main trading partner, accounting for more than 80% of imports and 60% of its exports. Other important trading partners are the United States and China.

General information on Switzerland's government, legal and taxation systems

Legal system

13. The Swiss Confederation consists of 26 cantons which are sovereign in so far as their sovereignty is not limited by the federal constitution. They exercise all of the rights which have not been delegated to the Confederation (art. 3, Cst). All of the cantons are in turn sub-divided into political "communes". The Constitution also gives the people the right to participate in decision-making through "initiatives" instigated through the support of a specified number of voters or cantons (art. 138-139, Cst), or through referendums on motions proposed by the Parliament (art. 140-141, Cst).

14. Switzerland recognises a separation of powers between the different branches of government. Legislative power is exercised by Parliament constituted by two houses, being the National Council (consisting of deputies), and the Council of States (formed by deputies representing the cantons). All of the deputies are elected by direct universal suffrage, according to different methods depending on the house. Executive power belongs to the government, being the Federal Council, composed of seven Federal Councillors, elected by Parliament for four years. The President of the Swiss Confederation is appointed for a one year term from amongst the Federal Council, and has

1. OECD Statistics and *Département fédéral des Finances: Place financière suisse : situation et perspectives, septembre 2009*, and *Secrétariat d'Etat à l'Économie*.

certain representative responsibilities. As “first among equals” however, the President is not the head of state or of the government, roles which are instead assumed collectively by the Federal Council.

15. The Swiss legal system is founded on Roman law, also known as civil law and is thus based on a codified system.² The hierarchy of Swiss laws must be considered in two contexts: for one part, the hierarchy of federal, to cantonal, to communal laws; and on the other, from the Constitution, to laws and in turn regulations.³ Federal law will always have primacy over cantonal or communal laws, regardless of whether it is a federal law or regulation (principle of “primacy of federal law”). However, the Confederation has only the rights vested in it by the federal Constitution. In other words the Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution (art. 3, Cst). The Confederation is thus generally responsible for those tasks which exceed the areas of responsibility of the cantons or which require a uniform regulation across the Confederation (principle of subsidiarity).

16. The civil and commercial law (Civil Code and Commercial Code), financial law, and criminal law (including anti-money laundering legislation), are part of the federal law, but their application can be arranged at the cantonal level. It is possible for certain subjects to be regulated in parallel between the Confederation and the cantons, for example both the Confederation and the cantons may make laws in respect of taxation (although taxes are predominantly imposed under cantonal law).⁴

17. Business may be conducted through a variety of legal forms including corporations, limited liability companies, investment companies, as well as limited and general partnerships. It is also possible to create foundations under Swiss law. Corporations and limited liability companies are the most common legal forms for business purposes. Entities carrying out commercial activities must be registered in the Commercial Register. Some types of entities may issue bearer shares as well as registered shares.

18. Further to the internal hierarchy of laws, in respect of international obligations, the Swiss Constitution states that the norms of international law

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2. All federal laws are numbered, and are preceded by the acronym RS, meaning “*recueil systematique*” (standardised collection): www.admin.ch/ch/fr/rs/rs.html.
 3. The Federal Constitution of the Swiss Confederation of 18 April 2009, represents in Swiss the “fundamental law” (www.admin.ch/ch/fr/rs/1/101.fr.pdf). Laws in the formal sense are acts enunciated by Parliament. Ordinances (the civil law parallel of regulations) are established by the executive branch of government (the Federal Council, cantonal governments) and administrative departments under a more simplified process.
 4. Heading III, Chapter 1 of the Constitution (articles 42-49, 122 al. 2, 123 al. 2, 128(4)).

prevail over domestic law, including the Constitution (articles 193(4) and 194(2), Cst). In addition, the legislative provisions of an international agreement, when they are sufficiently clear and intended to have immediate application, will benefit from a primacy over any provisions in federal law without the need for any implementing domestic legislation.

19. Foreign affairs falling within the jurisdiction of the Confederation, such as treaties signed by the Federal Council, must be approved by the Federal Assembly before they are ratified by the Council (art. 54 and 184, Cst). A treaty may be submitted to a referendum if it: (1) is of indefinite duration and cannot be renounced; (2) concerns Switzerland's membership of an international organisation; or (3) contains important provisions which either create laws or which would require the adoption of new federal laws. Either 50 000 citizens with the right to vote or 8 cantons may request a referendum within 100 days from the official publication of the treaty. If a referendum is triggered, it takes place after the approval of the treaty by the Federal Assembly but before ratification by the Federal Council. Where, upon referendum, a treaty is rejected, it may not be ratified and therefore will not enter into force for Switzerland.

20. After the signature of a double tax convention (DTC), the Federal Council adopts a message which is sent to the Parliament. Thereupon the Parliament approves the DTC and agrees that the Federal Council ratify the treaty. The decision to submit a DTC to an optional referendum therefore belongs to the Parliament, under the circumstances foreseen by the Constitution.

21. The judiciary is headed by the Federal Tribunal at Lausanne, and the Federal Tribunal of Insurance at Lucerne. It is the Federal Tribunal at Lausanne which is concerned with matters relating to violations of international law. Two first-instance tribunals exist at the federal level: the federal criminal tribunal which deals with first-instance criminal matters, and the Federal Administrative Tribunal which deals with matters concerning public law under the jurisdiction of the federal administration. Matters of international exchange of information are subject to the appeal to the Federal Administrative Tribunal rather than to the Federal Tribunal (art. 83 let. h LTF – *Loi sur le tribunal fédéral*, RS 173.110).

Taxation system

22. As a result of the federal structure described above, the cantons have the right to levy all taxes which are not otherwise explicitly attributed exclusively to the Confederation under the Constitution. In respect of customs duties and value added tax (VAT) the Confederation has exclusive jurisdiction (art. 128 and 133, Cst). However, Swiss law recognises parallel jurisdiction in matters of income tax on natural persons, and of taxation on profits and capital of legal persons. Thus the Confederations and each of the Cantons have jurisdiction to tax the

income of individuals and corporations. In doing so however, they are compelled to respect the principles of the Federal Act on the Harmonization of the Direct Taxes of Cantons and Communes (LHID, RS 642.14).

23. All resident corporations are taxed on worldwide income although income from foreign permanent establishments and foreign real property is exempt. Corporations that are incorporated in Switzerland or have their place of effective management there are considered to be resident for tax purposes in Switzerland. Effective combined federal, cantonal and communal income taxes on corporations varied from around 13% to 25% based on 2009 rates. Lower tax rates can be achieved for particular types of companies such as holding, domiciliary, auxiliary because of more favourable tax regimes. In addition to taxes on income, corporations are subject to tax on their net equity at rates ranging from .1% to .6% depending on the canton. Non-resident companies are liable to tax on Swiss source income.

24. Individuals are subject to taxes on income and net wealth. Resident individuals are taxable on their worldwide income, non residents on Swiss source income. Federal and cantonal tax rates applicable to individuals are progressive. The maximum federal rate is 11.5%; the cantonal and communal rate varies from canton to canton.⁵ In certain cantons, a special lump sum tax regime is available to resident aliens who are not carrying out a lucrative activity in Switzerland. Under this regime a deemed taxable income is calculated which at minimum is equivalent to five times the rental expense for the persons principal residence. The deemed tax base is subject to tax at ordinary rates.⁶

25. In Switzerland, taxation on income and wealth is based on the tax return which is sent to each taxpayer. If the taxpayer does not then file their tax return (with all necessary attachments) they will be taxed on the basis of

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5. Each of the 26 cantons have their own tax laws, with the level of deductions and tax thresholds varying across cantons. For the majority of cantons, the tax thresholds are based on simple rates (base rates or unit rates). The quota therefore represents a multiple (expressed in units or percentages) of the rates fixed in law. These multiples are in general amended annually to take into account the needs of the public accounts (cantonal and communal). With the intention of avoiding significant differences between the tax charge in richer and poorer areas, Switzerland applies an equalisation approach inter-cantonal and inter-communal. In this way, the cantons and communes which are financially weaker will benefit from compensating transfers which allow them to avoid having to increase the level of tax charges, or even to be able to lower them.
 6. The tax base must be at least equivalent to actual lifestyle expenses and the amount of tax must be at least equivalent to the amount of tax payable on Swiss assets and Swiss source income and foreign income for which the benefits of a double tax treaty are requested.

an estimate. In that case, the administration will calculate the amount due and collect the tax, with collection being undertaken at the cantonal level.

26. A 35% withholding tax applies to payments of dividends by Swiss companies, payments of interest from Swiss sources such as bonds or deposits at Swiss banks and distributions of income from Swiss funds. A refund procedure operates which allows Swiss residents or residents of countries with which Switzerland has a DTC to obtain credit or a refund of the tax withheld. Intercompany interest is generally not subject to withholding tax.

27. In addition to taxes on income and wealth, Switzerland has had a value added tax since 1995. The standard rate is 8% with a reduced rate of 2.8% for food, medicines and newspapers. A special rate of 4% applies for accommodation services. Other indirect taxes include vehicle ownership tax and stamp duty on certain legal transactions.

28. Switzerland has a network of double tax conventions (DTCs), and its competent authority for the exchange of information (EOI) is the *Administration Fédérale des Contributions* (AFC). Until March 2009 Switzerland had a reservation on Article 26 of the OECD Model Tax Convention. Its treaty network did not provide for EOI to the internationally agreed standards, as information exchange was generally limited to exchange for the purposes of the application of the treaty. In some DTCs with OECD and EU Member States, Switzerland also provides for the exchange of information with respect to tax fraud matters and acts of similar gravity. In addition, in certain of these DTCs, Switzerland also agreed to provide to its treaty partners exchange of information for holding companies. Swiss law distinguishes between tax fraud and tax evasion. On 13 March 2009, the international standard on EOI for tax purposes was adopted by Switzerland and it has moved rapidly to update its bilateral treaties.

Overview of the financial services industry and relevant professions

29. The financial services industry is a key pillar in Switzerland's economy both in terms of jobs (6.2%) and wealth creation (10.5% of GDP), and according to conservative estimates, is responsible for generating about 7.4% of tax collected in Switzerland (from taxes on income and company profits). It is made up of a number of sectors, principally banking, insurance and private wealth management. At the end of 2009, the total securities holdings in customer accounts in the banking sector was 429 billion CHF (or 335 billion EUR), making it one of the biggest international financial centres in the world which generates a significant net output, proportionately twice as much as in the US or Germany.

30. Although the banking sector consists of 325 different Swiss institutions, two banks in particular dominate the market: UBS and Credit Suisse. They both have strong roots in Switzerland and extensive foreign activities.

Together they hold 40% of the assets deposited in Switzerland, and extend close to 40% of credit. Their size also allows them to have a presence in a large number of activities targeted at the international market. About 80% of their assets and liabilities are attributable to people resident outside of Switzerland.

31. Other sectors of the financial services industry are also aimed predominantly at the international market. With around 10% of global assets under management, Switzerland is one of the top three wealth management centres in the world. Its 27% share of the offshore private banking sector makes it the world leader. In addition to the two main global banks, private wealth management includes many private and foreign banks along with thousands of independent asset managers.

32. UBS and Credit Suisse are also in the top ten global issuers of shares and bonds. In the insurance sector too, Switzerland holds an important global role due to the leading position of Swiss Reinsurance Company Ltd (“Swiss Re”).

33. Switzerland is a significant player in commodity trading, such as oil, and increasingly hedge funds. Viewed overall, its prominent positions in financial and internationally traded service activities have made Zurich and Geneva key global financial centres.

34. Switzerland is a member of both the OECD and FATF since their inception. It has participated in the work of the Global Forum on transparency and exchange of information for tax purposes since its new mandate in 2009. Although not a member of the EU, it is a member of the European Free Trade Association and has many other agreements with the EU. Switzerland is also a member of other international organisations, including the United Nations (UN), the International Monetary Fund (IMF) and the World Trade Organization (WTO). It also hosts many international organisations such as the United Nations, WTO, and the International Committee of the Red Cross.

Regulation of the financial services industry and the anti-money laundering regime

35. Since January 2009, FINMA is the principal regulator and supervisor of financial services providers including in respect of the anti-money laundering and counter-financing of terrorism obligations (the anti-money laundering/counter-financing of terrorism-AML regime).⁷ The customer due diligence and record keeping requirements that are imposed on the

7. The three former supervisory authorities in this area were the Federal Bank Commission (CFB), the Federal Office of Private Insurance (OFAP) and the Anti-money laundering Control Authority (AdC). These three authorities merged on 1 January 2009, forming FINMA pursuant to the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA).

financial services industry arise from the AML regime. The Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 10 October 1997 (Anti-Money Laundering Act, AMLA)⁸ sets out measures to combat money laundering and terrorist financing as defined in the Swiss Penal Code. The law applies to all persons deemed to be “financial intermediaries” under article 2 of the AMLA, including:

- banks as defined under the Federal Bank Act;⁹
- fund managers to the extent that they manage share accounts and offer or distribute shares in collective investment vehicles;
- SICAVs, SICAFs, SCPCs and private wealth managers (as defined in the law of 23 June 2006 on Collective Investment Vehicles) to the extent that they manage share accounts and offer or distribute shares in collective investment vehicles;
- insurance companies that have life insurance activities or engage in the marketing of collective investment vehicles;
- securities dealers; and
- casinos as defined in the Gambling Act of 18 December 1998.

36. In addition, an inclusive definition of persons deemed to be a financial intermediary is set out in article 2(3), being persons who, in a professional capacity, accept, keep on deposit or assist in the investment or sale of assets belonging to a third party, in particular those persons who carry out credit transactions, provide services related to payment transactions, manage assets, make investments as investment advisers and those persons who deal in money,¹⁰ commodities, or securities as well as their derivatives. Other persons considered to be financial intermediaries are described in Article 6 of the *Ordonnance sur l'activité d'intermédiaire financier exercée à titre professionnel* of 18 November 2009. In particular, this will include a person carrying out the activities of a body of a domiciliary company (“*sociétés de domicile*”). Entities considered as domiciliary companies include: legal persons, companies, foundations, trusts, fiduciary enterprises and similar arrangements which are not exercising a trade or manufacturing activity in Switzerland or any other country (Article 6(2)).¹¹

8. *Loi sur le blanchiment d'argent*, LBA

9. *Loi fédérale du 8 novembre 1934 sur les banques et les caisses d'épargne (Loi sur les banques*, LB)

10. Which includes banknotes, coins, money market instruments, foreign exchange and precious metals.

11. New provisions in respect of the requirements to keep ownership information in respect of domiciliary companies were introduced on 1 January 2011. See further paragraph 64.

37. A financial intermediary acts in a “professional capacity” if at least one of the following conditions is met (art.7, *Ordonnance sur l’activité d’intermédiaire financier exercée à titre professionnel*):

- generate gross profits of more than CHF 20 000 (EUR 15 600) in a calendar year;
- establish business relationships of whatever kind with more than 20 clients during the calendar year, or maintain at least 20 such relationships in that period;
- at any given time, has the dispositive power of unlimited duration over assets with a value in excess of CHF 5 million (EUR 3.9 million); or

engage in transactions with a total value in excess of CHF 2 million (EUR 1.56 million) during the calendar year.

38. The Ordinance on the activities of a professional financial intermediary provides further guidance on the definition of “financial intermediary”.

39. Certain financial intermediaries are regulated directly by FINMA (such as the banking and insurance sectors), whilst others must either obtain authorisation directly from FINMA or be affiliated with a self-regulating organisation (SRO). Each SRO is itself subject to FINMA regulation and supervision (art.18, AMLA), which includes approval by FINMA of the regulations they impose on their members.¹²

Recent developments

40. Switzerland has undertaken a number of changes relating to the exchange of information in the course of the last three years. Firstly, on 13 March 2009 Switzerland withdrew its reservation to Article 26 of the OECD Model Taxation Convention, and commenced negotiations with a view to revising its double tax conventions. In the space of 6 months, Switzerland had signed 12 DTCs, and to date, the Swiss Parliament has approved the first 10 DTCs. These are discussed in Part C.1 of the report.

41. Further, the ordinance of 1 September 2010 concerning administrative assistance for double tax conventions (OACDI) entered into force on 1 October 2010. It will be replaced by a law on administrative assistance for tax purposes which is anticipated to take effect in 2013. In January 2011, a draft of this law was published by Switzerland and is open for public consultation until April 2011. The draft is discussed briefly in Part B of this report.

12. The 2009 FATF follow-up report on Switzerland noted that there were currently 11 OARs governing financial intermediaries in the non-banking sector.

42. In February 2011, Switzerland’s Federal Department of Finance publicly declared¹³ that Switzerland interprets all treaties which included a new EOI provision similar to Article 26 of the OECD Model Tax Convention (29 such treaties signed to date) in such a way that the information will also be given where the person under investigation is identified by other means than name and address or where the requesting State does not know the name and address of the holder of the information. However fishing expeditions remain prohibited.

13. The press release, along with further information contained in a “Basic Information” brief, is available at the Department’s website: www.efd.admin.ch

Compliance with the Standards

A. Availability of Information

Overview

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

44. In Switzerland, all entities including foreign-incorporate entities, which are carrying on commercial activities in Switzerland, are required to register in the Commercial Register. The legal and regulatory framework governing the Commercial Register establishes many of the relevant ownership and accounting obligations under Swiss law. However for foreign entities, these requirements do not clearly require that ownership information is kept, and certain types of Swiss companies may still issue bearer shares. In respect of trusts, Switzerland is a signatory to the Hague Convention on trusts and it is incorporated into the Swiss international private law. Thus, whilst trusts may not be created under Swiss law, trustees resident in Switzerland will be subject to the laws of the jurisdiction which governs the trust, and for trustees there are additional identity information obligations established by Swiss tax and anti-money laundering laws

45. Overall, Switzerland has a network of intersecting laws to ensure, in most instances, the availability of ownership and identity information relating to relevant companies, partnerships, trusts and foundations. These obligations arise from laws and ordinances including the civil code, commercial code, tax laws, and the AML/CFT regime. The element concerning ownership and identity information (A1) is determined to not be in place with recommendations in respect of foreign entities and bearer shares, for which ownership information is not always required to be kept.

46. Similar to ownership information, obligations to maintain relevant accounting records stem from a number of different laws. In sum, this legal framework ensures accounting records will be kept for a minimum 5 year period for all relevant entities and arrangements and the element (A2) is determined to be in place. In respect of banking information, the element (A3) is also found to be in place.

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.

47. Swiss law distinguishes between “*sociétés de personnes*” (*entreprise individuelle, société en commandite et société en nom collectif*) and “*sociétés de capitaux*” (for example, *sociétés anonymes* and *sociétés à responsabilité limitée*). The most important and popular form of legal entity in Switzerland is the SA, followed by the SARL.

48. All entities (including foreign-incorporate entities operating in Switzerland) who are carrying on commercial activities in Switzerland, are required to register in the Commercial Register (RC, Commercial Registry): art. 52(1), CC (Civil Code); art. 934 (1), CO (Commercial Code). These commercial entities and arrangements only become separate legal entities once they are entered into the RC. There is no requirement to register for public (*i.e.* state-owned) entities. Where information is required to be registered in the RC, any changes to the registered information must be notified to the Registry (art. 937, CO and art. 27, ORC- Ordinance on the Commercial Registry).

49. The RC is regulated under federal law (CO, CC, and the ORC) and a federal registry is maintained by the Federal Commercial Registry Office with many of the records available online through the Zefix database. However, separate registers are in fact maintained at the cantonal or district¹⁴ level with each entity required to register in the canton in which their registered office is located or the relevant business is carried out.

14. In the 26 cantons, there are some 28 commercial register offices in total.

Companies (ToR A.1.1)

50. Under Swiss law, the following types of “companies” may be created:

- *société anonyme* – SA
- *société à responsabilité limitée* – SARL
- *société en commandite par actions* – SCA
- investment companies: The Swiss Federal Act on Collective Capital Investments (LPCC – *Loi fédérale du 23 juin 2006 sur les placements collectifs de capitaux*) regulates three forms of legal entities for collective investment funds:
 - *société d’investissement à capital variable* – SICAV
 - *société d’investissement à capital fixe* – SICAF
 - *société en commandite de placements collectifs* – SCPC:¹⁵ governed by the same law as SICAVs and SICAFs.
 - Société Anonyme (SA)

51. The SA is a separate legal entity from its members, with its capital (minimum CHF 100 000 or EUR 78 000) subdivided into shares and each owner’s liability limited to their contribution. At least one person authorised to represent the company (a board member or manager) must have his domicile in Switzerland. Shares may be issued in either bearer or nominal form (art. 622, al. 1, CO). An SA must be registered in the Commercial Registry, providing their articles of incorporation including the name and address of the founding shareholders or their representatives, as well as the names of the directors. There is no requirement to advise the Commercial Registry of changes to the original, founding shareholders.

52. However, in respect of nominal shares, each SA must maintain a register of those shareholders which includes the name and address of the legal owner of the share, and any person holding a beneficial interest in the share (art. 686(1), CO). In respect of bearer shares, see paragraph 92 below. Both nominative and bearer shares issued by an SA (art. 622, CO) may be held as “intermediated securities” (*titres intermédiés*), that is, where the security is held by a financial intermediary and this scenario is discussed further below at paragraph 74.

15. As they are governed by the same law as SICAVs and SICAFs, SCPCs are dealt with under the “companies” section of this report, although they may be more accurately categorised as a form of partnership.

Société à responsabilité limitée (SARL)

53. After the SA, the SARL is the most common legal form of businesses in Switzerland. It is a separate legal entity which must have a minimum three members at creation, but following creation is only required to have a minimum of one member (art. 775, CO). Members are referred to as partners (“*associé*”). The minimum share capital of a SARL is CHF 20 000 (EUR 15 600) and each owner’s liability is in principle limited to their contribution (art. 795, CO). At least one person employed in a body of the SARL (e.g. a manager) must be domiciled in Switzerland, and there is no board of directors. A SARL must be registered in the Commercial Registry, providing information including its articles of incorporation including the name, address and nationality of all founding members as well as the number and nominal value of the share (“*part sociale*” similar to a share¹⁶) held by each member (art.73(1), ORC). A SARL may not issue bearer shares, and must register all transfers of shares in the Commercial Registry (art. 82(1), ORC).

54. In addition, each SARL must maintain a register of members (art. 790(1), CO) indicating the name and address of each member and the number, value and category of interest held. The register also contains the names and addresses of beneficiaries and any creditors holding charges over the SARL. In addition, each SARL must provide up-to-date information on its members to the Commercial Register indicating the name, domicile and place of origin (nationality in respect of non-Swiss members), as well as their ownership interest in the company (art. 73(1), 119, ORC; art. 937, CO).

Société en commandite par actions (SCA)

55. An SCA is an entity limited by shares, which combines the characteristics of both the limited company (SA) and the limited partnership (SC). An SCA has a separate legal personality from its members, however, one or more of its members must have unlimited liability for the company’s debts. An SCA must be registered in the Commercial Registry and provide its articles of incorporation containing information on its founding members or their representatives, as well as the name and address of members with unlimited liability. There is no requirement to provide identity or ownership information on “passive” members (“*commanditaires*”), being those with limited liability.

56. The rules relating to an SA, including the requirement to maintain a register of shareholders, apply to a SCA *mutatis mutandis* (art. 764(2), CO) as well as the ability hold nominative or bearer shares (art. 622, CO) as “intermediated securities” (*titres intermédiés*) (see further paragraph 73). However where an

16. A “*part social*” is similar to a share, but the term refers specifically to shares which may not be freely traded on an organised stock market.

SCA's capital is divided into parts which do not take the form of shares but which are created uniquely to determine the ownership proportions between members (*i.e.* are more similar to a partner's share in a partnership), then the rules of an SC apply (art. 764(3), CO). In that case, each member is responsible for ensuring the SCA is registered in the Commercial Registry (art. 594(3), CO), which include an up-to-date list of each of the partners (art. 41(2)(f) and (g), ORC).

Investment companies

57. The LPCC¹⁷ governs collective investment vehicles (CIVs) regardless of their legal form (art. 2(1), LPCC).¹⁸ It requires that whoever administers collective investments must be authorised by FINMA.¹⁹ In addition to the types of entities identified elsewhere in this report, a CIV may take the form of a SICAV, SICAF or SCPC whose formation is specifically provided for in the LPCC.²⁰ These three types of CIVs are all directly subject to the requirements of the AML regime (art. 2(b^{bis}), AMLA). Whilst CIVs in other legal forms (such as SAs or SCAs) are not directly subject to the AML regime, a person who is a financial intermediary acting in a professional capacity who carries on a business of asset management, making investments, or holding or managing securities is subject to the AML regime (art.2(3)(e-g), AMLA). Relevant ownership and identity requirements under the AML regime are described in paragraph 80.

(i) *Société d'investissement à capital variable* (SICAV)

58. A SICAV is an open-ended (*i.e.* share capital not fixed) collective investment company which may issue new shares at any time, and shareholders may redeem their shares. Shareholders may be either “entrepreneurial shareholders” or “investor shareholders” (investors): article 36, LPCC.²¹ As an investment vehicle, it is the entrepreneurial shareholders who

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17. *Loi fédérale sur les placement collectives de capitaux du 23 juin 2006* (Federal law on collective investments).
 18. A collective investment vehicle which is in the form of an SA is limited to qualified investors, issues only nominative shares and an audit company regulated by FINMA annually declares that these conditions are met, is exempt from the LPCC requirements (art. 2(3), LPCC).
 19. Art. 13, LPCC. Persons who must be authorised include the managing body of the CIV; SICAVs, SICAFs and SCPCs in their own right; and the wealth manager for Swiss CIVs.
 20. For SICAVs, see art. 36; SICAFs, art. 110; and SCPCs, art. 98 of the LPCC.
 21. Art. 41 of the LPCC defines the rights and obligations of entrepreneurial shareholders. Art. 10 does the same for a “qualified investor” whilst Section 3 of the LPCC (art. 78 and following) covers the rights and obligations of investors

contribute capital to establish the entity (minimum capital of CHF 250 000, or EUR 195 000, to establish a SICAV), whilst investor shares are comparable to units in an investment trust fund. A SICAV is treated as transparent for Swiss tax purposes and taxation is applied exclusively and directly to the investors. The minimum capital upon formation is CHF 250 000 (EUR 195 000) which is paid by the entrepreneurial shareholders. The SICAV may issue “investor shares” to the investor shareholders against payment of capital contributions.

59. The rules regarding the establishment of an SA apply to a SICAV. Accordingly, it must be registered in the Commercial Registry, and provide its articles of incorporation including the name and address of its founding members or their representatives, although as with SAs, there is no requirement to notify of later changes to members.²² However, a SICAV is required to maintain an up to date register containing the name and address of each entrepreneurial shareholder and of each investor nominative shareholder. This will not include identity information relating to owners of bearer shares where the SICAV is in the form of an SA or SCA.

(ii) *Société d’investissement à capital fixe* (SICAF)

60. A SICAF is a closed-ended (*i.e.* share capital is fixed) investment company (art.110, LPCC), and the laws applicable to an SA apply to a SICAF in the absence of any contrary requirements in the LPCC (art. 112, LPCC). Accordingly, the SICAF must be registered in the Commercial Registry, providing its articles of incorporation including the names and addresses of its founding shareholders, or their representatives. In addition, a SICAF must maintain an up to date register of nominative shareholders²³ including their names and addresses. This will not include identity information relating to owners of bearer shares where the SICAF is in the form of an SA or SCA. The SICAF, unlike the SICAV, is not taxed on a pass-through basis but is subject to income tax as a separate entity in its own right and it is not divided into entrepreneurial and investor shareholders.

(iii) *Société en commandite de placements collectifs* (SCPC)

61. An SCPC is a legal form used predominantly for providing risk capital and may only have limited partners, “commanditaires”, who are “qualified

(which for non-listed companies, may be limited to “qualified” investors: art. 40, with a “qualified investor” defined in art. 10(3)). The shares of an entrepreneurial shareholder must be held nominatively (art. 40).

22. Further, article 42 of the LPCC specifically provides that following the issue of new shares or re-purchase of shares, no notification to the inscription in the RC is required.
23. For SICAFs, there is no division of shareholders into entrepreneurial shareholders, and investor shareholders.

investors”²⁴ (art. 98(3), LPCC). There must be at least one partner of the SCPC with unlimited liability, and all partners with unlimited liability must be Swiss SAs. The rules in the Commercial Code applicable to SCs (see paragraph 97 of this report) apply to SCPCs, unless there is an express provision to the contrary in the LPCC (art. 99, LPCC). Accordingly, an SCPC must be registered in the Commercial Registry (art.100, LPCC), providing information including the partnership agreement (art. 98 and 99, ORC), which contains the name and address of each partner with unlimited liability and sets requirements regarding the keeping of the register of the limited partners (art. 102 (1)(c) and (g), LPCC). There is an obligation for the SCPC to keep a register of partners, including the limited partners, in line with the rules applicable to SCs generally.

Publicly listed companies

62. A shareholder in a company whose shares, or a portion thereof, are listed on the Swiss stock exchange must, separately (*i.e.* separate from any obligations relating to the Commercial Registry) declare to the company and stock exchange certain changes in share holdings²⁵ (art. 20(1), LBVM). This information must be published by the company (art. 21, LBVM) and if the company suspects that the shareholder has not complied with this obligation, it must be reported to FINMA (Art. 20(4) LBVM).

Domiciliary companies

63. Domiciliary companies (“*société de domicile*”) is a term that refers to an entity which has only limited, “administrative”, activities in Switzerland (*i.e.* does not exercise commercial activities in Switzerland) and may only earn foreign income.²⁶ Customarily, they are used for the benefit of foreign companies. Entities considered as domiciliary companies include: legal persons, companies, foundations, trusts, fiduciary enterprises and similar arrangements which are not exercising a trade or manufacturing activity (see paragraph 36). They will be subject to the ownership and identity requirements applicable to their legal form under Swiss law.

64. In addition, the managing body of a domiciliary company is considered a financial intermediary (see paragraph 36) and therefore is subject to the AML

24. “Qualified investor” defined in article 10(3), LPCC.

25. Being changes where the holding exceeds or is reduced below the thresholds of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66%.

26. It is noted that whether an entity is merely managing wealth or is carrying out commercial activity is a question of fact which must be considered on a case to case basis. Guidance on the relevant factors is set out in art. 6(2) of the Ordinance on the activity as financial intermediary carried out on a professional basis and the FINMA-Circular 11/1, marg. 103-109.

regime's requirements. Whilst in general (see paragraph 87) those requirements do not include an express obligation to know the owners of the legal entity, since 1 January 2011, the obligations with regard to domiciliary companies have been increased. Risk criteria have been introduced in respect to domiciliary companies (art. 12(2)(h), OBA-FINMA). Such a domiciliary company will in principle be considered an increased risk, which will therefore require the financial intermediary to determine the natural person in control of the domiciliary company (art.14(2)(h), OBA-FINMA).²⁷ It is unclear how effective these rules would be in the case of bearer shares. In addition, a domiciliary company will also be subject to the ownership information requirements of the federal tax law although in the case of a foreign entity or where bearer shares are issued, this does not include an obligation to disclose all relevant ownership information.

65. Therefore, for domiciliary companies, the overlap of Commercial Registry, AML regime and tax law requirements means that ownership information will be available for companies incorporated under Swiss law, except in regards to any bearer shares that may be issued if the domiciliary company is an SA or SCA.

Foreign-incorporated entities (including foreign companies)

66. A foreign-incorporated entity or arrangement, including a foreign company, that transfers its headquarters (art. 161, IPL, as well as art. 126 and 146, ORC), or has a permanent establishment (art. 935(2) CO; and art.113 ORC) in Switzerland, must be registered in the Commercial Registry. Once a foreign entity or arrangement carries out business or earns income in Switzerland, it has a permanent establishment in Switzerland under Swiss law. Such a foreign entity will need to file information including an official excerpt from the Commercial Registry from the jurisdiction in which it is registered as well as an official copy of the statutes of the company (art.

27. The means of determining the identity of the natural persons in control of the domiciliary company are described in article 15 of the OBA-FINMA. These include: taking information orally or in writing from the domiciliary company or the beneficial owners, onsite visits to the place of business of those persons, or a consultation of publicly available sources and databases. The financial intermediary is required to document the information, and to verify whether the information is reliable. However, Switzerland advises in support of the effectiveness of these rules, that the financial intermediary is required to repeat the verification of the identity of the beneficial owners when doubts on the veracity of the previously provided information arise in the course of the relationship (art. 5, AMLA). In addition, the financial intermediary is criminally liable in the case of a violation of the beneficial owner identification requirement pursuant to art. 305^{ter} (1) of the CP.

113(1)(a) and (b), ORC), which may contain the name of the owners of the foreign entity. However, there is no express requirement for information relating to the ownership of the foreign entity to be included. The tax law obligations described in paragraph 76 will apply to foreign entities where they have an economic link to Switzerland but similarly this does not include an obligation to disclose all relevant ownership information.

67. In sum therefore, a foreign incorporated company which has its effective management in Switzerland that gives rise to a permanent establishment, is not subject to comprehensive requirements to maintain all relevant ownership information.

Nominees

68. Under Swiss law, the nominee relationship has a contractual basis under which the nominee must manage the affairs of the beneficiary in the manner agreed in the contract. Whilst there is no requirement for the nominee contract to be in writing, Switzerland advises that in practice, the contract is in writing. In the case where the contract was in writing, it would include the names of the contracting parties.²⁸

69. Further, in order to avoid tax obligations in respect of the assets, the binding circular issued by the AFC, Notice on Fiduciary Relationships²⁹ is clear that to establish the proper attribution of assets to a third person, the name and address of the person for whom the nominee acts must be mentioned in the nominee contract which must be in writing.

70. Nominees are not subject to obligations under Swiss anti-money laundering laws. However once the nominee, due to for example maintaining possession of the share certificates or acting on behalf of the shareholder in the management of the company (art. 2(3)(g), AMLA), becomes a financial intermediary and where he acts as such in a professional capacity,³⁰ he is subject to the AML regime. This will include the ownership and identity information requirements described in paragraph 82. This means that where a person is acting merely as a nominee, even in a professional capacity, he is not subject to any express obligation to keep identity or ownership information on the person for whom he acts. Where they carry out other regulated financial services in a professional capacity for their clients, nominees will be considered as financial intermediaries subject to AML requirements.

28. In addition, all nominee relationships are subject to the obligations set out in section 13 of the Commercial Code (art. 394 and following) although there are no express requirements therein to know the identity of the person for whom they act.

29. AFC Notice on fiduciary relationships, dated October 1967.

30. See paragraph 36 in the Introduction.

71. A type of fiduciary relationship is the *treuhand*, which is a relationship based on contract law, under which one person agrees to hold the legal title to assets for the economic benefit of another person. The legal and regulatory framework described above for nominees, will also apply to *treuhand* relationships.

72. In sum therefore, in most cases the nominee contract will be in writing, and further, as a matter of practice, the nominee will know the person for whom he acts (in order, for instance, to be able to take instructions from them). In addition, to avoid tax obligations in respect of the assets, the nominee must be able to produce a contract which includes the name and address of the person for whom they act. Finally, Switzerland has advised that most professional nominees are also carrying out additional financial activities for the client such as holding the share certificates, and as a result will be subject to the AML regime which meets the identity information requirements of the standard. As only a limited number of nominees would fall outside the sum of these obligations, Switzerland's authorities consider that this exception is narrow and does not prevent effective EOI. The explanations given by Switzerland about the practical application of the rules and their impact on EOI will be reviewed in Phase 2 of the review process.

73. Distinct but similar to a nominee relationship are the rules governing “intermediated securities” (*titres intermédies*), which may be issued by SAs or SCAs (art. 622(1), CO), and which are governed by the *Loi fédérale du 3 octobre 2008 sur les titres intermédies* (LTI). Intermediated securities, which may be either nominative or to bearer, are securities which are deposited by the titleholder to the credit of an account managed by a depository (*i.e.* agent) in the name of the titleholder (art. 3, LTI) on behalf of the titleholder (“*titulaire*”). The titleholder of an account is defined as the person in whose name the depositor maintains the account.

74. Moreover, only certain types of persons may act as depositories in respect of intermediated securities (art. 4(2), LTI), which include:

- banks;
- securities traders; and
- investment fund managers, to the extent that they hold share accounts for clients.

75. In general, depositories will be subject to the AML regime's obligations to maintain customer identity information described in paragraph 80.³¹

31. Depositories may also include the Swiss National Bank which is not subject to Switzerland's AML regime. The accounts of the Swiss National Bank are open only to other banks, to the Federal Government and cantonal administrations, to certain state-owned entities and to the bank's own employees.

Tax law

76. The following persons will be subject to tax under the federal direct tax law (LIFD):

- Natural persons (*personnes physiques*) who have either a personal or economic link to Switzerland (articles 3-4, LIFD)³² or who satisfy either criteria (article 5) including carry on an activity for profit in Switzerland (article 5, LIFD).
- Legal persons (*personnes morales*), that is “*societies de capitaux*”,³³ societies cooperatives, associations, foundations and other legal persons, which have a personal (art. 50, LIFD)³⁴ or economic (art. 51, LIFD)³⁵ link to Switzerland.

77. For entities and arrangements treated as separate legal entities from their members for tax purposes which are required to file a tax return in Switzerland, the tax return will include some ownership information such as information concerning transactions with or compensation paid to a member, or the names of the members of companies that primarily hold real estate. However, there is no general obligation to include comprehensive ownership information on the entity or arrangement in its tax return. A foreign company that has its effective management, or a permanent establishment in Switzerland will be required to file a tax return, however, the tax return does not include comprehensive ownership information on the company.

Financial Intermediaries and the anti-money laundering regime

78. The key relevant obligations on the financial services industry stem from Switzerland’s anti-money laundering regime based on the AMLA.³⁶

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32. A personal link as defined in art. 3 of the LIFD, include persons who reside or stay in Switzerland for at least 30 days per tax year if they are carrying out activity for profit, or 90 days without carrying out such activities. An economic link as defined in article 4 of the LIFD, includes persons who are owners, partners or beneficiaries of a business in Switzerland, have a permanent establishment in Switzerland, or are owners of (or have beneficial rights in respect of) real estate located in Switzerland.
33. SAs, SCAs, and SARLs. Also SICFs which, by virtue of art. 49(2) of the LIFD are treated as *societies de capitaux*.
34. A personal link defined in art. 50 of the LIFD, refers to legal persons which have their headquarters or effective management in Switzerland.
35. An economic link as defined in art. 51 of the LIFD, includes legal persons which are partners of a business established in Switzerland, have a permanent establishment in Switzerland, are owners of (or enjoy beneficial rights in respect of) real property located in Switzerland.
36. *Loi sur le blanchiment d’argent (AMLA, the Federal Law on the Prevention of Money Laundering in the Financial Sector of 10 October 1997).*

Persons subject to the regime (see paragraph 35) are described as “financial intermediaries” and must carry out the client identity measures set out below.

79. The principle regulatory body for AML requirements is FINMA who will also issue regulations establishing the specific obligations to implement the general requirements described in the AMLA. Financial intermediaries in the banking sector (banks, securities dealers, collective investment funds) must all obtain authorisation directly from FINMA before commencing their activities, and are regulated and overseen by FINMA. This is also the case for the insurance industry (life, damages and reinsurance). Other financial intermediaries not part of the banking or insurance sectors are required to either obtain authorisation from FINMA, or be affiliated to a self-regulating organisation (SRO). Each SRO is itself subject to FINMA regulation (art. 18, FINMASA – Financial Markets Supervision Act), which includes approval by FINMA of the regulations they impose on their members.³⁷

Client/customer identification and ownership information

80. The AMLA requires (art. 3) a financial intermediary to identify and verify the identity of their customer at the time of establishing a business relationship, and in respect of legal entities, must acknowledge the provisions regulating the power to bind the legal entity, and verify the identity of the person who is acting on the legal entity’s behalf.

81. A financial intermediary is required to obtain a written declaration from the customer identifying the client’s beneficial owner if (art. 4 (1), AMLA):

- The customer is not the beneficial owner or if there is any doubt as to whether the client is the beneficial owner;
- The customer is a domiciliary company; or
- A cash transaction of a significant amount³⁸ is involved.

82. The requirements which are described generally in the AMLA are then set out in more detail in regulations. For financial intermediaries subject to the supervision of FINMA, the relevant regulation is the *Ordonnance de la FINMA sur le blanchiment d’argent, 8 decembre 2010* (OBA-FINMA).

37. There are currently 11 OARs governing financial intermediaries in the non-banking sector. In its 2005 report, FATF noted that an assessment of the resources available to OARs to ensure compliance by its members with the regulations was difficult to determine, and the 2009 follow-up report noted difficulties in verifying the regulations established by OARs.

38. The threshold of a “significant amount” is determined by FINMA, the Federal Gaming Board and the self-regulatory organizations (Art. 3 al. 5 AMLA), and can vary according to the type of transaction. In most cases it is CHF25 000.

Chapter 4 of the OBA-FINMA details the specific requirements for compliance with articles 3 and 4 of the AMLA. For banks the Ordinance declares the regulations of the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 08), which contains similar binding requirements, will be applicable (art. 32 (1), OBA-FINMA). The insurance sector is subject to a similar code.³⁹

83. Where a financial intermediary is required to identify the beneficial owner of the client under article 4 of the AMLA, then the information concerning the beneficial owner must be provided in writing by the client and be signed either by the client, or by a person holding power of attorney for the client.⁴⁰

84. There is an obligation on financial intermediaries to repeat the verification of the identity of the customer and beneficial owners when doubts on the veracity of the previously provided information arise in the course of the business relationship (art. 5, AMLA).⁴¹

85. All client identity documents must be maintained for at least ten years from the date of the end of the business relationship or the date of the transaction (art. 7(3), AMLA).

86. Enforcement measures in place to ensure that the requirements of the AML regime are met are set out in the FINMASA and include declaratory rulings and prohibitions on financial intermediaries carrying out certain activities. Further details of these measures are described in part A.1.6 of this report.

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39. The code is made pursuant to art. 37 of the AMLA : *Règlement de l'organisme d'autorégulation de l'Association Suisse d'Assurances pour la lutte contre le blanchiment d'argent (OA-ASA) du 8 décembre 2010.*
40. For beneficial owners, the identification information includes: (i) for natural persons, their name, date of birth, address and nationality; (ii) for legal entities or partnerships: the business name and headquarter's address; (iii) for other organised groups of persons, trusts or other arrangements that have no defined beneficial owner, the identity of the settlor, the persons with authority to instruct the financial intermediary, the persons capable of becoming beneficiaries, the guardians, protectors and other persons holding similar authority in respect of the arrangement: art. 52 and 53, *Ordonnance de la FINMA*. These sections of the *Ordonnance de la FINMA* apply only to non-banking non-insurance financial intermediaries subject to the direct supervision (IFSDs). The requirements imposed by OARs, which must be approved by FINMA, impose equivalent requirements: see for example, art. 7-10 of the regulations of one of the self-regulating bodies (OARs), the Swiss Association for Private Wealth Managers (ASG).
41. In addition, in the case of insurance contracts which are susceptible to being re-sold, the insurance institution must re-verify the identity of the beneficial owner at the time of re-selling or claim on the policy, the previously identified beneficial owner is not the person mentioned in the relevant contract.

87. Notably, for legal persons the required client identity details will not necessarily include the identity of the owners of the entity (see for example art. 41, OBA-FINMA⁴²). Further, these identification requirements under article 3, will not apply for cash transactions or insurance institutions unless the transaction, or a series of linked transactions that appear to be connected involve a significant financial value (art. 3(2)-(3), AMLA)⁴³ which in most cases will be CHF 25 000 (EUR 19 500).

88. Further, in respect of business relationships which are limited to asset holdings of minimal value, unless there are indicators of money laundering or terrorist financing, the above obligations concerning customer due diligence and transaction records are not required to be followed (art.7a, AMLA). The threshold for “minimal value” (*faible valeur*) is determined in art. 11(1), OBA-FINMA, however it can be used as an exception only in respect to very limited activities,⁴⁴ e.g. issuing debit cards, credit cards, and in respect of leasing activities.

89. Finally, there is a blanket exception to the AMLA for a financial intermediary acting in a professional capacity if they provide services exclusively to entities that are themselves deemed to be financial intermediaries or to foreign financial intermediaries that are subject to equivalent oversight (art. 2(4) including art. 2(4)(d), AMLA). As regards the latter, the Swiss-based financial intermediary has no responsibility under Swiss law to obtain the information from the foreign financial intermediary and no penalty applies to the Swiss-based financial intermediary if the foreign-based intermediary does not maintain the information.⁴⁵ This has the result that the information in such cases will not be in the possession or control of a Swiss financial intermediary and therefore not available for the purposes of the exchange of information as required by the Terms of Reference.

90. In other cases (*i.e.* where the client is not a foreign financial intermediary), a Swiss financial intermediary may delegate the client identity requirements of the AMLA to a third person, subject to certain strict conditions (art. 26, OBA-FINMA). However, in those cases the financial intermediary remains responsible for compliance with the law, *i.e.* they may delegate the task, but not the responsibility (art. 27, OBA-FINMA).

42. This article of the *Ordonnance de la FINMA* is specifically applicable to financial intermediaries who are subject to FINMA’s direct supervision. It is presumed that the regulations applied by OARs are generally not stricter.

43. Except where a suspicion of money-laundering or terrorist financing arises.

44. See art. 11, OBA-FINMA.

45. Switzerland has advised that despite the information not being in Switzerland, competent authorities in Switzerland can obtain the information from the equivalent authority through international assistance.

Bearer shares (ToR A.1.2)

91. Bearer shares may be issued by SAs and SCAs. Founding shareholders, whether holding nominal or bearer shares, must be identified at the time the company is registered in the Commercial Registry. However, there is no obligation to keep this information up to date. Where bearer shares are issued after the company has been registered, or where founding shareholders have transferred their bearer shares, information concerning the current holder of the share is not required to be maintained by the Commercial Register or in the company's own registry.

92. There are certain circumstances where the holder of a bearer share must be identified. The following laws may create either an obligation to disclose bearer share ownership, or impose adverse consequences on non-disclosure:

- The obligation to report to the Stock Exchange whenever certain thresholds of ownership⁴⁶ in publicly traded companies are passed apply also to bearer share holders (art. 20, LBVM).
- Beneficiaries (including holders of bearer shares) in receipt of income, including non-residents, are subject to income tax under Swiss law (arts 20 (1 let. c), 20 (1bis) and 20a LIFD) and therefore must complete a tax declaration.
- A withholding tax (anticipatory tax) of 35% is imposed on dividends paid by Swiss companies, and to obtain a credit or reimbursement, shareholders (whether residents or non-residents) must declare their share ownership to the tax authorities.⁴⁷
- Where a financial intermediary that is subject to the AML regime manages the purchase or transfer of such shares, or maintains possession of the bearer share certificates, the financial intermediary will be required to know the identity (name and address) of the holder (see paragraph 80 concerning the requirements of the AML regime).

93. While one or more of these rules may require that identity information regarding the holder of a bearer share be maintained, there is no requirement in place to ensure such information for all instances of bearer shares (which may only be issued by SAs or SCAs).

46. Those thresholds are, when a shareholder's voting power reaches any of the following points: 3, 5, 10, 15, 20, 25, 33 1/3, 50, or 66 2/3%.

47. Their respective cantonal tax authorities in respect of natural persons resident in Switzerland, or the federal tax authority in respect of legal persons or other commercial entities.

Partnerships (ToR A.1.3)

94. Swiss law recognises ordinary partnerships, general partnerships and limited partnerships, all of which are governed by the Commercial Code. In addition, cooperative societies and associations, which have characteristics of both companies and partnerships, are dealt with in this section.

Société Simple (SS)

95. The civil/ordinary partnership (art. 530 *et seq.*, CO) is a contractual association between at least two persons uniting their efforts or resources for a common purpose. It is not a separate legal entity and is not required to register in the Commercial Registry. A partnership is only an SS when it does not exhibit any of the distinctive characteristics of any other type of partnership governed by the Commercial Code (art. 530, al. 1, CO). Accordingly, whenever a partnership carries on a commercial activity, which is a characteristic of the partnerships described below, it will be subject to the rules applying to that type of partnership. As a result, an SS is often used for activities of a short duration or for specific projects only. This type of partnership does not carry on business, it cannot have any income, credits or deductions for tax purposes (see discussion of tax law requirements below), and is not a limited partnership. Therefore it does not fall within the partnerships relevant to the *Terms of Reference*.

Société en nom collectif (SNC)

96. The SNC or general partnership (art. 552 *et seq.*, CO) is formed by two or more individuals entering into a contract of association, in order to operate a commercial enterprise. Although it can acquire rights, incur liabilities, take legal action and be sued, the general partnership is not in itself a legal entity and partners are jointly and severally liable for all the debts of the partnership. Each partner of an SNC is required to ensure the SNC is registered with the Commercial Registry which will include its business name and headquarters' address, an updated list of each of the partners and the persons designated to represent the SNC (art. 552, al. 2, CO; and art. 41(1), ORC).

Société en commandite (SC)

97. A *société en commandite* (SC) or limited partnership (art. 594 *et seq.*, CO) has one or more general partners, who are personally liable for the debts and obligations of the partnership. In addition, there are limited partners (“*commanditaires*”) who have limited liability for the debts and obligations of the SC. Only individuals may be partners with unlimited liability whereas partners with limited liability may also be legal entities, for example corporations. Since the limited partnership is derived from the general partnership, their other

characteristics such as rights and duties, etc. are the same as described for the general partnership. Each partner of an SC is responsible for ensuring the SC is registered in the Commercial Registry (art. 594(3), CO), which must include an updated list each of the partners (art. 41(2)(f) and (g), ORC).

Société cooperative

98. A cooperative society is formed by any number of persons to further the economic interests of its members (art. 828(1), CO) and is similar to a joint venture. It must be registered in the Commercial Registry, including its business name and headquarters' address, and the personal details of each of the founding members and their representatives (articles 84-85, ORC). A list of members must be deposited in the office of the Commercial Registry, and the members are personally responsible for notifying any changes to the list (art. 837, CO).

Tax Law and partnerships

99. Swiss partnerships are transparent for federal income tax purposes and partnerships are not required to submit tax returns (art. 10(1), LIFD). Each partner subject to tax in Switzerland is required to report their partnership income in their tax return, and on request from tax authorities (federal or cantonal) must supply information regarding their legal relationship with other partners, for instance concerning their partnership share, claims and earnings (art. 128, LIFD, art. 44, LHID).

100. Foreign partnerships and other arrangements without separate legal personality that have an economic link with Switzerland are subject to tax in Switzerland in the same manner as a company. "Economic link" means that the partnership or other arrangement is connected with a business established in Switzerland, that it has a permanent establishment in Switzerland or holds certain rights in real property (art. 11 and 51, LIFD). However, as noted in paragraph 77, there is no general requirement for companies to include information concerning ownership in a tax return.

Financial intermediaries and partnerships

101. Partnerships which engage a financial intermediary will also be subject to the ownership and identity requirements carried out by the financial intermediary and described in paragraph 80 above.

Trusts (ToR A.1.4)

102. While Swiss law does not allow for the creation of trusts, there are no restrictions on persons in Switzerland acting as a trustee or providing

other services to trusts created under foreign law. A number of trust companies operate in Switzerland, and Swiss lawyers and asset managers regularly act as trustees of foreign trusts. Moreover, Swiss courts have dealt with trust issues on a number of occasions in the past.

103. The ratification by Switzerland on 1 July 2007 of the Hague Convention on the international recognition of trusts created stronger legal foundations for the trustee business. In addition to ratification of the Convention, the Swiss Federal Council enacted parallel amendments to Swiss federal legislation on international private law (the IPL) and debt enforcement and bankruptcy. At the same time, the “*Conférence Suisse des impôts*” issued Circular number CI 30 on 22 August 2007⁴⁸ which established a common set of rules across the cantons and the federation with regard to the taxation of trusts (discussed at paragraph 106).

104. The amendments to the IPL established that the seat or domicile of a trust is its place of administration appointed in the deed or, where no such place is appointed, its place of effective management. The second amendment was the introduction of the new chapter 9a to the IPL (from articles 149a to 149e) entitled “The Trust”. Among other things, these provisions allow for the registration in public registers of certain types of trust assets and provide for the recognition of foreign judgments concerning trusts. The Hague Convention (art. 6-7) and Swiss international private law (art. 149c) provide that the laws governing the trust are those designated by the settlor (apparent from the trust deed), and where not so designated, those of the jurisdiction to which the trust has the closest connection. Therefore, if the trust is governed by UK or Jersey law, for example, then the obligations and rights under these laws will apply and the Swiss trustee will need to scrupulously comply with these laws including identity and account record-keeping requirements.

105. Swiss law does not require trusts to be registered, which includes no registration in the RC.⁴⁹ However, where the trust holds property that is itself required to be registered – namely real estate, ships or aircraft – the existence of a trust relationship would be recorded in the appropriate registry (art. 149d, IPL and art 12 of the *Convention relative à la loi applicable au trust et à sa reconnaissance*). Furthermore a trust relationship can be registered in the various public registers for the protection of intellectual property rights (art. 149d(2), IPL). If a trust relationship is not registered in these registries, it cannot be claimed against a third party that has acted in good faith (art. 149d(3), IPL).

48. This Circular is binding and is written in conjunction with the cantonal authorities, and the federal tax authority.

49. However, where for example the trustee was a company carrying out commercial activities on behalf of the trust, than that company would be required to be registered. Even in that case however, the ownership and identity requirements of the ORC would only apply to that company, not the trust more broadly.

Tax Law and trusts

106. Following the ratification of the Hague Convention in 2007, the “*Conférence Suisse des impôts*” issued Circular number CI 30 “Taxation of Trusts”, to ensure a uniform interpretation to the existing practice of cantonal and federal tax authorities for the taxation of trusts.

107. The Circular highlights that for Swiss tax purposes, profits are considered to be derived only when the taxpayer receives a right to income or acquires the right of disposition. As a trustee has no right to the assets or income of a trust (in spite of legal ownership), a Swiss trustee is never taxable in respect of trust income or capital provided it can prove that it holds the trust property as a trustee. These principles are taken into account to identify the taxpayer in the case of a trust (either the settlor or beneficiary) according to the type of trust involved.

108. In the case of a revocable trust, where the settlor has the power to revoke the trust and obtain the trust fund, the trust is considered fiscally transparent (binding Circular on Taxation of Trusts issued by AFC) and a settlor domiciled in Switzerland, but not a foreign settlor, will remain subject to tax in Switzerland on trust assets and income.

109. In the case of an irrevocable trust, the settlor effectively loses his rights to the assets of the trust. At the time of a distribution of trust funds or the time at which, the beneficiaries can claim the distribution (irrespective of any effective distribution), it is regarded as income of the beneficiary and an income tax charge will arise on the beneficiaries where they are resident in Switzerland.

110. Where the irrevocable trust is a discretionary trust, the beneficiaries have only the right to be considered as potential recipients of distributions by the trustee, and the trustee has the right to decide on what distributions to make. Once this power is exercised and a distribution is made it is regarded as income of the beneficiary and an income tax charge will arise on the beneficiaries where these are resident in Switzerland. No liability to tax will arise in relation to foreign beneficiaries unless the trust is in receipt of Swiss source income, which may be subject to withholding tax.

111. There is no express requirement under tax law for trustees resident in Switzerland to know the settlors or beneficiaries of foreign trusts. However, to ensure that the trust assets are not attributed to the trustee for tax purposes, it must be able to prove the trust relationship. The Circular on Taxation of Trusts provides that settlors, trustees or beneficiaries liable to tax in Switzerland are required to provide all necessary information and submit documents, vouchers or certifications of third parties to prove the existence of a trust and

distributions of a corresponding value, or expenses.⁵⁰ In principle, however, a trustee will never be liable to tax in respect of trust income and the settlor and beneficiary may not be liable either if they are not resident in Switzerland. In addition to the Circular, the AFC’s binding Notice on Fiduciary Relationships⁵¹ makes clear that to establish the attribution of assets to a third person, the name and address of the settlor must be mentioned in the contract (*i.e.* trust deed) which must be in writing. Finally, the tax authorities could use their powers to ask the trustee for information about the settlor or the beneficiary in order to ensure that they do not have tax liabilities in Switzerland.

Financial intermediaries and trusts

112. In addition to the tax law requirements, AML legislation has a broad application to trustees in Switzerland who act in a professional capacity (see paragraph 37), as they are considered to be a “financial intermediary”. Such a trustee would therefore be subject to the duties of a financial intermediary, including customer identification (art. 3) and record keeping requirements (art. 7) as described in paragraphs 80 and 144.

113. Financial intermediaries, which are under the direct supervision of FINMA, are subject to articles 52-53 of the OBA-FINMA⁵² and under these provisions a financial intermediary must identify the following persons in the case of a trust for which beneficiaries have not yet been appointed:

- the settlor;
- persons with the authority to instruct the financial intermediary;
- the category of persons who are capable of becoming a beneficiary;
- the guardian, protectors and other persons holding similar authority in respect of the trust.

114. For a trust with a defined beneficiary, the person or entity would be required to be identified. For revocable trusts, the persons authorized to exercise the revocation are considered as the beneficial owners.

50. It should be noted that the tax authority’s Circular provides that in the context of an examination of relevant facts during an external tax audit, the trustee may not invoke professional secrecy and must disclose all documents relating to the trust. This also applies to cases in which the trustee is a lawyer since the administration of a trust does not form part of a lawyer’s activity in strict terms.

51. AFC Notice on fiduciary relationships, published October 1967.

52. The regulations applicable to persons who are supervised by SROs must be verified by FINMA and they impose equivalent requirements. The same rules are applicable to banks (see the Agreement on the Swiss banks’ code of conduct with regard to the exercise of due diligence (CDB 08), marg. 43).

115. Financial intermediaries, not directly supervised by FINMA, are subject to similar provisions as described above, based on regulations of SROs.

116. A trustee that does not act in a professional capacity would not fall within the AML regime and therefore not be subject to these requirements although the tax law requirements may still apply.

117. Overall, in view of the obligations under the tax laws, the AML regime as well as the obligations found in the law which governs the trust,⁵³ there will generally be available information on the identity of the settlor, trustee and beneficiaries for trusts which are administered or have the trustee resident in Switzerland.

Foundations (ToR A.1.5)

118. Swiss law allows for the establishment of foundations (art. 80, CC) which must be created for the object of allocating assets to a particular purpose. Both public and private foundations may be created. A body of assets may be tied to a family by means of a family foundation created in order to meet the costs of education, the establishment and support of family members or for similar purposes (art. 335, CC). Foundations “*d’entretien*” are forbidden. Private foundations are often used for charitable purposes. Public law foundations are established and incorporated through federal, cantonal or municipal legislature or administrative act and are often referred to as “*Anstalt*” or “*établissement*”. These are entities in the form of foundations that serve public purposes and are not to be confused with private law entities, also called “*Anstalt*” as found in Liechtenstein.

119. Private foundations are established by a notarial deed or by will and inheritance (art. 81(1), CC) and the foundation charter must stipulate amongst other things, the purposes of the foundation, the way these purposes will be realised and how the foundation is organised and managed (art. 83, CC). In addition, the foundation deed must be authorised by a notary, and the notary must verify certain matters relating to the foundation, including the identity of the parties to the foundation deed including the founder.

120. The beneficiaries can be named in the deed, or be referred to as a class of person relating to the purpose of the foundation. A foundation beneficiary has no rights against the foundation assets unless the foundation charter stipulates specific benefits and the particular beneficiary can be sufficiently clearly identified. Once transferred to the foundation, assets may not be returned to the founder. Once created, the purpose of the foundation cannot in principle be changed, either by the founder or by the foundation council although it is possible for the founder to reserve the right to make

53. *E.g.* UK law. This law would bind a Swiss-resident trustee, noting Switzerland’s ratification of the Hague Convention and its domestic IPL.

such modifications. If the foundation statute allows for modifications, such modifications require approval by the relevant oversight authority.

121. Foundations acquire legal personality upon registration in the RC (art. 52(1) and (2), CC) however certain types of foundations are exempt from the requirement to register if they are not carrying on any commercial activities. Further, registration in the RC is optional for religious and family foundations. Family foundations may only be established for the purposes of education fees, the establishment and support of family members, or similar purposes (art. 335(1), CC). To register in the RC, certain information must be provided including the name of the foundation, the names of all persons forming part of the management of the foundation (the foundation council) as well as the names of the persons with the power to represent the foundation (art. 94, ORC); and this information must be kept up to date (art. 27, ORC).

122. All foundations are supervised by a federal, cantonal or municipal oversight authority⁵⁴ (art. 84, CC) with the exception of religious or family foundations, or foundations which are contingency funds. At the federal level, the oversight authority is *Surveillance fédérale des fondations*. Each oversight authority maintains a register of the foundations which they supervise, but the register does not include comprehensive information regarding the identity of founders, and beneficiaries. The oversight authorities as well as the Register of Commerce will in all cases have the information on the members of the foundation council (art. 95(1)(i), ORC) and the oversight authorities are required to ensure that the assets of the foundation are used in accordance with its purpose (art. 84(2), CC) and it can require certain information to be provided to it for that purpose, including identity information on the beneficiaries. The information provided annually does not appear to include information on the identity of the founder or the beneficiaries.

Tax Law and foundations

123. Foundations (other than charitable or religious foundations) established under Swiss law or those whose effective administration is in Switzerland, are required to file a tax return (art. 124, 125(2), LIFD; art. 42(3), LHID). Foundations which are separate legal entities (*i.e.* are registered in the RC) are required to file a tax return in Switzerland. Swiss federal tax law requires in all cases that any information, including the identity of the beneficiaries, regarding distributions must be provided to the tax authorities (art. 129(1)(a), LIFD).

54. Whether a foundation's oversight authority is federal, cantonal or municipal will depend on where the foundation council is situated, and also the jurisdiction within which it will carry out its purposes. Each supervisory authority issues regulations which supplement the Civil Code and Commercial Code provisions relating to foundations.

Financial intermediaries and foundations

124. Financial intermediaries who are providing services to the foundation must verify the identity of their clients, and any person authorized to represent them, in accordance with the customer due diligence obligations described in paragraph 80. In particular, a member of the foundation council will become subject to the AMLA when they act in a professional capacity carrying out “financial intermediation” activities.⁵⁵ In particular, for a foundation with defined beneficiaries, this would be the name, date of birth and address of that person, or where the foundation does not have a defined beneficiary then the information required to be maintained includes (art. 53, OBA-FINMA):

- the identity of the founder;
- the identity of those persons with the authority to instruct the financial intermediary;
- the category of persons who are capable of becoming a beneficiary;
- the guardian, protectors and other persons holding similar authority (including, for example, the foundation council).

125. Where the financial intermediary, for example the notary, is not acting in a professional capacity (or is not otherwise a “financial intermediary”), these requirements will not apply.

126. Therefore, in most instances foundations which are formed under Swiss law will have information available on the identity of the founders, members of the foundation council and any beneficiaries as a result of the obligations found in the AML regime and Swiss tax laws. In addition, the foundation deed must be authorised by a notary, and the notary must verify certain matters relating to the foundation, including the identity of the parties to the foundation deed. In authorising the deed before the notary, the founder may be represented by an agent and in those cases, it is not clear that the identity of the founder themselves, as well as the agent, must be verified. Further, where a foundation (family or religious foundation) is not registered in the RC, the board members of the foundation do not qualify as professional financial intermediaries, no financial intermediary is involved in a professional capacity in the management of the foundation, or the foundation is not subject to tax in Switzerland, it is not clear that relevant identity information in respect of the foundation will be available in all cases. Only a few

55. “Financial intermediation” activities in this context include where they conduct fiduciary activities or asset management on behalf of a third party, or where they do not exercise a commercial activity: see art. 6, OIF (*ordonnance sur l’activité d’intermédiaire financier exercée à titre professionnel*).

foundations may fall within this very limited class, and further, Switzerland advises that because the family foundation will involve only related members, the beneficiaries will always be known. As a result, whether the requirements on such foundations do impede the effective exchange of information should be considered in the Phase 2 Review of Switzerland.

Other relevant entities or arrangements

127. Switzerland has not identified any other relevant entities and arrangements which may be formed under its laws.

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

128. In respect of the obligations of the AML regime in regards to ownership information and accounting records, the enforcement measures available to FINMA are set out in the FINMASA. In general, enforcement measures follow a 3-stage process beginning with preliminary enquiries, followed by administrative proceedings and finally, implementation of any measures ordered by FINMA. Measures include an order requiring restitution of the breach (art. 31); a declaratory ruling (where a breach occurred, but restitution is no longer required: art. 32), or a prohibition against an individual continuing to carry out a profession (art. 33).

129. Where the financial intermediary is regulated by an SRO, the SRO may terminate the membership of a financial intermediary which has broken the applicable rules, withdrawing thus the right to act as financial intermediary unless a direct licence would be granted by FINMA. In addition, most SROs may impose financial sanctions on their members for non-compliance with AML obligations.⁵⁶

130. In respect of obligations to register or update information contained in the Commercial Registry, persons responsible may be liable for any damage which results (art. 942, CO) and may be fined an administrative penalty of up to CHF 500 (EUR 390) or even a penal sanction (art. 153, CP). A person using falsified documents when registering or obtaining false certification from the RC in order to defraud another person can be punished with fines or

56. For example, the Regulations of VQF, probably the biggest OAR with 1 700 members, state the following:

The Supervisory Commission may impose the following types of sanction on members:

- a. Censure.
- b. Penalty of up to CHF 250 000.00.
- c. Exclusion from the Association.

imprisonment of up to 5 years (art. 251 and 253, CP). In respect of accounting record obligations, a failure to keep the required accounts can also imply a penal sanction (art. 166, CP). The person who fails to keep the accounting records required under the ORC can also be fined by the tax authorities (see for example art. 174, LIFD).

131. For tax obligations in respect of ownership and accounting information, a person who intentionally or negligently does not provide information required under the LIFD, may be fined up to CHF 10 000 (EUR 7 800) (art. 174(1)(b), LIFD).

132. Under the CO and CC, which will apply to each type of entity and arrangement described in the report with the exception of trusts, if a member of the board of a company (or other person responsible for the management of the entity) breaches his or her duties⁵⁷ each and every such person may have unlimited liability for any damages that result. Such liability maybe enforced against the person by the owners or partners of the entity, or in the case of bankruptcy, any creditor in a civil case (art. 754, CO). Furthermore, members of the managing body of an entity may be prosecuted for mismanagement of the entity and sanctioned with fines (art. 34, CP: unless the law provides otherwise, a monetary penalty amounts to a maximum of 360 daily penalty units) or imprisonment of up to five years (art. 158, CP). The court decides on the number of daily penalty units according to the culpability of the offender and a daily penalty unit amounts to a maximum of CHF 3 000 (EUR 2 340). The court decides on the value of the daily penalty unit according to the personal and financial circumstances of the offender at the time of conviction, and in particular according to his income and capital, living expenses, any maintenance or support obligations and the minimum subsistence level.

133. In general, the enforcement measures in place in Switzerland are strong and reinforce the obligations to keep all relevant information. However, penalties which may be imposed for breaches of the CO or the Commercial Registry requirements are comparatively low or will generally only apply in respect of damages which have occurred from a breach. The effectiveness of these enforcement provisions which are in place in Switzerland will be considered as part of its Phase 2 Peer Review.

57. A breach will include a negligent act or omission.

Determination and factors underlying the recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Bearer shares may be issued by SAs and SCAs, and mechanisms to ensure that the owners of such shares can be identified are not systematically in place for all bearer shares.	Switzerland should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
Companies incorporated outside of Switzerland but having their effective management in Switzerland which gives rise to a permanent establishment are not required to provide information identifying their owners as a part of registration requirements. Therefore, the availability of information that identifies any 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, Switzerland should ensure that ownership and identity information is available.

A.2.Accounting records

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

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

134. The main accounting record requirements under Swiss law are found in the obligations concerning the Commercial Registry pursuant to the ORC and in articles 662-677 of the CO, for an SA, rather than under the laws concerning each type of legal entity and arrangement, as well as under tax law.

Commercial Registry

135. All persons carrying commercial activity in Switzerland are required to be registered in the RC. The person responsible for ensuring the entity is so registered is also required to hold and keep accounting records that meet recognised accounting principles, as necessary according to the nature and

extent of the entity's business; being those that reflect the financial situation of the business including annual financial statements. This includes a requirement to keep books,⁵⁸ "accounting records" ("*pieces comptables*") and correspondence, which may be kept in written, electronic or other suitable, readable form, whilst the annual earnings report and balance sheet must be kept in written, signed form (art. 957, CO).⁵⁹ The Swiss Commercial Code describes the general documents which must be retained as the documents necessary to reflect properly the financial situation of the business and to determine the liabilities and claims as well as the operating results of each business year. Switzerland has provided doctrine which confirms that this will include business related documents which are of importance to the company and possibly to third parties and includes invoices and copies of invoices that have been sent out, delivery notes, receipts, bank statements, internal documents if these are accounting records, letters, faxes, electronic correspondence, contracts of any kind, organisation plans and regulations, judgements, settlements, etc.

136. All of the records referred to under article 957 must be kept for a minimum 10 year period, generally counted from the end of the financial year to which they relate (art. 962, CO). The Ordinance on the retention of accounting records (Olico⁶⁰) provides further details on the requirements under article 957 of the CO; in particular, the specified details required in the accounting "books" as well as the manner of retaining records.

Tax Law

137. Persons subject to federal tax in Switzerland (see paragraph 76) are subject to the requirements to retain accounting records set out in article 126 of the LIFD. These requirements are based on the general principle that the taxpayer must do everything necessary to ensure that tax is fully and precisely imposed. In particular (art. 126(2), LIFD):

58. The reference to "books" is described further in article 1 of Olico (*Ordonnance concernant la tenue et la conservation des livres de comptes*). In all cases, a person must retain "books" which include accounts structured logically by groups or themes which would allow earnings reports and balance sheets to be prepared, and also a journal in which all transactions are recorded. In some cases, additional "books" are required, including all information necessary to establish the financial situation of the business, the debts and credits of the business, and the annual accounts: art. 1(3), Olico.
59. These documents must be prepared in line with general accounting principles, representing in the most precise manner possible the financial situation of the business: art. 959, CO).
60. *Ordonnance concernant la tenue et la conservation des livres de comptes*.

On request by the federal tax authority, they must furnish information orally or in writing, present their accounting books, supporting documents and any other certificates as well as documents relating to their business affairs.

138. The records referred to in article 126 of the LIFD must be retained at least 10 years (art. 148 and 152 (3), LIFD).

139. There are additional requirements for taxpayers that are individuals who are carrying out an activity for profit, and legal entities (art. 126(3), LIFD) who are not required by the Commercial Code to keep accounting records in the specified form set forth in article 957, CO. These taxpayers must keep for 10 years the books and statements referred to in article 125(2), as well as the supporting documents in respect of their business activities. The books and statements referred to in article 125(2) of the LIFD are the documents which must be annexed to the tax return of those persons, being:

Signed extracts from the accounts (balance sheet, profit and loss statements and earnings report) for the tax period, or in the absence of accounting records which confirm to commercial usage, a record of assets and liabilities, a statement of receipts, expenditure, deductions and private investments in the business.

140. There are also requirements imposed on third parties to produce certain accounting records, which on request may be produced directly to the tax authorities. This includes information on the assets and income of taxpayers that is held by fiduciaries, private wealth managers, secured creditors, trustees and guardians, and other people with possession or administration of a taxpayer's assets (art. 127, LIFD). However in respect of this requirement, professional secrecy obligations (see Part B.1) are reserved.

141. Under the federal law concerning harmonisation of direct taxes between the cantons (LHID), each canton must, under cantonal direct tax law, impose accounting records requirements on taxpayers which match those found in articles 125-127 of LIFD and described above: article 42-45, LHID.

142. In addition, for VAT purposes, the taxpayer is also required to retain for at least ten years the books of account and relevant underlying documentation, business correspondence and other documents (art. 52(2), VAT Act).

143. Therefore, in order to meet the obligations of article 126 and noting the broad scope of persons subject to the federal tax law (see paragraph 76) as well as persons subject to VAT and cantonal tax laws, all the accounting records described in element A.2.1 and A.2.2 of the ToR are required to be kept by these persons. The penalties which apply if these obligations are not met are eventually a fine (art. 174, LIFD) or even a penal sanction (art. 325, CP).

Financial intermediaries and the anti-money laundering regime

144. The AMLA sets out the requirements of the AML regime, which are then prescribed in further detail in regulations and guidance issued by FINMA or the relevant SRO. The AMLA prescribes in article 7 that a financial intermediary must keep records relating to transactions in such a manner that a third party expert would be in a position to have an objective understanding of the transactions and the business relationships and of compliance with the provisions of this Act.⁶¹ These documents must be retained for 10 years from the end of the business relationship or the transaction. It is not clear that these requirements would capture all relevant accounting records, particularly underlying documentation, for transactions conducted through a financial intermediary consistent with the *Terms of Reference*.

Companies

145. For each accounting period, SAs (art.662-663, CO) are required to prepare a report which includes annual financial report to give a sufficiently clear presentation of the holdings and results of the company, and will include profit and loss statements and balance sheets. In addition, article 662(4) notes that SAs are also subject to the obligations imposed on all entities registered in the RC (paragraph 135 above). There are also additional requirements imposed on companies whose shares are traded on the Swiss Exchange, and accounts for those companies generally must comply with IFRS, US GAAP or SWISS GAAP RPC standards. SAs are required to prepare audited financial statements annually.

146. In respect of other types of companies, there are no additional accounting record-keeping obligations other than those described above pursuant to the CO, ORC, tax laws and the AML regime.

Partnerships

147. There do not appear to be any additional accounting record-keeping obligations imposed on partnerships, other than those described above, as applicable, pursuant to the CO, ORC, tax laws and the AML regime.

61. The regulations associated with the AMLA provide very little further detail to outline the precise transaction documents that are to be kept. For example, article 62 of the OBA-FINMA notes only that the documents relative to the transaction should be maintained, and they must allow each transaction to be reconstructed.

Trusts

148. As the institution of the trust is not governed by Swiss private law, there are no provisions providing for trusts themselves to be registered in the RC, and therefore the obligation to maintain accounting records under the Commercial Code does not generally apply.⁶² However, trusts carrying on commercial activities must register in the RC, and therefore keep the accounting records described in paragraph 135. Further, the Swiss resident trustee will themselves be subject to the general accounting obligations as provided under the Commercial Code (described above).

149. Under the tax law, in order to establish that the trustee is not liable to tax on the trust income, the trustee is required to maintain information relating to the trust and its assets (as discussed in Part A1.4 *Trusts*). Further, the Notice on Fiduciary Relationships provides that the fiduciary is required to maintain a balance sheet which clearly indicates the assets held for third parties. These books will be produced separately from the accounting books of the fiduciary, in such a way that the tax authorities may at any time be informed on the composition of assets and any subsequent changes thereto. These documents will fall under the account retention requirements under Swiss tax law which is 10 years (art. 126 LIFD). Furthermore, the tax law provides that fiduciaries, wealth managers, or any persons that manage or administer the assets of a specific taxpayer are required to provide a written statement regarding the assets held and income generated therefrom to the taxpayer (art. 127(1)(d), LIFD).

150. Under the AML regime moreover, a professional trustee is subject to the anti-money laundering requirements for accounting records described above. Those documents must be kept for at least 10 years from the time the transaction took place or the end of the business relationship (art. 7(3), AMLA). As noted in section A.1, the anti-money laundering law contains important exceptions for trustees not acting in a professional capacity or who act exclusively for foreign financial intermediaries, and so this requirement does not apply in all cases. Moreover, the requirements to maintain records for AML purposes may not capture all relevant accounting records including underlying documentation consistent with the *Terms of Reference*.

151. Finally, as noted in paragraph 104, Swiss resident trustees will be subject to the obligations on trustees under the law governing the trust (e.g. UK law), and this will include the account record-keeping requirements of the governing law.

62. However, where for example the trustee was a company carrying out commercial activities on behalf of the trust, than that company would be required to be registered. Even in that case however, the accounting record requirements of the ORC would only apply to that company, not the broader activities of the trust.

152. In respect of trusts administered in Switzerland or where the trustee is resident in Switzerland, the obligations found in the Commercial Code, tax laws and the AML regime will ensure that there are comprehensive requirements to maintain the accounting information required under the standard.

Foundations

153. Foundations are overseen by regulatory authorities to ensure compliance with the obligations of the CC⁶³ and on an annual basis the federal regulatory authority requires certain accounting records including balance sheet, earnings report (with explanatory notes) as well as an auditor's report.⁶⁴ To seek exemption from the audit requirement, a foundation must have a balance sheet total of less than CHF 200 000 (EUR 156 000) for two consecutive years.

154. In addition, all foundations will be subject to the accounting record requirements described above pursuant to the ORC,⁶⁵ and as applicable, under the tax laws⁶⁶ and the AML regime. Further, in all cantons, foundations which are exempt from tax must nonetheless submit the accounting records required by the regulator (see above paragraph) to the tax authorities.⁶⁷

Determinations and factors underlying recommendations

Determination
The element is in place.

63. Articles 80-89 of the Civil Code.

64. Cantonal regulators of foundations have similar obligations to produce annual accounting records.

65. Art. 83a of the Civil Code requires all foundations, even if they are not required to be registered in the Commercial Register, to maintain the accounting records described in the ORC.

66. As noted in paragraph 123, foundations (other than charitable or religious foundations) established under Swiss law or those whose effective administration is in Switzerland, are required to file a tax return.

67. See for example in respect of the Vaud canton, article 11(3) of the *Reglement vaudois du 30 avril 2008 sur la surveillance des foundations*.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

155. Banks are “financial intermediaries” and are therefore subject to Switzerland’s anti-money laundering regime. The term “bank” for the purposes of the AML regime and the Banking Law (LB),⁶⁸ includes banks, private bankers and savings institutions (art. 1, LB) and any person not falling within this definition may not accept deposits from the public on a professional basis.⁶⁹ The supervisory authority for banks in respect of the AML obligations is FINMA.

156. As described in paragraph 80, in respect of customer identity information, banks must verify the client’s identity from documentary evidence. For clients which are legal persons, the bank must verify the identity of the person establishing the account or undertaking the transaction in the name of the legal person. In respect of beneficiaries of the account, the obligations described in paragraph 81 apply, including that the bank must obtain a written declaration from the client identifying persons with beneficiary’s rights on the account (art. 4(1), AMLA):

- the client is not the beneficiary or there is a doubt as to whether the client is the beneficiary;
- the client is a domiciliary company;
- a cash transaction of a significant amount⁷⁰ is involved.

157. Where, in the course of the business relationship doubts arise over the identity of the client or the beneficiary, identity verification procedures must be undertaken again.

158. In respect of transaction records, all financial intermediaries are required to maintain all transaction documents as well as any clarifying documents, such that a third party may be able to have a clear understanding of the transactions and the business relationship (art. 7, AMLA).

68. *Loi federale du 8 novembre 1934 sur les banques et les caisses d’épargne.*

69. The Federal Council may provide for exceptions to allow other persons to accept such deposits, if they are guaranteed. Further, the granting of loans is not considered as the acceptance of deposits in a professional capacity for these purposes: art. 1(2), LB.

70. The threshold of a “significant amount” is determined by FINMA, the Federal Gaming Board and the self-regulatory organizations (art. 3 al. 5 AMLA), and can vary according to the type of transaction. In most cases, it will be CHF 25 000 (EUR 19 500).

159. All client identity and transaction documents must be maintained for at least ten years from the end of the business relationship or of the transaction (art. 7(3), AMLA). In respect of business relationships limited to asset holdings of minimal value, unless there are indicators of money laundering or terrorist financing, the above obligations concerning customer due diligence and transaction records are not required to be followed (art. 7a, AMLA). The threshold for “minimal value” (*faible valeur*) is determined in article 11(1), *Ordonnance de la FINMA*. It can be used only in very limited activities, *i.e.* issuance of means of electronic payment, credit card issuance and leasing activities.

160. The requirements of the AMLA are further detailed in the OBA-FINMA. In particular, article 32 of the OBA-FINMA notes that banks⁷¹ are subject to the stringent client identification processes in respect of beneficiaries of a client, set out in the CDB 2008 (*Convention relative à l'obligation de diligence des banques*, of 7 April 2008).

161. Despite the rules described above, it appears that bearer savings books with unknown beneficial ownership are still in circulation in Switzerland. Following the analysis and recommendations of the FATF (Rec. 5) on this issue, existing bearer savings books must be cancelled the first time they are physically presented, and the identity of the person making withdrawals must be verified. In its most recent follow-up report published October 2009, FATF noted that whilst still in existence, the number of such books had halved between July 2005 and March 2008. Switzerland advises that between 2005 and 2010, the total assets held in such accounts reduced by 76%.⁷²

Determination and factors underlying the recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Some bearer savings books remain in existence although they may no longer be issued and must be cancelled upon physical presentation of the bearer savings book at the bank.	Switzerland should ensure that there are measures to identify the owners of any remaining bearer savings books.

71. Banks, as well as stockbrokers, funds managers, investment institutions and private wealth managers: art. 32(1), *Ordonnance de la FINMA*.

72. The total assets held in bearer savings accounts amounts to about 0.1% of the total assets held in Swiss bank accounts.

B. Access to Information

Overview

162. 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 Switzerland's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

163. For agreements entering into force since 1 October 2010, Switzerland has in place a new regime for accessing information for EOI purposes. Established by ordinance, the access powers are available to the Swiss competent authority once a preliminary review has determined that the request is in accordance with the regulation. The ordinance is intended to ensure Switzerland has the domestic framework in place which allows it to meet its international commitments pursuant to its DTCs, and includes a preliminary examination of the request to ensure it meets the requirements of a valid request, which generally appear to be line with the standard. In all cases, should there be a discrepancy between the double tax agreements and the ordinance, the provisions of the double tax agreements will prevail over the ordinance.

164. Once the preliminary review of an EOI request is satisfied, Switzerland has a broad range of access powers available which allow it to seek information from cantonal tax authorities, or issue a notice for the production of information from the holder of the information. These powers are supported by coercive measures including fines for non-compliance with a direction of the competent authority, or issuing a search warrant to obtain the information.

165. A further important development of the last two years is that Switzerland has now lifted its domestic bank secrecy provisions when information is sought

for EOI purposes pursuant to one of its new agreements. On the other hand, requests made under agreements that were negotiated prior to the decision of the Federal Council to adopt the standard in the area of exchange of information in tax matters on 13 March 2009 are still unable to have access to information subject to bank secrecy rules. Whilst Switzerland is moving quickly to update these EOI agreements to allow access to bank information, the restriction currently affects more than half of its EOI agreements. As a result, Switzerland's access powers are determined to be in place, but with certain aspects of the legal framework needing improvement.

166. Swiss law provides for right to be heard for persons directly concerned by an EOI request. The law provides for clear procedures that protect the rights and safeguards of such persons, including that they must be notified of the request. Exceptions to this notification rule only permit notification to be delayed until after the information has been accessed, and the person concerned must still be notified before the information can be exchanged with the EOI partner. On this basis, it is determined that this element concerning rights and safeguards (B.2.) is in place, but with certain aspects requiring improvement.

167. Switzerland has made a lot of progress over the past two years, notably in its commitment to fully implement the international standard without reservation. It continues to take steps to improve its implementation of the standard which includes the intention to replace the present ordinance with a law within the next two years, and in doing so, Switzerland is encouraged to address the matters raised in this section of the report.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

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

168. The competent authority for Switzerland in respect of EOI is the *Administration Fédérale des Contributions* (AFC, the Federal Tax Administration), or the Commissioner of the AFC. Switzerland's powers to access information for EOI purposes vary on the basis of whether the EOI agreement in question came into force on or after 1 October 2010. The pre- and post-1 October 2010 regimes, and their historical rationale, are explained below.

169. Following the Federal Council’s decision of 13 March 2009, Switzerland renounced its previous reservations to the exchange of information article (Article 26) of the OECD Model Tax Convention. Therefore, Switzerland will exchange information not only for the carrying out of the provisions of the double tax convention but also for the administration and enforcement of the domestic laws of the requesting contracting state.

170. To reflect this change, Switzerland has first brought into effect a regulation (ordinance), which it intends to replace with a comparable law in due course. The ordinance of 1 September 2010, “*Ordonnance relative à l’assistance administrative d’après les convention contre les doubles impositions*” (OACDI, Ordinance concerning administrative assistance in respect of double tax conventions) was introduced, and came into force from 1 October 2010. That the ordinance is a form of secondary legislation rather than a law does not alter its effectiveness in allowing access and exchange of information in line with its provisions. Switzerland has advised that the ordinance will be replaced as soon as possible, although not before 1 January 2013, by a law concerning administrative assistance for tax purposes. The draft proposed law was made available for public consultation in January 2011.⁷³

171. The OACDI concerns the AFC’s powers to access and exchange information relating to the application of a DTC or relating to the domestic tax law of an EOI partner.⁷⁴ It includes provisions relating to the AFC’s preliminary review of EOI requests, empowers the AFC to exercise powers to obtain the relevant information, the procedural rights, and rights of recourse for persons affected by the EOI request, as well as the interdiction of information exchange in certain cases.⁷⁵ The OACDI also regulates any requests that are made by Switzerland to its EOI partners. It applies to the execution of administrative assistance in respect of new or revised DTCs that come into force following the entry into force of the OACDI (1 Oct 2010). It will therefore apply to all of the New Agreements, which contain an EOI provisions based on the Federal Council decision of 13 March 2009.⁷⁶

73. As the law is only presently in draft form, and will not come into force until 2013 at the earliest, a discussion of its proposed provisions are not included in this report.

74. Chapter 3 of the Ordinance concerns the making of EOI requests by Switzerland to its EOI partners, however those provisions are not considered in the course of this review.

75. For example where the EOI request is suspected of being based on information which was obtained or transmitted by actions which would be illegal under Swiss law (art. 5(2)(c), OACDI).

76. The New Agreements, which contain an EOI provisions based on the Federal Council decision of 13 March 2009, are the agreements with Austria; Canada; Denmark; Faroe Islands; Finland; France; Germany; Greece; Hong Kong, China; India; Japan; Kazakhstan; Korea; Luxembourg; Malta; Mexico; the Netherlands;

172. The access powers available to the AFC for DTCs other than the New Agreements, is discussed in paragraph 192 below.

OACDI

173. The OACDI sets out a step by step process for handling EOI requests made to Switzerland. It is also significant as the AFC's access powers will not be available if the request does not meet the criteria described in Article 5 of the OACDI. In this way, the OACDI, and its explanatory report ("RE", *rapport explicatif*), may also impact the interpretation of the EOI provisions in Switzerland's agreements which are discussed in Part C. In interpreting the OACDI, Swiss tribunals will take into account the explanatory report, particularly in this case, where there are no other documents considered as part of the legislative adoption process which would indicate the purpose or intended scope of the ordinance.

174. The terms of the OACDI should be read in light of the provisions of its article 1(2), which provides that the ordinance is:

Subject to any specific deviating provisions in the applicable convention.

175. Therefore, the international agreements take precedence over the ordinance. In all cases, should there be a discrepancy between the provisions of the double tax agreements and the ordinance, the provisions of the double tax agreements will prevail over the ordinance.

Information relevant to the application of the DTC

176. Section 1 (art. 4) of the OACDI addresses administrative assistance for requests for information relevant to the application of DTCs. Switzerland may access information for these purposes using the powers described in Articles 6, 7 and 8 of the OACDI⁷⁷ or powers available under Swiss domestic tax law. That is, the power to obtain information from the person concerned, from the holder of information, from a cantonal tax authority or from another Swiss administrative agency. Where there is non-compliance with the request of the AFC, including a decision that a person has failed to comply with an order, the person will be liable for a fine (art. 292, CP).⁷⁸ However the AFC

Norway; Poland; Qatar; Romania; Singapore; Slovak Republic; Spain; Sweden; Turkey; United Kingdom; United States; and Uruguay. In some instances these are new DTCs, in others, they are amending protocol to existing agreements.

77. As they apply *mutatis mutandis*, these articles are framed in the context of accessing information for the purposes of the domestic tax law of the EOI partner.

78. For information on the penalties in this case, see paragraph 195.

may not exercise coercive measures (e.g. search and seizure powers)⁷⁹ for these purposes.

177. Before transmitting the information, the AFC is required to notify in writing the person concerned, as well as all persons with legal recourse,⁸⁰ of the nature and extent of information to be transmitted to the EOI partner. If such persons give written permission, or do not respond to such a notice within 30 days of its receipt, the AFC may transmit the information to the EOI partner. Where consent is refused, the AFC will render a decision on whether to exchange the information.⁸¹ The decision is subject to appeal according with Swiss domestic law concerning appeals from administrative decisions.

Information relevant to the domestic tax law of the EOI partner

(i) Preliminary examination of the request

178. Section 2 (art. 5-15) of the OACDI concerns administrative assistance relating to the application of the domestic tax law of the EOI partner. The AFC will undertake a preliminary review of such requests (art. 5). The request will be refused if (art. 5(2), OACDI).

- a. it is not compatible with the fundamental values of Swiss law (*ordre public*) or if it goes against the fundamental interests of Switzerland;
- b. it does not respect the principle of good faith; or
- c. it is grounded on information which was obtained or transmitted by acts punishable under Swiss law.

179. Some guidance is given on the interpretation of these points in the RE. In respect of (a), the RE notes that this category is narrow, and that Switzerland must take into account the commentary on the meaning of the words “*ordre public*” in the commentary to Article 26 of the OECD Model Tax Convention, and that essential interests of Switzerland should be read with reference to Article 26(3)(c) of the OECD Model Tax Convention (which

79. Coercive measures for this purpose are those described in Article 9 of the OACDI, namely search and seizure powers, or the issue of a summons to give evidence.

80. Persons with legal recourse are defined in article 48 of the *Loi federale du 20 decembre 1968 sur la procedure administrative* (PA, Federal Law of 20 December 1968 regarding administrative procedures), and include persons specifically affected by the decision concerned.

81. This ruling will be made by the AFC in application of the general provisions for administrative rulings stated in the *Loi sur la procedure administrative* (PA, RS 172.021).

concerns the disclosure of certain information including trade, business and professional secrets, or information contrary to *ordre public*). Switzerland has confirmed that “essential interests of Switzerland” and “*ordre public*” should be read synonymously in this context, and therefore (a) is consistent with the standard.

180. As concerns (b) and the principle of good faith, the RE refers to the principles as enunciated in the Vienna Convention on the Law of Treaties. In so far as this reference to “good faith” goes no further than this concept as enunciated in the Vienna Convention (to which all EOI agreements will be subject), it is consistent with the standard.

181. In addition, in the context of explaining the “good faith” requirement, the RE notes that if Switzerland was to give administrative assistance when an EOI partner was relying on stolen data, Switzerland would indirectly be encouraging the commission of other such infractions of its own law. The Federal Council will indicate to its EOI partners, by issue of a declaration, this limit on the grant of administrative assistance.

182. In respect of Article 5(2)(c), that requests based on information obtained through acts which would be illegal under Swiss law (the “illegally obtained” exception), will not be met by Switzerland.⁸² Switzerland has advised that this provision was included in the OACDI to cover situations where requests are based on illegally obtained bank information. If the AFC suspects that Article 5(2)(c) is applicable, it may seek further information from the EOI partner about the information on which the request is grounded, but the starting point for such enquiries will be that the requests of an EOI partner are properly founded.

183. Overall, to the extent that Article 5(2)(c) of the OACDI may go beyond the concept of “*ordre public*” or “good faith”, Article 5(2) may create an additional threshold which is not consistent with the standard. In such a case, the AFC would not be empowered to use the access powers described in Articles 6-9 of the OACDI. Whether or not in practice this provision is applied inconsistently with the standard should be considered in the Phase 2 review of Switzerland.

82. It is noted that in Switzerland the Courts have upheld the use of information by the Swiss tax authorities for the purposes of domestic tax law, where that information was obtained in breach of a fiduciary obligation. In that case, the secrecy obligation was not a statutory duty: 2C_514/2007 (Swiss Federal Court in Lausanne on 2 October 2007). In another case involving confidential information covered by attorney-client privilege, a Federal Court ruled that information stolen from a law firm would still considered secret and could not be used in a criminal case – ATF 117 Ia 348.

184. Once satisfied the elements in Article 5(2) are met, there is a further step required as part of the preliminary review of the request. Article 5(3) provides that the AFC will provide administrative assistance if the request meets certain conditions, including that it is:

- ...b. is submitted in writing in one of the Swiss national languages or in English, and contains information that: ...
 2. Identifies without any doubt the person concerned;
 3. Identifies without any doubt the holder of the information.
- c. does not consist of an unauthorised request of information.

185. The identifying requirements appear to be consistent with the standard. Article 1(2) of the OACDI (see paragraph 174), ensures that the provisions in the OACDI will be interpreted consistently with the provisions of the relevant EOI agreement. Switzerland’s confirmation⁸³ of their interpretation of the identification requirements in the New Agreements is consistent with this analysis that the OACDI’s identification requirements are in line with the standard.

(ii) Access powers

186. Article 6 of OACDI allows the AFC to commence administrative assistance to the requesting State if the outcome of the preliminary examination under Article 5 is satisfactory. To commence, the AFC will ask the person concerned or the holder of information to provide the information, allowing a period of time for this. Article 6 is titled (*emphasis added*):

“Information in the possession of the person concerned or the holder of the information”.

187. Further, the definition in Article 3 of the OACDI of the “*détenteur des renseignements*” (holder of information) refers to the person who holds or has possession of the requested information. Under Swiss law, the concept of possession includes instances where a person has “control” of the information even if it is located abroad to the extent that person is under a specific legal obligation to keep that information. Therefore, to the extent that Switzerland may not be able to access information located overseas but within the “control” of a person in Switzerland where there is no specific obligation on that person to keep the information, the access power may not encompass the full scope of the requirement for information to be accessible.

188. Information in the possession of the cantonal tax authorities may be requested by the AFC, and in such cases the AFC will communicate the

83. See paragraph 232.

entire EOI request to that cantonal tax authority and fix a period in which the information should be provided (art. 6). Cantonal tax authorities may not for the instant however take measures to access any information not already in their possession (e.g. requesting information from a person concerned or the holder of the information under Article 6, or the coercive measures provided for in Article 9).

189. Where information is held by other Swiss authorities (whether federal, cantonal or communal), the AFC may demand the transmission of such information which is in their possession, to the extent allowable by Swiss law (Article 8). In such cases, the AFC will inform the authority of the essential elements of the request (although will not provide a copy of the request itself) and fix a period in which the information should be provided.

190. Information is requested under Articles 6, 7, or 8 by registered letter. A deadline for reply is not specified in the OACDI but will be fixed by the executing authority and Switzerland advises that under current practice, the allowed delay varies between 10 and 20 days depending on the type of information requested and its urgency.

191. Article 14 concerns the formal making of the decision to exchange the information, which is the final step before the exchange of information to the EOI partner. Article 14(3) notes that information which is not “foreseeably relevant” will not be exchanged and will be made illegible. Switzerland has confirmed that the provision will be applied, in line with the internationally agreed standard, including Article 26 of the OECD Model Tax Convention and its commentary.

Access powers for agreements entering into force prior to 1 October 2010

192. Switzerland’s agreements entering into force prior to 1 October 2010 are not covered by the OACDI. For access to information to exchange under those agreements, Switzerland may use all powers available to access information for domestic tax purposes. These are powers equivalent to Articles 6, 7 and 8 of the OACDI, and are found in articles 122 ff., LIFD and 39 ff., LHID of the Swiss law. They are exercised by the AFC at the federal level, or at the cantonal level by each of the regional tax authorities. These powers do not allow the lifting of bank secrecy however, except in the cases of tax fraud (conduct that is fraudulent and which would be punishable by imprisonment) when it is provided for under the double tax convention. Switzerland has advised that it is in the process of re-negotiating these agreements to ensure that access to bank information is guaranteed, and it should also ensure that any new agreements which are entered into allow for access to all relevant information, in line with the standard.

193. In sum, the Swiss legal framework concerning its powers to access relevant information raises two issues:

- That the access powers do not extend to obtain information which is in the *control* of persons within Switzerland if there is no specific obligation on the person to keep the information where for instance the information itself is located outside Switzerland.
- That the access powers available for agreements other than the New Agreements, do not allow access to information subject to bank secrecy, except in the cases of tax fraud when it is provided for under the specific agreement.

194. Other than in these two regards which Switzerland should address, Switzerland’s powers to access ownership, identity and accounting information are in accordance with the standard.

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

195. With respect to the New Agreements, the information gathering powers of the AFC are not subject to Switzerland requiring such information for its own tax purposes. Indeed, the powers available to the AFC are more extensive in some cases than those available for Swiss domestic tax law purposes. For example, information subject to bank secrecy remains unavailable for Swiss domestic tax purposes, unless it may be lifted by application of another provision.

196. For the earlier agreements negotiated by Switzerland prior to March 2009⁸⁴ and its agreement with Colombia, Tajikistan and Georgia, access powers are limited to the powers available under Swiss domestic law (federal or cantonal), but are not restricted by a domestic tax interest.

Enforcement provisions to compel production and access to information (ToR B.1.4)

197. The AFC’s power described above, are supplemented by search and seizure powers, or summons powers, in certain instances. Article 9 of the OACDI outlines the coercive measures available to the AFC, being “search and seizure” powers, or in cases involving the provision of false information,

84. On 13 March 2009, Switzerland withdrew its reservations to Article 26 of the OECD Model Tax Convention.

tax fraud, or tax avoidance of significant amounts,⁸⁵ a summons issued by the police to a person to give evidence.

198. These coercive measures may only be ordered by the Commissioner of the AFC or his replacement. In cases where there is a risk that the information will be endangered due to any delay in obtaining the Commissioner's consent, an AFC officer may take such measures of their own initiative, but it will be valid only if ratified by the Commissioner or his replacement within three days. Finally, the exercise of these coercive powers is subject to articles 45-50 of the "*droit penal administrative*" (DPA, Law concerning the administration of the criminal law), which sets out certain rights and safeguards. In particular, these provisions require that searches must be undertaken in a manner which provides the utmost regard to safeguarding professional secrecy.

199. In addition, the AFC may take other measures, in so far as they do not contravene Swiss tax law, or Swiss criminal tax law, or the DTC itself. For example, under Swiss law a person who fails to follow a decision of a public authority (including the AFC), which will include a request to provide information under the OACDI, will be punished by a fine (art. 292, CP). The fine amounts to CHF 1 000 (EUR 780) in ordinary cases, and to a maximum of CHF 10 000 (EUR 7 800) in serious cases.

Secrecy provisions (ToR B.1.5)

200. Three applicable forms of secrecy are found in Swiss Law: bank secrecy; "professional secrecy" that applies to certain classes of people including lawyers; and "*secret de fonction*" applying to persons exercising roles of a public character.

Banking secrecy

201. The Swiss Banking Law (LB) covers banks, private bankers (individuals carrying on business, general and limited partnerships – *raisons individuelles, sociétés en nom collectif et sociétés en commandite*) and savings accounts (*caisses d'épargne*). The law applies equally to branches of foreign banks operating in Switzerland and foreign bank representatives who are carrying out their activities in Switzerland (art. 2, LB). The law does not cover

85. Tax avoidance of a serious amount is defined for these purposes in accordance with Swiss domestic tax law, in particular art. 190 of the *loi fédérale du 14 décembre 1990 sur l'impôt fédéral direct* (art. 190, federal Law of 14 December 1990 concerning direct federal taxes). Pursuant to article 190, with reference to articles 175 and 176, this will include actual or attempted tax avoidance whether intentional or negligent.

notaries, business agents or wealth managers who administer their clients' funds without exercising banking activities.

202. Article 47 of the LB provides that, a person who in his role in an entity (“*organe*”), employer, agent, liquidator of a bank, reveals a secret which was confided to them or of which they have knowledge as a result of their responsibilities or job, or who encourages others to violate professional secrecy, is liable for a fine of up to CHF 250 000 (EUR 195 000) where negligent, or a fine or imprisonment for up to three years where the conduct is intentional. In addition, violation of professional secrecy may be punishable by the termination of employment or contract. Cantons have responsibility for the legal proceedings and judgments relating to this provision, and the general provisions of the penal code are applicable.

203. Bank secrecy may be lifted where information is required for the purposes of an EOI request under the New Agreements. This is because these agreements expressly include a provision that the contracting parties may not decline to exchange such information notwithstanding any contrary domestic legislation, and the hierarchy of laws in Switzerland ensures that domestic law is subordinate to treaties, regardless of which is later in time.

204. Therefore, where information is sought under the New Agreements, the AFC may issue a request directly to the bank that holds the information, requiring it to be produced (using the same process as for information held by other persons) and may exercise their search and seizure powers to obtain such information, if necessary. For access to information for the purposes of EOI under Switzerland's other DTCs, bank secrecy cannot be lifted as those agreements do not include an express provision equivalent to Article 26(5) of the OECD Model Tax Convention.

205. It is also noted that outside of exchange of information pursuant to its DTCs, Switzerland exchanges information in accordance with the agreement on the taxation of savings which it has entered into with the European Community (signed on 26 October 2004). For information exchange pursuant to that agreement, bank secrecy may be lifted where the request concerns tax fraud relating to the taxation of savings. In those cases, Switzerland is also able to use coercive measures against banks as necessary. Further, in the field of indirect taxes, Switzerland has concluded with the EU and its member States a cooperation agreement in combating fraud and any other illegal activity (Anti-fraud Agreement) which provides for both mutual assistance and administrative assistance in cases of tax fraud and serious cases of tax evasion. Banking secrecy can also be lifted in such cases. This cooperation has been applied by Switzerland since 8 January 2009, even though not all EU members have ratified the relevant agreement.

Legal privilege, professional secrecy and “secret de fonction”

206. “Professional secrecy” under Swiss law⁸⁶ includes the concept of legal privilege, but also covers other persons including clergymen, “*défenseurs en justice*”, notaries, doctors, dentists, pharmacies, midwives, and certain other professionals⁸⁷ as well as their auxiliaries. In addition, “*secret de fonction*”⁸⁸ under Swiss law applies to any person acting in a public capacity, either as member of an elected authority or public servant. Professional secrecy and *secret de fonction* provisions require that any information obtained by such persons in the course of their duties should be kept secret. It is likely that for the most part, persons covered by this privilege will not, in their professional capacity, hold information relevant to an EOI request for tax purposes. However, it is foreseeable that information held by lawyers and notaries in particular, may hold information relevant for tax purposes.

207. Legal privilege, falling with definition of “professional secrecy” under Swiss law,⁸⁹ encompasses information that has been confided to a lawyer in the normal exercise of their profession. Swiss Courts have found that a lawyer acting in the capacity of an asset manager (ATF 112 Ib 606), director or member of the board of a company (ATF 114 III 107, ATF 115 Ia 197), or payment agent (ATF 120 Ib 118) is not exercising the normal activities of a lawyer, and these activities would qualify as financial intermediation. A lawyer acting as a trustee is also a financial intermediary (see Part A, paragraph 103; see also FINMA-RS 11/1, marg. 117), and they would not be exercising the normal activity of a lawyer (ATF 5A.620/2007 – SJ 2010, 579 –, 132 II 109). Legal privilege and professional secrecy provisions are therefore not applicable, and confidential information obtained in the course of such activities will thus not be covered by the privilege.

208. It is noted furthermore that Circular No. 30, issued on 22 August 2007 by the *Conférence Suisse des Impôts* regarding the taxation of trusts, states in Part 6 that in the context of an “*examen des faits lors d’un contrôle fiscal externe*” (an external tax audit), that a trustee may not invoke professional secrecy and must provide all information concerning the trust. The Circular notes that this is the case notwithstanding that the trustee is a lawyer, as the administration of a trust does not form part of the activities of a lawyer properly so called.

209. Information relating to confidential communications where the lawyer is acting as a trustee or guardian is therefore available to be exchanged and

86. Defined in art. 321 of the CP.

87. Other professions including those persons subject to a secrecy obligation by virtue of the Commercial Code, namely auditors (art. 730b CO).

88. Defined in art. 320 of the CP.

89. Art 321, CP.

does not fall within the exception for “professional secrets” in Article 26(3) of the OECD Model Tax Convention.

210. Regarding the access to information otherwise protected by “*secret de fonction*”, article 8 of the OACDI provides that the AFC may ask for information for EOI purposes from all other administrative federal and cantonal authorities. The “*secret de fonction*” is thus lifted in respect of EOI requests.

211. Overall, the secrecy provisions in Swiss law only affect exchange of information for tax purposes to the extent that it concerns information covered by bank secrecy in respect of requests made pursuant to agreements other than the New Agreements.⁹⁰ It is noted that Switzerland is in the course of updating the EOI provisions in those agreements which will ensure that bank secrecy may be lifted in the case of those EOI requests.

Determinations and factors underlying recommendations

Determinations	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
Switzerland does not have powers to access bank information in respect of requests made under agreements that entered into force prior to 1 October 2010, except in the cases of tax fraud when it is provided for under the specific agreement.	Switzerland should ensure that it has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements (regardless of their form).
Switzerland’s access powers for the agreements which it has, and will, update in line with its commitment to the standard, are only applicable to requests made under double tax conventions.	Switzerland should ensure that its competent authority has the power to obtain all relevant information pursuant to requests under all exchange of information agreements (regardless of their form).

90. That is, DTCs negotiated by Switzerland prior to 13 March 2009, when it withdrew its reservations to Article 26 of the OECD Model Tax Convention.

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)

Agreements entering into force after 1 October 2010

212. For the New Agreements, the OACDI sets out the rights and safeguards available to interested persons, including the person who is the subject of the investigation, and the holder of the information.

213. In cases where information is sought relating to the application of a DTC, article 4 of the OACDI provides that before transmitting the information, the AFC is required to notify, in writing, the person concerned, as well as all persons with legal recourse,⁹¹ of the nature and extent of information to be transmitted to the EOI partner. If such persons give written permission, or do not respond to such a notice within 30 days of its receipt, the AFC may transmit the information to the EOI partner. Such consent is irrevocable. Where consent is refused, the AFC will render a decision on whether to exchange the information, with that decision being appealable according with Swiss domestic law concerning appeals from administrative decisions.

214. Where information sought relates to the application of the domestic tax laws of the EOI partner, the process for the protection of the right to be heard (which is protected by article 29 of the Swiss Constitution and the PA⁹²) is provided for in articles 10-13 of the OACDI. These articles provide for both a simplified process and the normal process of protecting that right for a person concerned by a request. This right to be heard is limited to only allow participation and consultation of the file by such persons concerned to the extent that the disclosure to the EOI partner would directly affect their own rights.⁹³

91. Persons with legal recourse are defined in article 48 of the “*Loi fédérale du 20 décembre 1968 sur la procédure administrative*” (PA, Federal Law of 20 December 1968 regarding administrative procedures), and include persons specifically affected by the decision concerned. A comprehensive court practice defines the meaning of this provision, which is interpreted in a restrictive way (see Commentary to the identical art. 83 LTF, FF 2001 p. 4127 and 4206, www.admin.ch/ch/f/ff/2001/4000.pdf).

92. PA: *Loi fédérale sur la procédure administrative*, RS 172.021

93. See article 10(3) with article 13(2) of the OACDI, as well as the case law dealing within the scope of this right referred to in footnote 91 above.

215. In both instances, in order to allow the person(s) concerned to properly exercise their right to be heard in respect of the AFC decision to exchange the information, they are provided with a copy of the relevant EOI file, including in most cases the EOI request itself. Switzerland has advised that this disclosure is discussed with each of its EOI partners. Further, as noted in paragraph 220, a limited exception to the obligation to disclose the EOI request, in whole or in part, does exist.

216. These rights to be heard and to access the file are subject to the exceptions in Article 27 of the PA, including if there are important public interests (being Swiss interests at a Federal or cantonal level); if there are important private interests, in particular those of the persons concerned with the proceedings; or if the interests of an ongoing official inquiry requires it. Switzerland has advised that the “public interests” referred to would allow exceptions for notification in cases for example where the EOI request is of a very urgent nature or notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction.⁹⁴

217. Where consent of the persons concerned is received by the AFC, the consent is irrevocable, and the AFC may transmit the information to the EOI partner, referring to the consent of the persons concerned. If consent is not received, then the AFC must render a decision, which must be notified to persons concerned, including the basis for the administrative assistance and the decision to extend it to the transfer of the information. AFC may notify a foreign resident of its decision, by notifying the intermediary entitled to receive the notifications, if no person is designated, then notification should take place by publication of a notice in the federal gazette “*feuille officielle*”. The AFC is also required to notify interested third parties, interested cantonal tax authorities, and the holder of the information.

218. A legal challenge to the AFC’s exercise of its powers or the exchange of the information has the effect of suspending the AFC’s decision (art. 13(3), OACDI). This means that the information will not be able to be exchanged pending resolution of the appeal by the Federal Administrative Court.⁹⁵

219. A simplified process is created under article 11 which allows for the exchange of information, without the tax authority having to make a formal decision, if all of the person(s) concerned agree. They shall notify their consent to the AFC in writing, and the consent is irrevocable. In addition, under article 10(2) a procedure is created which facilitates the exchange. It allows

94. See further, the doctrine in *Auer, Kommentar zum VwVG*, 2008, note 37 et 39 art. 27. Under Swiss law, doctrines are a source of law of a guiding, rather than binding, character.

95. The OACDI itself does not specify that the information must not be exchanged pending the appeal, this obligation is established by article 44 and following of the PA.

for all of the persons concerned to be notified simultaneously of the intention to exchange the information, which improves the efficacy of the process. It is unclear in what timeframe this process of notification (simplified or normal) will unfold, and this will be considered in the Phase 2 Review of Switzerland.

220. As mentioned in paragraph 216, there is an exception to the right of a person to inspect the relevant tax files (including the EOI request), under Article 10(4) of the OACDI. Article 10(4) confirms that the general exceptions to disclosure under Swiss law (in article 27 of the *Loi sur la procédure administrative* – LPA) remain. Article 27 of the LPA provides for exceptions to notification where there are important public or private interests. Switzerland has advised that these exceptions would include cases where its EOI partner did not permit the release of the request because for example it may impede the ongoing investigation of the person’s tax affairs. The extent of Article 10(4) of the OACDI is further explained in the explanatory report, which provides that:

A prohibition on communication which is limited in time is possible, where an EOI partner has established that it is justifiable. However, information which has not been revealed to the person concerned may not be exchanged with the EOI partner.

221. Switzerland has advised that the notification, which is part of the constitutional right to be heard, may be carried out after the information has been obtained. Therefore, the tax authorities may carry out the necessary measures to access the information (including by using their search and seizure powers) directly held by third parties. Thereafter, it is required that the person concerned be notified (prior to any information being exchanged) and that person has the right to inspect the EOI file. The person may also, pursuant to the decision of the Swiss federal tax administration to exchange the information, appeal to the Swiss Federal Administrative Court against that decision, (which is the first and only level of appeal in these matters). The appeal has a suspensive effect and therefore the Swiss tax authorities will need to await the final decision of the Swiss Federal Administrative Court prior to transmitting the information to the requesting State. Therefore, whilst notification of the person concerned may be delayed until the information is accessed by the competent authority, there is no exception that would allow information to be exchanged prior to notification. This is not compatible with the exceptions to notification rules which are established under the standard.

Agreements entering into force prior to 1 October 2010

222. For the remaining agreements, the rights and safeguards set out in the OACDI will not apply. Instead, the domestic law safeguards will apply, namely the right of the person concerned to be heard which is guaranteed

by article 29 of the Swiss constitution, and article 27 of the PA. In addition, Swiss tax law, at both a federal and cantonal level, include rights of a taxpayer to consult their tax files (information which they have produced or signed or other information in the tax files to the extent that there is no public or private interest in not doing so).⁹⁶ As noted in paragraph 221, there are only limited exceptions to the obligation to notify the person concerned by the request, and this is not consistent with the standard.

Determinations and factors underlying recommendations

Determinations	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Under Swiss law, a person concerned by the request must be notified of the request and has the right to inspect the EOI file. The exceptions to this notification rule only permit notification to be delayed until after the information is accessed. The person concerned must still be notified before the information can be exchanged with the EOI partner.	Switzerland should ensure that there are appropriate exceptions to the right of notification and right to inspect the EOI file which are consistent with the standard.

96. For example, see article 114 of the LIFD.

C. Exchange of Information

Overview

223. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Switzerland, the legal authority to exchange information derives from bilateral mechanisms (double tax conventions) as well as from domestic law. This section of the report examines whether Switzerland has a network of information exchange that would allow it to achieve effective exchange of information in practice.

224. Switzerland's exchange of information agreements can be separated into those agreements which were negotiated after 13 March 2009 (the New Agreements),⁹⁷ and earlier agreements. The New Agreements were drafted to reflect Switzerland's March 2009 commitment to apply all aspects of the standard without reservation. However, Switzerland's initial interpretation of the obligations for an EOI partner to provide identity information on the person concerned by the EOI request and the holder of the information was not in line with the standard. Switzerland has modified its initial interpretation and Switzerland intends to apply these New Agreements fully in line with the standard, particularly in respect of the identification requirements for a valid request. This interpretation will need to be approved through the Swiss parliamentary process (including optional referendum), as well as have additional arrangements (such as mutual agreement procedures or exchange of letters) concluded with its EOI partners in some cases if necessary.

225. For the older agreements which have not yet been updated to include an EOI provision in line with the standard, they do not expressly provide for the exchange of information held by banks, or persons acting in a fiduciary

97. Agreements with Austria; Canada; Denmark; Faroe Islands; Finland; France; Germany; Greece; Hong Kong, China; India; Japan; Kazakhstan; Korea; Luxembourg; Malta; Mexico; the Netherlands; Norway; Poland; Qatar; Romania; Singapore; Slovak Republic; Spain; Sweden; Turkey; United Kingdom; United States; and Uruguay. In some instances these are new DTCs, in others, they are amending protocol to existing agreements.

or agency capacity. However, Switzerland is continuing to work quickly to upgrade these older agreements so that its information exchange network is in line with the standard. Given that there are several agreements that have not yet been updated to include an EOI provision in line with the standard, and that Switzerland initially interpreted the identification requirements for an EOI request that are contained in some of the New Agreements in a manner that was not in line with the standard, element C.1. is not in place.

226. Whilst many of its agreements have not yet been amended in line with Switzerland's commitment, it is evident that Switzerland is taking steps to bring its EOI network up to the standard as quickly as possible. While Switzerland is rapidly renegotiating all of its double tax treaties, the report notes that element C.2. is in place but with certain aspects of this element needing improvement.

227. Each of Switzerland's agreements includes a confidentiality provision and in addition Switzerland has a strong domestic confidentiality regime applicable to persons who in the course of their public duties have access to tax information (element C.3.). In addition, disclosure of information relating to an EOI request to persons is permitted under Swiss law, and although some exceptions to this disclosure are allowed, whether this affects the confidentiality requirements in practice will be considered as part of the Phase 2 Review of Switzerland. The rights and safeguards protected under Switzerland's EOI agreements are consistent with the standard (element C.4.)

C.1. Exchange-of-information mechanisms

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

Summary

228. Switzerland made a commitment in March 2009 to meet the internationally agreed standard, and to renegotiate its EOI agreements consequently. Since then, Switzerland has negotiated 29 agreements. Due to an issue concerning Switzerland's initial interpretation of the identification requirements for an EOI request, Switzerland is now moving to take action to address this issue through its parliamentary approval process.

229. Following the government's statement made on 15 February 2011, Switzerland will bring legislation to the parliament which will ensure that the treaties are interpreted in line with the standard.

230. As a result by October 2011, Switzerland expects that its interpretation of 10 EOI agreements⁹⁸ will be to the standard. A further 10 EOI agreements⁹⁹ may be interpreted to the standard by January 2012. These timelines rely on:

- i. the timely approval of the necessary legislation (“arrêtés”) by both chambers of parliament,
2. with no referendum (which can be called within 100 days of parliamentary approval); and in some cases,
3. Switzerland and its EOI partners concluding a form of mutual arrangement¹⁰⁰ (which can be concluded during the 100 days in which a referendum is permissible).

Foreseeably relevant standard (ToR C.1.1)

231. The international standard for exchange of information envisages information exchange 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 Tax Convention and Article 1 of the OECD Model TIEA.

232. On 13 March 2009, the Swiss Federal Council decided that in negotiating new DTCs, and amending protocols to existing DTCs, that the EOI provisions would be based on the standard established by Article 26 of the OECD Model Tax Convention. This decision also led to Switzerland withdrawing its remaining reservation to Article 26 of the OECD Model Tax Convention.¹⁰¹ As of 28 February 2011, 29 agreements or amending protocols

98. Netherlands, Turkey, Japan, Poland, India, Germany, Kazakhstan, Uruguay, Greece and Canada.

99. Denmark, Finland, France, UK, Qatar, Luxembourg, Mexico, Norway, Austria and the United States.

100. The legislation does not specify what form such arrangement must take, and for example it could be by way of mutual agreement procedure or exchange of letters.

101. From 2005 to the Federal Council decision of 13 March 2009, Switzerland had made the following reservation to Article 26 of the OECD Model Tax Convention: “Switzerland reserves its position on paragraphs 1 and 5. It will propose to limit the scope of this article to information necessary for carrying out the provisions of the Convention. This reservation shall not apply in cases involving acts of fraud subject to imprisonment according to the laws of both Contracting States.”

(the New Agreements)¹⁰² have been signed by Switzerland in line with this Federal Council decision. In February 2011, Switzerland’s Minister of Finance publicly declared¹⁰³ that each of the Swiss treaties which included a new EOI provision according to Article 26 of the OECD Model Tax Convention would be interpreted in line with the standard regarding the requirements to identify the person concerned and the holder of information.

233. As stated by Switzerland, this interpretation must be confirmed by Parliament, and the necessary legislation will be tabled for 10 treaties¹⁰⁴ which are in the process of ratification. The draft *arrêtés fédéraux* include language to ensure the proper interpretation of their provisions.¹⁰⁵ As 6 of these treaties include the “not to frustrate” language (see paragraph 254 and footnote 122),¹⁰⁶ the tax administration may be mandated to conclude an arrangement with some EOI partners if necessary to confirm the interpretation of the treaties. Whilst for the other 4 treaties,¹⁰⁷ the tax administration will be mandated to also include the “not to frustrate” language in the arrangement.

234. For nine treaties already into force,¹⁰⁸ plus the agreement with the US which has already been ratified by Switzerland, the same process of *arrêtés fédéraux* to be adopted by the parliament will also be put in place. It is planned that this second group of EOI agreements will be considered by the Council of States in June 2011, and then by the National Council in September 2011. The 100 day period within which a referendum may be called will expire in January 2012. For this second group of agreements, if

Prior to 2005, the precise wording of Switzerland’s reservations to Article 26 changed a number of times. The history of those changes is documented in the previous editions of the OECD Model Tax Convention.

102. Agreements with Austria; Canada; Denmark; Faroe Islands; Finland; France; Germany; Greece; Hong Kong, China; India; Japan; Kazakhstan; Korea; Luxembourg; Malta; Mexico; the Netherlands; Norway; Poland; Qatar; Romania; Singapore; Slovak Republic; Spain; Sweden; Turkey; United Kingdom; United States; and Uruguay. In some instances these are new DTCs, in others, they are amending protocol to existing agreements.
103. The press release dated 15 February 2011, along with further information contained in a “Basic Information” brief, is available at the Federal Finance Department’s website: www.efd.admin.ch.
104. Netherlands, Germany, Canada, India, Turkey, Poland, Greece, Japan, Kazakhstan and Uruguay.
105. Netherlands, Germany, Canada, India, Turkey, Poland, Greece, Japan, Kazakhstan and Uruguay.
106. Netherlands, Germany, Canada, India, Turkey and Poland.
107. Greece, Japan, Kazakhstan and Uruguay
108. Denmark, Luxembourg, Norway, Austria, UK, Finland, France, Qatar, and Mexico.

necessary, the same process of concluding an arrangement with some EOI partners may be concluded.

235. In respect of the other agreements signed by Switzerland which do not include EOI provision based on the standard,¹⁰⁹ a brief consideration of Switzerland’s historical position concerning Article 26 is useful. Up until 2000, EOI provisions in Switzerland’s DTCs were negotiated on the basis that administrative assistance to the EOI partner would only be provided to the extent that it related to the application of the treaty. That is, it did not go to assist the administration or enforcement of the domestic tax laws of the EOI partner, except to the extent they related to determining the application of provisions of the DTC. Therefore, the agreements negotiated prior to 13 March 2009 which do not include an EOI provision based on the standard, do not meet the “foreseeably relevant” standard.

236. From its commitment to the CFA report on Improving Access to Bank Information in March 2000, until 13 March 2009, Switzerland’s position, as reflected in its most recent reservation to Article 26, was that in respect of exchange of information for the purposes of the domestic law of the requesting State (that is, not in regard to the application of the Convention), it would agree to exchange information in cases of “tax fraud” as defined in Swiss law, thereby effectively incorporating a dual criminality standard on this point. Nine agreements incorporating this language were signed by Switzerland (although six of these have since been renegotiated as New Agreements),¹¹⁰ and in some cases also allowed for the exchange of information on specific request, if the request concerned a Swiss holding company. These limitations mean however, that the agreements with Chile, Colombia and South Africa also do not meet the foreseeably relevant standard.

237. Pursuant to its Mutual Legal Assistance Law (EIMP, “*Loi fédérale du 20 mars 1981 sur l’entraide internationale en matière pénale*”), Switzerland is able to exchange information in respect of criminal matters, including matters of tax fraud.

The New Agreements

238. The New Agreements must be considered by taking into account the terms of the EOI provisions themselves as well as the interpretative protocols or provisions to those agreements.

109. Being Switzerland’s EOI agreements which were negotiated prior to 13 March 2009.

110. The DTCs which allow the exchange of information for the purposes of domestic law relating to tax fraud are Switzerland’s agreements with Chile, Colombia and South Africa.

239. The New Agreements, in the interpretative protocols, include requirements to identify (“identification requirements”): (i) the person under examination or investigation (“the person concerned”) and (ii) the holder of the requested information. For some New Agreements,¹¹¹ these requirements are qualified by the words:

nevertheless are to be interpreted in order not to frustrate effective exchange of information.

240. In the statement of the government on 15 February 2011, the interpretation of these identification requirements was confirmed, with the statement noting:

Identifying the taxpayer and the holder of the information is an indispensable prerequisite for the granting of administrative assistance. In most cases, this occurs by indicating the name and address. Other means of identification should also be admissible in the future.

241. According to the Swiss authorities, this interpretation will be binding on Swiss courts once the process described in paragraph 230 is complete. Until that occurs however the New Agreements cannot be considered to be to the standard.

242. The way in which the identification requirements are dealt with in the standard and in the New Agreements are discussed below.

Identifying the person concerned

243. Article 5(5)(a) of the Model TIEA requires that a requesting State “shall provide” the following information when making a request:

(a) the identity of the person under examination or investigation;

244. The commentary to Article 5(5), notes at paragraph 58 that:

“ While paragraph 5 contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs a) through g) nevertheless need to be interpreted liberally in order not to frustrate effective exchange of information.”

245. Further, paragraph 59 of the commentary, gives an example of the application of sub-paragraph 5(5)(a), that:

111. Canada, Germany, India, Kazakhstan, Korea, Malta, the Netherlands, Romania, Singapore, Slovak Republic, Spain, Sweden, Turkey and the US.

Where a Party is asking for account information but the identity of the accountholder(s) is unknown, sub-paragraph (a) may be satisfied by supplying the account number or similar identifying information.

246. The following table indicates the language used by Switzerland on this point in the New Agreements.

Column 1	Column 2	Column 3	Column 4	Column 5
<u>Information sufficient to identify</u> the person under examination or investigation (typically, name and, to extent known, address, account number or similar identifying information). ¹¹²	<u>The name and address of the person(s)</u> under examination or investigation <u>and, if available, other particulars</u> facilitating that person's identification, such as date of birth, marital status, tax identification number. ¹¹³	<u>Name and, to the extent known, other information,</u> such as address, account number or date of birth, in order to identify the person(s) under examination or investigation. ¹¹⁴	<u>The name of the person(s) under examination or investigation and, if available, other particulars</u> facilitating that person's identification such as address, date of birth, marital status, tax identification number. ¹¹⁵	<u>Information sufficient to identify the person(s) under examination or investigation, in particular name, and, to extent known, address,</u> account number and other particulars facilitating that persons identification, such as date of birth, marital status, tax identification number. ¹¹⁶

247. Article 5(5)(a) of the OECD Model TIEA and its commentary is clear that the obligation to “identify” the relevant taxpayer, does not necessarily require the provision of their name or address. The provisions in columns 2-4 require at minimum, the name of the taxpayer to be provided, whilst column 5, by its distinction between the name, and other details which should be provided only “to extent known”, is open to be interpreted as requiring the name of the taxpayer to be provided.

112. US, Germany, Japan and Spain.

113. Austria; Denmark; Faroe Islands; Finland; Greece Hong Kong, China; Kazakhstan; Luxembourg; Norway; Malta; Mexico; Qatar; Romania; Singapore; Slovak Republic; Turkey; UK; Uruguay; France; and Poland.

114. Canada, Korea and Sweden.

115. India.

116. The Netherlands.

248. Therefore, the agreements containing the words in column 1 are consistent with the standard on this point (identity of the person concerned). However, the formulations in columns 2-5 depart from the articulation of the standard on that point. Therefore, in order to be consistent with the standard it would be necessary for the agreements with these formulations to rely either on some additional wording included in the agreement (if any) or the further mutual understanding of the parties to the agreement.

Identifying the holder of the information

249. Article 5(5)(e) of the Model TIEA requires that a requesting State “shall provide” the following information when making a request:

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

250. Of the New Agreements, Switzerland’s agreement with France includes this precise language, and this is extended to Spain through the “most favoured nation” clause in the Swiss-Spanish DTC.

251. The following table indicates the language otherwise used by Switzerland in the New Agreements on this issue:¹¹⁷

Column 1	Column 2	Column 3	Column 4
The <u>name and address</u> of any person believed to be in possession of the requested information. ¹¹⁸	The <u>name and, to the extent known, the address</u> of any person <u>believed to be in possession</u> of the requested information. ¹¹⁹	The <u>name and, if available, address</u> of any person <u>believed to be in possession</u> of the requested information. ¹²⁰	The <u>name and, to the extent known, address</u> of any person <u>in possession</u> of the requested information. ¹²¹

252. The standard, described in Article 5(5) of the OECD Model TIEA, only requires the identification of the holder of the information to the extent that it is known by the requesting State.

117. For the provisions found in the France and Spain agreements dealing with identity of the holder of the information, please see paragraph 250.

118. Austria; Denmark; Faroe Islands; Finland; Greece; Hong Kong, China; Kazakhstan; Korea; Luxembourg; Norway; Malta; Mexico; Qatar; Romania; Singapore; Turkey; UK; and Uruguay.

119. United States, Germany, Japan, Spain, Sweden, Canada and Korea.

120. India and Poland.

121. The Netherlands.

253. Therefore, all of the formulations in columns 1-4 depart from the articulation of the standard on this point (identity of the holder of the information). Therefore, in order to be consistent with the standard it would be necessary for the agreements with these formulations to rely either on some additional wording included in the agreement (if any) or the further mutual understanding of the parties to the agreement.

The Interpretative Provisions

254. Each of the New Agreements includes either interpretative provisions or an interpretative protocol (“Interpretative Provisions”), which covers *inter alia*, the interpretation of the EOI provision. The interpretative provisions are not identical across each of the New Agreements however they share some similarities. An extract of the key parts of the provision, from the Canada-Switzerland protocol signed on 22 October 2010, is shown here:

Regarding Article 25 [the EOI article in the Canada-Swiss DTC]:

... (c) It is understood that the standard of “foreseeable relevance” is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While subparagraph 2(b) [the provisions setting out the requirements for a valid request] contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) of subparagraph 2(b) [which set out the necessary elements of a valid request] nevertheless are to be interpreted in order not to frustrate effective exchange of information. [emphasis added]¹²²

255. As noted in paragraphs 238-9 above, Switzerland’s Finance Minister has confirmed the interpretation to be given to the identification requirements of the New Agreements, and once the process described in paragraph 230 is complete, according to the Swiss authorities this interpretation will be binding.

122. Text equivalent to this sub-paragraph is in Switzerland’s agreements with, Germany, India, Korea, Malta, the Netherlands, Poland, Romania, Singapore, Slovak Republic, Spain (MFN), Sweden, Turkey and the US. In some of the other New Agreements, this sub-paragraph does not mention that the procedural requirements are to be interpreted in order not to frustrate effective exchange of information, namely the agreements with France and the UK. In the agreements with Austria; Denmark; Faroe Islands; Finland; Greece; Hong Kong, China; Japan; Luxembourg; Mexico; Norway; Kazakhstan; Qatar; and Uruguay the interpretative provisions only note that the EOI provision is not to be used to seek information by way of “fishing expeditions”.

256. Switzerland has also stated¹²³ that it will ensure that this interpretation is applied to each of the New Agreements, and in some cases, if necessary, confirmed either through mutual agreement procedure or an exchange of letters, or the reopening of negotiations for those treaties not already signed.

257. In sum, with respect to agreements that have not been updated to include an EOI provision in line with the standard, Switzerland is continuing to work to quickly upgrade its information exchange network. Moreover, although some of the agreements have been drafted to include provisions consistent with the internationally agreed standard, Switzerland's initial interpretation of the obligations for an EOI partner to provide identity information on the person concerned by the EOI request and the holder of the information was not in line with the "foreseeably relevant" standard. However, Switzerland has since modified its initial interpretation of the obligations for an EOI partner to provide identity information to be fully in line with the standard, and is in the process of taking the actions necessary to implement its commitment in respect of the "foreseeably relevant" standard.

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

258. For exchange of information to be effective it is necessary that a jurisdiction's obligations to provide information are 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.

259. None of the 29 New Agreements are restricted for EOI purposes by the "persons covered" article in the DTC (equivalent to Article 1 of the OECD Model Convention). All of the EOI provisions in Switzerland's agreements which were negotiated prior to 13 March 2009 are restricted to requests concerning persons otherwise covered by the Convention.

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

260. 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. Both the OECD Model Tax Convention and the OECD Model TIEA, which are primary authoritative

123. See the document "Brief Information" released by Switzerland in conjunction with the government statement on 15 February 2011, referred to at paragraph 232 and footnote 103.

sources of the standards, stipulate 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.

261. All of the New Agreements concluded by Switzerland expressly include a provision that the requested State may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. As a result of the hierarchy of laws in Switzerland which ensures that domestic law is subordinate to treaties, the express inclusion of this provision concerning information held by banks or other financial institutions ensures that bank secrecy will not apply for the exchange of information under the New Agreements.

262. Further, the New Agreements also provide that:

In order to obtain such information [i.e. information held by a bank, financial institute, nominee, or person acting in an agency or fiduciary capacity], the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws

263. The New Agreements are in line with the standard in regards to the obligation to exchange all types of information.

264. In the case of Switzerland’s agreements which were negotiated prior to March 2009, both bank secrecy and professional secrecy will apply to limit the exchange of information to the standard.

Absence of domestic tax interest (ToR C.1.4)

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

266. Each of the New Agreements include an express provision (equivalent to Article 26(4) of the OECD Model Tax Convention) that information shall be exchanged by the requested Party notwithstanding they may have no domestic tax interest in such information.

267. Switzerland's agreements which were negotiated prior to March 2009, as well as its agreements with Colombia and Tajikistan, do not include such an express provision but are interpreted by Switzerland such that no domestic tax interest applied. The domestic tax interest as such has never been an impediment to exchanging information.

Absence of dual criminality principles (ToR C.1.5)

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

269. None of the New Agreements apply the dual criminality principle to restrict the exchange of information. The issue of dual criminality arises in a few agreements concluded by Switzerland which entered into force prior to 1 October 2010 as they concerned exchange of information in cases of "tax fraud". However this is not the case for those agreements concluded by Switzerland which entered into force prior to 1 October 2010 providing an exchange of information only where it is relevant to the application of the DTC or for the application of domestic law in the case of holding companies.

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

270. 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").

271. Each of the New Agreements, as well as Switzerland's agreement with Chile, extends the exchange of information to civil and criminal tax matters. Of the remaining agreements, the agreement with Colombia covers criminal tax matters only, whilst the others are restricted to civil tax matters.

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

272. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form

is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

273. There are no impediments in Swiss law which would prevent the information being obtained in the form, for example, of an authenticated copy of original document to the extent that this is consistent with domestic law. In the case of the latter, such a request may however necessarily affect the speed with which the request could be met.

In force (ToR C.1.8)

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

275. In the case of Switzerland, an EOI agreement will enter into force upon ratification and for the majority of treaties, including DTCs, it is the Federal Assembly which has the power to approve the ratification of a treaty. The draft convention or protocol once ratified will be subject to consultation of the cantons and as a matter of practice other economically interested parties. The concluded or initialled agreement must be submitted to the Federal Council, which if it approves the text and signs the agreement submits a “message” which annexes the agreement to the Federal Assembly (“*Chambres*”) for ratification. All these documents need to be translated into the three official languages of Switzerland (German, French and Italian). Approval by the Federal Assembly is confirmed by the issuance of a federal decree. The treaty may then be ratified, through the exchange of instruments of ratification between the contracting States. In each case, a DTC may be subject to a referendum which would take place after parliament’s approval of the agreement, but prior to ratification.¹²⁴

276. Of the 29 New Agreements signed by Switzerland, 11 have already entered into force¹²⁵ with Switzerland also having completed the internal procedures necessary, for its part, to ratify the US agreement. However, for the reasons explained in part C.1.1, none of Switzerland’s EOI agreements that are in force are to the standard. Switzerland has in place a programme of negotiations to increase as quickly as possible the number of agreements to the standard which are in force.

124. Once a treaty is adopted, there is a 100 day period following the publication of the law in which a referendum can be sought. For a referendum to take place, it must be supported by 50 000 citizens (with voting rights) or eight cantons.

125. Denmark, Luxembourg, Finland, France, Norway, Austria, UK, Faroe Islands, Mexico, Qatar and Spain.

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

277. For information exchange to be effective the parties to an exchange of information arrangements need to enact any legislation necessary to comply with the terms of the arrangement. Switzerland has implemented the OACDI which enables it to meet the standard.

278. For the remaining agreements, administrative assistance is managed by the AFC but do not require a specific domestic law provision to be effective. The right of the AFC to access tax information to give effect to those agreements is found in Swiss domestic law, principally the federal law on direct federal taxes (LIFD, *Loi fédérale du 14 décembre 1990 sur l'impôt fédéral direct*). For those DTCs which provide for exchange of information in the case of tax fraud and the like, a specific ordinance was also introduced for each such DTC to allow the AFC to access relevant tax information thus giving effect to those agreements.

Determinations and factors underlying recommendations

Determination	
The element is not in place	
Factors underlying recommendations	Recommendations
Some of the New Agreements establish identification requirements for the person concerned and the holder of information that are inconsistent with the standard for effective exchange. In addition, with respect to all of the New Agreements, Switzerland's interpretation of the identification requirements is inconsistent with the standard.	Switzerland should ensure that the identification requirements in some of the New Agreements, as well as its interpretation of the identification requirements in all of these agreements, are in line with the standard for effective exchange, and all of those agreements should be brought into force quickly.
EOI agreements that were negotiated prior to 13 March 2009 are not consistent with the standard.	Switzerland should ensure that each of its EOI agreements that were negotiated prior to 13 March 2009 allows for the exchange of information in line with the standard.

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

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

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

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

280. On 13 March 2009 the Federal Council decided that in respect of the negotiation of DTCs and in particular the EOI provisions, that Switzerland would base such negotiation on the standard set out in Article 26 of the OECD Model Tax Convention. This decision was to be undertaken through the revision of existing agreements, as well as in negotiating new agreements. Within 6 months of this decision, Switzerland had signed 12 DTCs or protocols, making contemporaneous changes broader than the introduction of amended EOI provisions. On 18 June 2010, the Federal Assembly (“*Chambres*”) ratified the first 10 conventions containing EOI provisions based on the standard. In August 2010, the Federal Council submitted to the *Chambres* a further four agreements¹²⁶ containing the revised EOI provision, and in December 2010, the Council submitted a further six agreements.¹²⁷ Although foreshadowed at one stage, no optional referendum on this issue has taken place although this option remains available at the time of the passage of each agreement through the parliamentary approval process.

281. In respect of EOI, 29 of the recently negotiated agreements (either entirely new agreements, or existing agreements complemented by an amending protocol covering EOI) have now entered into force, or have been signed, with the following jurisdictions:

Austria (in force – F)	Canada (signed – S)	Denmark (F)	Faroe Islands (F)
Finland (F)	France (F)	Germany (S)	Greece (S)
Hong Kong (S)	India (S)	Japan (S)	Luxembourg (F)
Mexico (F)	The Netherlands (S)	Norway (F)	Poland (S)
Qatar (F)	Spain (F)	Turkey (S)	United Kingdom (F)
United States (S)	Uruguay (S)	Singapore (S)	Malta (S)
Romania (S)	Slovak Republic (S)	Republic of Korea (S)	Sweden (S)
Kazakhstan (S)			

282. These 29 New Agreements (11 in force) are not fully in line with the standard. Further, Switzerland has a network of 59 signed older agreements (54 in force) which are also not to the standard.

283. Further, the international standard requires that a jurisdiction exchange information with all relevant partners, meaning those partners who are

126. Japan, the Netherlands, Poland and Turkey.

127. The agreements with Germany, Canada, Greece, India, Kazakhstan and Uruguay.

interested in entering into an information agreement. At least one jurisdiction has approached Switzerland to indicate its interest in entering into a TIEA, but Switzerland proposed instead to update the existing DTC which Switzerland has ratified but the partner jurisdiction has not and which is provisionally applicable. To date, this appears to have been the end of the discussion. Switzerland has advised that it will conclude tax information exchange agreements (TIEAs). However, Switzerland's first priority is to respond to the requests of its major trading partners to quickly update its large existing DTC network (88 DTCs) to the internationally agreed standard. Moreover while Switzerland's powers to access information are limited to access for the purposes of exchange pursuant to a DTC, the draft law concerning administrative assistance for tax purposes, which is expected to come into force in 2013 (see paragraph 41), will extend Switzerland's powers to also access information for the purposes of exchange pursuant to a TIEA, or any other form of EOI agreement for tax purposes.

284. Switzerland has advised that it intends to continue to work with its EOI partners in the coming months to negotiate amending protocols and new agreements, which include an EOI provision based on the standard set out in Article 26 of the OECD Model Tax Convention. It is recommended that in negotiating new EOI agreements, or amending existing agreements, Switzerland ensure that the EOI provisions are in line with the standard in all regards in order to create a network of EOI agreements.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Switzerland has acted promptly on its commitment to bring its network of EOI agreements, covering all relevant partners, to the standard. Notwithstanding this, none of these EOI agreements are currently fully in line with the standard.	Switzerland should continue to rapidly update and develop its network to ensure it has agreements (regardless of their form) for the exchange of information to the standard with all relevant partners.

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) and All other information exchanged (ToR C.3.2)

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

286. Each of the EOI agreements concluded by Switzerland, provide for confidentiality in accordance with Article 26(2) of the OECD Model Tax Convention, which provides:

Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

287. In addition, Swiss domestic tax law contains provisions to ensure the confidentiality of information exchanged, namely a professional secrecy provision applicable to tax officers, and provisions to protect both the public and private interests in maintaining confidentiality of tax information. Article 110 of the LIFD provides:¹²⁸

(1) Persons responsible for applying this law or in connection with its application, must keep secret the information which they obtain in the

128. Equivalent provisions may be found in the Swiss laws concerning value added tax (art. 74, LTVA); concerning the withholding tax on income from movable capital, lottery winnings and insurance benefits (art. 37, LIA); and stamp duty (art. 33, LT).

exercise of their functions, as well as the deliberations of the authorities, and must not allow third parties to see any tax files.

(2) Information may be communicated in so far as that disclosure is expressly provided for under federal law.

288. Violations of tax secrecy laws may be sanctioned using disciplinary measures, or through civil or criminal sanctions.

289. Federal laws do allow disclosure of tax information in certain instances, for example where it is required for the purposes of applying Swiss social security laws or to the authority for public prosecutions in respect of criminal acts or criminal tax offences. In addition, in respect of the New Agreements, the OACDI allows for the disclosure of information relating to an EOI request (see paragraph 215 of the report) to persons who are directly concerned with the information. There are exceptions to the obligation to disclose information relating to the request to a person concerned by the information, which allow the disclosure to be delayed. Further, in accordance with the confidentiality provisions in Switzerland's DTCs such disclosure to another Swiss authority or person concerned by the request, should be advised to Switzerland's EOI partner, and Switzerland has advised that it does so. Whether in practice such disclosure is conducted in a manner consistent with the confidentiality requirements in the standard, will be considered as part of the Phase 2 review of Switzerland.

Determination and factors underlying recommendations

Determination
The element is in place.

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)

290. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

291. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney – client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

292. A provision equivalent to the exception in Article 26(3) of the OECD Model Tax Convention which allows a State to decline to exchange certain types of information, including that which would disclose any trade, business, industrial, commercial or professional secret or trade process, appears in Switzerland’s DTCs.

Determination and factors underlying recommendations

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)

293. In order for exchange of information to be effective it needs to be provided in a time frame 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 cooperation as cases in this area must be of sufficient importance to warrant making a request.

294. A review of the practical ability of Switzerland’s competent authority to respond to requests in a timely manner will be conducted in the course of its Phase 2 Review.

Organisational process and resources (ToR C.5.2)

295. A review of Switzerland’s organizational process and resources in practice will be conducted in the context of its Phase 2 Review.

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

296. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Whether this is the case in Switzerland will be considered in the context of Switzerland’s Phase 2 Review.

Determination and factors underlying recommendations

Determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

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>)		
The element is not in place.	Bearer shares may be issued by SAs and SCAs, and mechanisms to ensure that the owners of such shares can be identified, are not systematically in place for all bearer shares.	Switzerland should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
	Companies incorporated outside of Switzerland but having their effective management in Switzerland which gives rise to a permanent establishment are not required to provide information identifying their owners as a part of registration requirements. Therefore, the availability of information that identifies any 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, Switzerland should ensure that ownership and identity information is available.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.	Some bearer savings books remain in existence although they may no longer be issued and must be cancelled upon physical presentation of the bearer savings book at the bank.	Switzerland should ensure that there are measures to identify the owners of any remaining bearer savings books.
Competent authorities should have the power to obtain and provide information that is the subject of a request under and 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>)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Switzerland does not have powers to access bank information in respect of requests made under agreements that entered into force prior to 1 October 2010, except in the cases of tax fraud when it is provided for under the specific agreement.	Switzerland should ensure that it has access to bank information in respect of EOI requests made pursuant to all of its EOI agreements (regardless of their form).
	Switzerland's access powers for the agreements which it has, and will, update in line with its commitment to the standard, are only applicable to requests made under double tax conventions.	Switzerland should ensure that its competent authority has the power to obtain all relevant information pursuant to requests under all exchange of information agreements (regardless of their form).
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>)		

Determination	Factors underlying recommendations	Recommendations
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Under Swiss law, a person concerned by the request must be notified of the request and has the right to inspect the EOI file. The exceptions to this notification rule only permit notification to be delayed until after the information is accessed. The person concerned must still be notified before the information can be exchanged with the EOI partner.	Switzerland should ensure that there are appropriate exceptions to the right of notification and right to inspect the EOI file which are consistent with the standard.
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The element is not in place.	Some of the New Agreements establish identification requirements for the person concerned and the holder of information that are inconsistent with the standard for effective exchange. In addition, with respect to all of the New Agreements, Switzerland's interpretation of the identification requirements is inconsistent with the standard.	Switzerland should ensure that the identification requirements in some of the New Agreements, as well as its interpretation of the identification requirements in all of these agreements, are in line with the standard for effective exchange, and all of those agreements should be brought into force quickly.
	EOI agreements that were negotiated prior to 13 March 2009 are not consistent with the standard.	Switzerland should ensure that each of its EOI agreements that were negotiated prior to 13 March 2009 allows for the exchange of information in line with the standard.
The jurisdiction's network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2.</i>)		

Determination	Factors underlying recommendations	Recommendations
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Switzerland has acted promptly on its commitment to bring its network of EOI agreements, covering all relevant partners, to the standard. Notwithstanding this, none of these EOI agreements are currently fully in line with the standard.	Switzerland should continue to rapidly update and develop its network to ensure it has agreements (regardless of their form) for exchange of information to the standard with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
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.		

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

Switzerland wishes to express its gratitude and appreciation for the excellent and conscientious work carried out by the assessment team in evaluating the Swiss legal and regulatory framework. Notwithstanding the very limited timeframe within which the assessment team was performing its examinations, the evaluation took place in a cordial atmosphere of ongoing dialogue and cooperation.

We believe this report demonstrates that Switzerland is committed to the international standards for transparency and exchange of information. Switzerland acknowledges that the Swiss legal and regulatory framework contains deficiencies and will give careful consideration to the recommendations included in the report. We would also like to emphasize that the peer review of Switzerland was given high priority, both in the Federal Department of Finance and in the Federal Tax Administration.

The decision of the Federal Council of the 13 March 2009 to adopt the OECD standard in the area of exchange of information for tax purposes was a very important step for Switzerland. Immediately after the decision of the Federal Council, Switzerland started to renegotiate its agreements to include the standard on exchange of information, with as objective to renegotiate all its existing treaties. Priority for negotiations was given to relevant economic partners, being EU Member States, OECD and G20 countries. Switzerland furthermore continues to engage with other jurisdictions that are interested in concluding such agreements. It was important for Switzerland to provide a clear framework for the exchange of information within each of the double tax treaties and to include procedural aspects in order to ensure the efficient exchange of information.

When Switzerland negotiated these agreements, it acted in good faith that requiring the name and address of not only the taxpayer but also the holder of the information in the administrative assistance request was compliant with the standard. However, in January 2011, it was brought to the attention

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

of Switzerland that these requirements were too restrictive and could lead to a formalistic interpretation of these texts thereby resulting in a potential obstacle to an effective exchange of information.

Therefore, in February 2011, the Swiss Government decided that the requirements contained in the agreements regarding the identification of the person under examination or investigation and of the person believed to be in possession of the requested information are to be interpreted in a wider sense, allowing to comply with a request in which the taxpayer and the information holder are identified by other means than by the name and the address, provided that it is otherwise demonstrated that the request does not constitute a fishing expedition.

In order to implement its decision, the Federal Council has taken several steps to ensure that the agreements in the process of being ratified and those that have entered into force will be subject to the more liberal interpretation. The necessary legislative acts have been submitted to parliament for approval to ensure enforcement. The details of this process have been described in Section C.1. of the report.

Switzerland has acted expeditiously in implementing its extended policy concerning the exchange of information and will continue to do so in order to ensure that the standard is complied with and applied correctly, thereby ensuring a “level playing field”, which is an essential element of the peer review process.

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

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
1.	Albania	DTC	12 November 1999	21 December 2000
2.	Algeria	DTC	3 June 2006	9 February 2009
3.	Argentina	DTC	23 April 1997	1 January 2001
		Protocol to DTC	7 August 2006	
4.	Armenia	DTC	12 June 2006	7 November 2007
5.	Australia	DTC	28 February 1980	13 February 1981
6.	Austria	DTC	30 January 1974	4 December 1974
		Protocol to DTC	3 September 2009	1 March 2011
7.	Azerbaijan	DTC	23 February 2006	13 July 2007
8.	Bangladesh	DTC	10 December 2007	13 December 2009
9.	Barbados*	DTC	20 August 1963	1963
10.	Belarus	DTC	26 April 1999	28 December 1999
11.	Belgium	DTC	28 August 1978	26 September 1980
12.	Bulgaria	DTC	28 October 1991	10 November 1993
13.	Canada	DTC	5 May 1997	21 April 1998
		Protocol to DTC	22 October 2010	
14.	Chile	DTC	2 April 2008	5 May 2010
15.	China (People's Rep.)	DTC	6 July 1990	27 September 1991
16.	Colombia	DTC	26 October 2007	
17.	Côte d'Ivoire	DTC	23 November 1987	30 December 1990
18.	Croatia	DTC	12 March 1999	20 December 1999
19.	Czech Republic	DTC	4 December 1995	23 October 1996
20.	Denmark	DTC	23 November 1973	15 October 1974
		Protocol to DTC	21 August 2009	22 November 2010
21.	Ecuador	DTC	28 November 1994	22 December 1995

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
22.	Egypt	DTC	20 May 1987	14 July 1988
23.	Estonia	DTC	11 June 2002	12 July 2004
24.	Faroe Islands	DTC	20 March 1978	1 January 1975
		Protocol to DTC	22 September 2009	29 November 2010
25.	Finland	DTC	16 December 1991	26 December 1993
		Protocol to DTC	22 September 2009	19 December 2010
26.	France	DTC	9 September 1966	26 July 1967
		Protocol to DTC	27 August 2009	4 November 2010
27.	Georgia	DTC	15 June 2010	
28.	Germany	DTC	11 August 1971	29 December 1972
		Protocol to DTC	27 October 2010	
29.	Ghana	DTC	23 July 2008	30 December 2009
30.	Greece	DTC	16 June 1983	21 February 1985
		Protocol to DTC	4 November 2010	
31.	Hong Kong, China	DTC	6 December 2010	
32.	Hungary	DTC	9 April 1981	27 June 1982
33.	Iceland	DTC	3 June 1988	20 June 1989
34.	India	DTC	2 November 1994	29 December 1994
		Protocol to DTC	30 August 2010	
35.	Indonesia	DTC	29 August 1988	24 October 1989
36.	Iran	DTC	27 October 2002	31 December 2003
37.	Ireland	DTC	8 November 1966	16 February 1968
		Protocol to DTC		
38.	Israel	DTC	2 July 2003	22 December 2003
39.	Italy	DTC	9 March 1976	27 March 1979
40.	Jamaica	DTC	6 December 1994	27 December 1995
41.	Japan	DTC	19 January 1971	26 December 1971
		Protocol to DTC	21 May 2010	
42.	Kazakhstan	DTC	21 October 1999	24 November 2000
		Protocol to DTC	3 September 2010	
43.	Korea	DTC	12 February 1980	22 April 1981
		Protocol to DTC	28 December 2010	

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
44.	Kuwait	DTC	16 February 1999	31 May 2000
45.	Kyrgyzstan	DTC	26 January 2001	5 June 2002
46.	Latvia	DTC	31 January 2002	18 December 2002
47.	Liechtenstein	DTC	22 June 1995	17 December 1996
48.	Lithuania	DTC	27 May 2002	18 December 2002
49.	Luxembourg	DTC	21 January 1993	19 February 1994
		Protocol to DTC	25 August 2009	19 November 2010
50.	Macedonia	DTC	14 April 2000	27 December 2000
51.	Malaysia	DTC	30 December 1974	8 January 1976
52.	Malta	DTC	25 February 2011	
53.	Mexico	DTC	3 August 1993	8 September 1994
		Protocol to DTC	18 September 2009	23 December 2010
54.	Moldova	DTC	13 January 1999	22 August 2000
55.	Mongolia	DTC	20 September 1999	25 June 2002
56.	Montenegro	DTC	13 April 2005	10 July 2007
57.	Morocco	DTC	31 March 1993	27 July 1995
58.	Netherlands	DTC	12 November 1951	9 January 1952
		DTC (new)	26 February 2010	
59.	New Zealand	DTC	6 June 1980	21 November 1981
60.	Norway	DTC	7 September 1987	2 May 1989
		Protocol to DTC	31 August 2009	22 December 2010
	Oman	DTC		
61.	Pakistan	DTC	19 July 2005	24 November 2008
62.	Philippines	DTC	24 June 1998	30 April 2001
63.	Poland	DTC	2 September 1991	25 September 1992
		Protocol to DTC	20 April 2010	
64.	Portugal	DTC	26 September 1974	17 December 1975
65.	Qatar	DTC	24 September 2009	15 December 2010
66.	Romania	DTC	25 October 1993	27 December 1994
		Protocol to DTC	28 February 2011	
67.	Russia	DTC	15 November 1995	17 April 1997
68.	Saint Kitts and Nevis*	DTC	26-August 1963	01 January 1961

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
69.	Serbia	DTC	13 April 2005	5 May 2006
70.	Singapore	DTC	25 November 1975	17 December 1976
		DTC (new)	24 February 2011	
71.	Slovak Republic	DTC	14 February 1997	23 December 1997
		Protocol to DTC	8 February 2011	
72.	Slovenia	DTC	12 June 1996	1 December 1997
73.	South Africa	DTC	8 May 2007	27 January 2009
74.	Spain	DTC	26 April 1966	2 February 1967
		Protocol to DTC		
75.	Sri Lanka	DTC	11 January 1983	14 September 1984
76.	Sweden	DTC	7 May 1965	6 June 1966
		Protocol to DTC	28 Februar 2011	
77.	Tajikistan	DTC	23 June 2010	
78.	Thailand	DTC	12 February 1996	19 December 1996
79.	Trinidad and Tobago	DTC	1 February 1973	20 March 1974
80.	Tunisia	DTC	10 February 1994	28 April 1995
81.	Turkey	DTC	18 June 2010	
82.	Ukraine	DTC	30 October 2000	22 February 2002
	United Arab Emirates	DTC		
83.	United Kingdom	DTC	8 December 1977	7 October 1978
		Protocol to DTC	7 September 2009	15 December 2010
84.	United States	DTC	2 October 1996	19 December 1997
		Protocol to DTC	23 September 2009	
85.	Uruguay	DTC	18 October 2010	
86.	Uzbekistan	DTC	3 April 2002	15 August 2003
87.	Venezuela	DTC	20 December 1996	23 December 1997
88.	Vietnam	DTC	6 May 1996	12 October 1997

Status of EOI mechanisms as at 28 February 2011.

*Switzerland's double tax conventions with Barbados and Saint Kitts and Nevis, arise from the ongoing application of Switzerland's 1954 double tax convention with the UK, to those two jurisdictions.

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

Tax laws and regulations

- Loi fédérale sur l'impôt fédéral direct (LIFD)
- Loi fédérale régissant la taxe sur la valeur ajoutée (LTVA)
- Loi fédérale sur les droits de timbre (LT)
- Loi fédérale sur l'impôt anticipé (LIA)
- Circulaire 30 de la Conférence suisse des impôts
- Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes (LHID)

Laws, regulations and other materials relating to Financial Markets

- Loi sur l'Autorité fédérale de surveillance des marchés financiers (LFINMA)
- Loi fédérale sur les placements collectifs de capitaux (LPCC)
- Loi fédérale sur les banques et les caisses d'épargne (LB)
- Ordonnance du 17 mai 1972 sur les banques et les caisses d'épargne (OB)
- Convention relative à l'obligation de diligence des banques (CDB 08)
- Loi fédérale concernant la lutte contre le blanchiment d'argent et le financement du terrorisme dans le secteur financier (LBA)
- Pratique de l'Autorité de contrôle en matière de lutte contre le blanchiment d'argent relative à l'art. 2, al. 3, LBA
- Règlement LBA de l'OAR de l'ASG

Ordonnance de l’Autorité fédérale de surveillance des marchés financiers du 6 novembre 2008 sur la prévention du blanchiment d’argent et du financement du terrorisme dans les autres secteurs financiers (OBA-FINMA 3)

Ordonnance du 18 novembre 2009 sur l’activité d’intermédiaire financier exercée à titre professionnel (OIF)

Commercial laws, regulations and other materials

Constitution fédérale de la Confédération Suisse (Cst.)

Loi fédérale complétant le Code civil suisse (CO)

Ordonnance sur le registre du commerce (ORC)

Ordonnance concernant la tenue et la conservation des livres de comptes (Olico)

Code civil suisse (CC)

Loi fédérale sur le droit international privé (LDIP)

Loi fédérale sur les titres intermédiés (LTI)

Code pénal suisse (CP)

Convention relative à loi applicable au trust et à sa reconnaissance

Loi fédérale du 23 juin 2000 sur la libre circulation des avocats (LLCA)

Laws, regulations and other materials relating to the exchange of information

Ordonnance du 1^{er} septembre 2010 relative à l’assistance administrative d’après les conventions contre les doubles impositions (OACDI)

Loi fédérale du 20 mars 1981 sur l’entraide internationale en matière pénale (EIMP)