

**DRAFT**

**A PROPOSED FRAMEWORK FOR A MORE IN DEPTH MONITORING  
AND PEER REVIEW, AND RESTRUCTURING THE GLOBAL FORUM  
ON TRANSPARENCY AND EXCHANGE OF INFORMATION**

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**1-2 September 2009, Los Cabos, Mexico**

**5<sup>th</sup> Meeting of the Global Forum on Transparency and Exchange of Information**

This is the key document which will be discussed at the meeting. It is being circulated to all the Global Forum participants for written comments by 10 August. Comments should be addressed to [aziza.nasirova@oecd.org](mailto:aziza.nasirova@oecd.org). It will then be revised and recirculated to all participants.

## **A PROPOSED FRAMEWORK FOR A MORE IN DEPTH MONITORING AND PEER REVIEW, AND RESTRUCTURING THE GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION**

### **ACTIONS FOR GLOBAL FORUM MEMBERS**

At the Global Forum meeting in Mexico, participants are invited to discuss and approve a framework for an in-depth monitoring and peer review and provide guidance on the membership, status and governance of a reformulated Global Forum.

#### **A) MONITORING AND PEER REVIEW**

##### **Objectives**

1. Is it agreed that the objective of the monitoring and peer review process should be to ensure effective implementation of the standards on transparency and exchange of information for tax purposes, by all jurisdictions, whether or not members of the Global Forum?
2. Is it agreed that the reformulated Global Forum would continue to have the overall responsibility for the monitoring and peer review process?
3. Is it agreed that the Global Forum should create a group to carry out the monitoring and peer review (Peer Review Group), which will report to the full Global Forum (Plenary)?

##### **Focus of review**

4. Is it agreed that the monitoring and peer reviews should be based on the broad principles set out in this note and that the Peer Review Group would develop further these objective criteria?
5. Is it agreed that the focus should be on:
  - International instruments to exchange information, i.e. Article 26 of the Tax Conventions and Tax Information Exchange Agreements (TIEAs);
  - The relevant domestic legal framework, in particular as regards the availability of the information (including accounting, ownership and identity information) and access to the information;
  - Exchange of information in practice as well as the quality of information exchanged?
6. Is it agreed that the Global Forum should assess its members as well as non members, in particular other jurisdictions which are emerging as financial centres?

##### **Phasing of Reviews**

7. Is it agreed that the monitoring and peer review process should be carried out in phases? Is the proposed three-staged phasing agreeable?
8. Is it agreed that a preliminary first phase factual assessment should be delivered quickly in order to revisit the way progress is assessed?
9. Is it agreed that thereafter the way Phase 1 progress is carried out should be revisited?
10. Is it agreed that Phases 2 and 3 should be flexibly applied (i.e. carried out consecutively or in parallel) depending on the country's<sup>1</sup> degree of experience with information exchange?

<sup>1</sup> References in this document to “countries” should be taken to apply equally to “territories”, “dependencies” or “jurisdictions”.

11. Whilst all jurisdictions will eventually be covered in both Phases 2 and 3, is it agreed that in Phase 3, there should be some prioritisation based upon criteria developed by the Peer Review Group and which would be endorsed by the Plenary?

#### **Organisation of Reviews**

12. Is the proposal set out in the note on how the reviews should be organised acceptable?

#### **Outcome of the Reviews**

13. Is it agreed that the rating system to be applied at the conclusion of Phase 2 and Phase 3 should be in line with FATF like rating (from compliant to non compliant)?

14. Is it agreed to explore whether an overall rating could be given to each reviewed jurisdiction?

15. Is it agreed that the evaluations should lead to recommendations to address any weaknesses?

16. Is it agreed that the reviews should be published?

#### **Schedule**

17. Is the proposed time schedule acceptable?

### **B) RESTRUCTURING THE GLOBAL FORUM**

#### **Membership**

18. Is it agreed that membership in the Global Forum should be as wide as possible but with some basic entry criteria?

19. Is it agreed that all members should participate on an equal footing?

20. Is it agreed that a jurisdiction's membership should be reconsidered where a peer review finds that a jurisdiction has failed to make substantial progress or to substantially meet its commitments and the jurisdiction has failed to act on the recommendations of the Global Forum?

#### **Status and Resources**

21. Is it agreed that the Global Forum should be a self standing forum financed by its members, with a separate secretariat within the OECD and with an initial three year mandate?

22. Is it agreed that the costs of the programme should be divided between members on a basis to be agreed by the Global Forum?

#### **Governance**

23. Is it agreed that the Global Forum's decision making should continue to be based upon consensus as set out in the note?

24. Is it agreed to appoint a Steering Committee to be composed of the Global Forum chair and two vice-chairs, the chair and the two vice-chairs of the Peer Review Group and six other members, reflecting the composition of the membership of the Global Forum and to be assisted by the Secretariat?

#### **Meeting Schedule**

25. Is it agreed that the Global Forum should meet at least annually and that, the Steering Committee and the Peer Review Group should meet as necessary?

## **INTRODUCTION**

1. Recent developments have raised the profile of the issue of transparency and exchange of information in tax matters. Major progress has been made as all jurisdictions previously surveyed by the Global Forum on Transparency and Exchange of Information (the Global Forum) have now committed to the standards on transparency and exchange of information. The Declaration of the G20 Heads of State on Strengthening the Financial System issued after the London summit in April 2009 calls on the Global Forum to conduct and strengthen objective peer reviews, based on existing processes, and to review its structure. This message was reinforced by G8 Leaders who met in L'Aquila on 8-9 July.

2. The Statement of the G7 Finance Ministers and Central Bank Governors, issued in Washington on 24 April 2009, urged the OECD, FSB and FATF to intensify their work in conducting objective peer reviews of countries' efforts to strengthen international standards in taxation, prudential supervision and AML/CFT, respectively. At their 13 June 2009 meeting, G8 Finance Ministers underlined that it is "essential to develop an effective peer review mechanism to assess compliance with the OECD standards [on the exchange of information for tax purposes]" and noted that this could be delivered by an expanded Global Forum. At the 2<sup>nd</sup> meeting to fight international tax fraud and evasion hosted by Germany on 23 June 2009, the participants agreed to "encourage the OECD and non-OECD countries to work together in a reformed and expanded Global Forum, in order to set up a multilateral, impartial and transparent monitoring and peer review process of all jurisdictions that ensures effective implementation of the standards on a global basis. The outcome of the review process for each jurisdiction should be published." This theme was reiterated at the 2009 Meeting of the OECD Council at Ministerial Level on 25 June.

3. The Global Forum's standards of transparency and information exchange are now almost universally endorsed, and all jurisdictions previously covered by the Global Forum's assessments have now committed to these standards. Moreover, the standards were endorsed by the G20 Finance Ministers at a meeting in Berlin in 2004 and Xianghe, Hebei (China) in 2005 and by the UN Committee of Experts on International Cooperation in Tax Matters in October 2008. The European Union and the G8 have also endorsed the standard. All this means that Global Forum members have a common interest in ensuring that the standard is implemented effectively both by Global Forum members and other countries. This note proposes a framework to monitor progress made by jurisdictions with regard to transparency and exchange of information and to establish a restructured Global Forum.

4. This note first sets out proposals for establishing a robust monitoring and peer review mechanism (Part A) and then sets out the parameters for a restructured Global Forum (Part B).

## **PART A - ESTABLISHING A ROBUST MONITORING AND PEER REVIEW MECHANISM**

### **I. BACKGROUND**

#### **(i) The standards**

5. A robust monitoring and peer review system for the Global Forum is intended to assess the effectiveness of implementation of the standards of transparency and exchange of information.

6. Agreed policy recommendations and guidelines are the most frequent standards used as a basis for peer review. The standards in the case of tax transparency and exchange of information consist of a set of principles which were developed in the framework of the Global Forum and the OECD. The JAHGA

(Joint Ad Hoc Group on Accounts) document adopted by the Global Forum in 2005<sup>2</sup> sets out principles in the area of transparency. The principles for exchange of information are included in the 2002 Model Tax Information Exchange Agreement and Article 26 of the OECD Model Tax Convention, as updated in 2004 and in the revised Article 26 of the UN Model Tax Convention. These documents are completed by commentaries and a Manual on exchange of information. All jurisdictions assessed by the Global Forum have now endorsed these standards which can be summarised as follows:

7. **Key Principles of Transparency and Information Exchange for Tax Purposes<sup>3</sup>;**

- Existence of mechanisms for exchange of information upon request.
- Exchange of information for purposes of both criminal and civil matters.
- No restrictions on information exchange caused by the application of dual criminality principle or of a domestic tax interest requirement.
- Respect for safeguards and limitations.
- Strict confidentiality rules for information exchanged.
- Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request in a timely manner.

8. Transparency and exchange of information are closely linked concepts because lack of transparency prevents effective exchange of information. Within the legal framework there are three aspects which are key to ensuring effective exchange of information: (i) the existence of international exchange of information mechanisms, (ii) appropriate access powers to the information and (iii) the availability of the information. However, the analysis cannot stop with an assessment of the legal framework. Effective exchange of information also requires effective implementation at a practical level.

9. Most countries have been exchanging information for many years and have a long standing experience in the matter. However, not all countries have been exchanging information to the standards in practice. Some have only recently committed to exchange bank information for civil tax purposes or exchange information in the absence of a domestic tax interest. The nearly universal endorsement should facilitate a common understanding of the standards. The fact that many countries have been exchanging information in accordance with the standards for many years may also help in identifying what the fact finding exercises should focus on.

**(ii) The current Global Forum assessment process and information gathered so far**

10. The Global Forum decided to issue annual assessments at its Berlin meeting in 2004. Following the Melbourne meeting in 2005, the Global Forum issued its first assessment in 2006 which was updated in 2007 and 2008. The next update will be published on 1<sup>st</sup> September 2009. The Global Forum assessments include key information on the legal framework of all jurisdictions reviewed by the Global Forum in relation to the standards. The information is broken down in a number of categories and also presented in

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<sup>2</sup> See [Final JAHGA Paper, Enabling Effective Exchange of Information: Availability and Reliability Standard](#) (6 July 2005).

<sup>3</sup> See Tax Cooperation, Towards a Level Playing Field, 2006 Assessment by the Global Forum on Taxation, page 14, Summary of Part II.

tabular format. The information is collected by the OECD Secretariat on an annual basis from the jurisdictions covered by the survey. The process started initially with jurisdictions completing a template agreed by the Sub-Group on Level Playing Field Issues. Since then jurisdictions have been invited each year to update and if necessary correct the information for inclusion in the update reports. The OECD Secretariat posts this information on the restricted access OECD Global Forum website and invites all other countries covered by the assessment reports to submit comments or questions with regard to the information posted for the particular jurisdiction. The questions or comments are then posted without attribution.

11. The Global Forum reports are limited to information on the legal framework of the participating jurisdictions. The Global Forum has not focused on implementation in practice.

### **(iii) Progress Report**

12. At its October 2008 meeting, the Sub-Group on Level Playing Field Issues decided to change the presentation of the annual assessment in order to make it easier to read and understand (See the note *Taking the Process Forward in a Practical Way* in Annex I). It was agreed to prepare short summary assessments for each of the jurisdictions surveyed. Moreover, the Sub-Group agreed to convey positive recognition to the jurisdictions actively engaged in negotiating agreements to the standard. In particular, the Sub-Group proposed to consider as having substantially implemented the standard on information exchange any jurisdiction which had signed at least 12 agreements to the OECD standard with OECD countries. The Global Forum was informed on 26 November 2008 of this new approach and all participating jurisdictions have used this approach in the 2009 assessment.

13. On the occasion of the G20 London Summit on 2<sup>nd</sup> April, the OECD Secretariat published a progress report on the implementation of the OECD standard on information exchange. In this progress report, the agreements taken into consideration were not limited to agreements with OECD countries. The progress report identified three categories: jurisdictions which have not committed to the OECD standard; jurisdictions which committed but have not yet substantially implemented the standard and jurisdictions which have substantially implemented the standards. The progress report has been updated regularly to take into consideration developments since it was first published.<sup>4</sup>

## **II. OBJECTIVES AND SCOPE OF ESTABLISHING A ROBUST MONITORING AND PEER REVIEW MECHANISM**

### **(i) Ensuring a level playing field**

14. A robust monitoring and peer review system is intended to assess the universal implementation of the transparency and information exchange standards and the effectiveness of the steps taken to implement them. This is critical to ensure that all jurisdictions which have committed to implement the standards actually do so. It is also essential to identify and evaluate jurisdictions which are not members of the Global Forum and that have not committed to the international standard or have not implemented it in order to ensure a level playing field and prevent jurisdictions from trying to benefit as a result of refusing to cooperate in the Global Forum's objectives.

15. To be acceptable and efficient, the monitoring and peer review mechanism must meet some basic requirements as articulated below:

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<sup>4</sup> See [A Progress Report on the jurisdictions surveyed by the OECD Global Forum in implementing the internationally agreed tax standard](#).

**Effectiveness.** The mechanism must be systematic and provide an objective and coherent assessment of whether a jurisdiction has implemented the standards.

**Fairness.** The mechanism must provide equal treatment for all participants. Peer review of Global Forum members is an exercise among peers that can be frank in their evaluations. Reviews of non-members should be conducted only after a jurisdiction has declined to participate in the Global Forum. The review process should provide the jurisdiction with an adequate opportunity to participate in its evaluation by the Global Forum.

**Transparency.** The mechanism will need to include a process for providing regular information to the public on the Global Forum work and activities and on implementation of the standards. This general responsibility must be balanced against the need for confidentiality which facilitates frank evaluation of performance.

**Objectivity.** The mechanism should rely on objective criteria. Jurisdictions must be assessed against the internationally agreed standards in accordance with an agreed methodology.

**Cost-efficiency.** The mechanism should be efficient, realistic, concise and not overly burdensome. It is necessary, however, to ensure that monitoring and peer review are effective, since together with the standards, they guarantee the level playing field. A high degree of procedural cooperation is necessary both for effectiveness and cost efficiency.

**Co-ordination with other organisations.** The mechanism should aim to avoid duplication of effort. Efforts should be made to take account of relevant findings by other international bodies engaging in monitoring of performance in related areas.

## **(ii) Focus of the monitoring and peer review**

16. Exchange of information in tax matters allows countries to apply, administer and enforce their tax laws. The effectiveness of exchange of information depends on four conditions:

- the existence of a legal mechanism for exchange of information, typically a tax treaty or a tax information exchange agreement;
- the existence of necessary domestic legislation providing adequate powers to access information;
- the availability of information; and
- effective implementation at a practical level.

17. Any review must also examine the mechanisms in place in the requesting and requested jurisdiction to protect the confidentiality of the information received.

18. As discussed above, the Global Forum has already collected a wealth of information on the first three aspects and in particular the legal framework, including both international instruments and domestic legislation. Even though such information may need to be further reviewed, it does not need to be collected again. The assessment of practical implementation, however, will require fact finding. Prior to commencement of any fact finding exercises it will be necessary to develop a methodology to decide which kind of information should be sought.

19. Even though all countries reviewed by the Global Forum have now committed to the standards, progress is incremental and jurisdictions stand at different stages of implementation:

- some countries have long been involved in full exchange of information;
- others are now considered as having substantially implemented the standards but have only recently concluded agreements to the standards or have only a limited number of agreements that have not been utilised to any degree;
- other jurisdictions assessed by the Global Forum have committed to the standards but only have a limited number of agreements;
- finally, some other jurisdictions which have not been surveyed by the Global Forum may have developed or be developing into significant financial centres which raise concerns.

20. Therefore, it would seem appropriate to stage the monitoring and peer review process into three phases.

**Phase 1: Monitoring the progress made in concluding new international agreements and reviewing the quality and status of these agreements**

21. A preliminary first phase, which is in the nature of a fact finding exercise, could be completed quickly and would cover all participants to the Global Forum and would further include new jurisdictions which either volunteer or are designated by participants. This first phase would refine the benchmarks in connection with the exchange of information aspect of the standard and could be completed before the end of 2009.

22. The process of developing a benchmark has already been launched in the Global Forum and was conceived as an element of a staged process. An initial focus on whether a country had concluded 12 agreements with other jurisdictions incorporating the standard was an important step in that it provided an easily applicable measure to determine at a glance whether a country's agreements provide the potential to participate in information exchange in a meaningful way.<sup>5</sup> But it is apparent that for many countries, 12 agreements are likely to be too few to allow for exchange with all relevant requesting countries, and that clarity is required as to the extent of implementation of the standards.

23. The Global Forum has not yet had a chance to consider this issue in the new environment characterised by the near-universal agreement on the standards. It is clear, however, that the primary focus has shifted from commitment to implementation. The Global Forum could consider subsequently restructuring the Phase 1 analysis to (i) focus on agreements in force rather than agreements that have merely been signed, and (ii) apply a quality check on the degree of coverage provided by a country's agreement network.

24. While an evaluation based on signed agreements may have been appropriate at a time when the focus was primarily on obtaining commitment of all parties to the standards, all parties to the Global Forum have now committed to the standards. An evaluation of whether the conditions for effective exchange exist on a particular date can only be based on agreements in force because their effectiveness may depend crucially on exactly how they are incorporated into, and how they interact with, domestic law. The number of agreements in force can be easily determined and is included in the 2009 Global Forum assessment report.

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<sup>5</sup> The quality of individual agreements of a given country with regard to the standards would of course also form a core part of this first phase.

25. As noted by the Sub-Group on Level Playing Field Issues (see note Taking the Process Forward in a Practical Way), the assessment of whether a jurisdiction has substantially implemented the standard is a staged process. The threshold of 12 should not be considered as a ceiling but must be appreciated as part of a dynamic approach.

26. Most jurisdictions without agreements can be expected to follow through on their commitment to the standards by initiating contact with their important economic partners in order to achieve agreements or by responding appropriately to requests for agreements from such partners. However, as a matter both of fairness and effectiveness, it is important to apply a criterion to ensure that agreement coverage reflects the strengths of the economic links with other jurisdictions. For purposes of review, a criterion in this area should serve as a rough check to ensure that the agreement network is not in effect a sham, i.e., a large number of agreements with counterparties of little economic significance. The criterion should be objective and easy to apply. Any criteria should reflect the economic and financial weight of partners with which a jurisdiction would exchange information (e.g. based on publicly available data regarding bilateral financial flows and bilateral trade flows).

## **Phase 2: The domestic legal and regulatory framework**

27. This second phase would focus on the legal framework and on possible domestic law obstacles to information exchange.

28. It would assess each jurisdiction's legal framework against the standards. This would include a review to verify that the absence of a domestic tax interest or the existence of strict secrecy provisions do not affect the obligation to obtain and exchange information, and that domestic law provides for the relevant investigatory powers as appropriate.

29. The review would also include situations where the treaty obligation may need to be incorporated into domestic law through legislation.

30. Further, a treaty obligation to provide information effectively can be affected by domestic law requirements for a variety of reasons. Article 1 of the Model TIEA strikes a balance between rights and safeguards granted to persons in the requested party and the need for effective exchange of information. For requirements such as notification requirements, a party whose laws require prior notification is obliged to ensure that its notification requirements are not applied in a manner that, in the particular circumstances of the request, would frustrate the efforts of the party seeking the information. The review can help to define potentially applicable requirements of this nature and the conditions for their application in order to ensure that they do not unduly interfere with exchange of information.

31. Identifying and describing domestic law obstacles will also facilitate on-going efforts to address them in bilateral agreements.

32. Efforts could be made to develop criteria to allow these domestic law issues to be evaluated in the reviews and to be discussed by the Global Forum at a later date.

33. The review of domestic legislation mechanism would also apply to the accounting-related aspects of the standards, as set forth notably in the Final Paper of the Joint Ad Hoc Group on Accounts.<sup>6</sup> This would include review of the legal requirements with regard to the maintenance of reliable accounting records for all Relevant Entities, including the standard of reliability, and the requirements with regard to

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<sup>6</sup> Final JAHGA Paper, Enabling Effective Exchange of Information: Availability and Reliability Standard (6 July 2005).

access to accounting records. For example, as noted in the JAHGA paper, countries should have in place a system or structure that ensures that accounting records are kept. In addition, where accounting records are requested by another party, they should be accessible to the requested country's authorities within a reasonable period of time. The Peer Review Group could develop criteria in this area that would be suitable for use in a rapid review and propose them to the Global Forum.

34. The domestic legislation review would also encompass ownership and identify information. The JAHGA standards, which were endorsed by all participants in 2006 deal with both legal ownership and beneficial ownership. As for ownership information, the peer review would consider whether the legislation of a reviewed country meets the requirement of the standard. It is worth noting that FATF Recommendations also include ownership and identity provisions that could be useful in this regard. For example, jurisdictions should take measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. Similar provisions apply to require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

### **Phase 3: Identify the practical impediments**

35. This third phase of the peer review would focus on practical barriers to the effectiveness of exchange of information. Even if satisfactory international instruments are in place together with a sound legal framework, the effectiveness of exchange of information will depend on the practice of the competent authorities. There is a wide range of potential deficiencies, from lack of willingness to practical impediments such as the comprehensiveness of requests, language issues, resources spent to seek the information etc.

36. To assess the effectiveness of the exchange of information, requires quantitative data such as statistics on requests fulfilled (requests received, denied, treated...) and period between request and response and qualitative data, such as satisfaction of the requesting parties with the reliability and relevance of the information exchanged could be examined by assessors. These criteria may be developed further and decided upon at a later stage.

37. Peer review allows general government statements about the sufficiency of resources for particular purposes to be tested, and for a range of views of the adequacy of resources to be collected and compared with one another. Identifying areas where resources are inadequate in practice typically may require some on-site review.

38. For analytical purposes, it is important to distinguish the three phases in terms of their primary thematic scope. It is worth bearing in mind, however, that to the extent they are carried out sequentially each phase would normally encompass to some degree the issues in previous phases as well as the key new aspects. Thus, for example, it would be expected that Phase 2 and 3 reviews would provide an updated view with regard to the number and nature of international exchange agreements in force for the relevant country. Similarly, assuming there was no on-site visit for Phase 2, one of the key functions of a subsequent Phase 3 on-site visit would be to discuss with a wide variety of participants the effects of potential domestic law obstacles, both those that were previously evident in Phase 2 and those that may be discovered during the course of the Phase 3 review (including during the on-site visit). Phase 3 review may also help clarify the significance of any shortcomings identified in Phase 2. Subsequent phases also typically review remedial efforts made by countries in response to issues identified in earlier review reports. This natural overlap between phases exists in most effective systems, including the FATF and OECD Working Group on Bribery (WGB) (see Annex II for FATF and WGB experiences).

### III. ORGANISATION OF PEER REVIEWS

#### (i) Background

39. While several international organisations including UN bodies and the International Monetary Fund (IMF) conduct peer reviews, the practice has been most extensively developed at the OECD. The OECD has used this method of assessment since its creation four decades ago. Within the OECD, there exist a range of peer review mechanisms, as described in the OECD Policy Brief: Peer Review: a Tool for Co-operation and Change (available at <http://www.oecd.org/dataoecd/9/41/37922614.pdf>).

40. The goal is to help the country under review improve its policymaking, adopt best practices and comply with established standards and principles. Whatever the topic, such exercises are generally carried out on a regular basis, and result in a published report that assesses accomplishments, spells out shortfalls and makes recommendations. Follow-up procedures review how the country has addressed recommendations.

41. There is no standardised peer review mechanism but all peer reviews share certain structural elements: a basis for proceeding; an agreed set of principles, standards and criteria against which the country's performance will be reviewed; designated actors to carry out the review; and a set of procedures leading to the final result.

42. Peer reviews proceed on different bases. Dealing with a particular issue, it can be decided to undertake peer reviews as part of their activities, or to carry out a one-time peer review at the request of the country being examined.

43. Peer review is a joint operation involving several actors: the reviewed country, the examining countries and the Secretariat. As the term peer review implies, officials in the relevant policy field from other countries will be involved in the evaluation process. Generally officials from a few countries are chosen as lead examiners -- they represent the collective body carrying out the review and provide guidance in the collective debate -- while the rest of the group participates actively in the final discussion.

44. The choice of lead examiners is usually based on a system of rotation among members, although particular knowledge of a country relevant to the review may be taken into account. Their work includes examining documentation, taking part in discussions with the reviewed country and the Secretariat, and taking a lead speaker role in the debate in the collective body. The examiners may also participate in missions to the country. Lead examiners have a duty to be objective and fair, and free from any influence of national interest that would undermine the credibility of the peer review mechanism.

45. Participation by the country under review implies the obligation to co-operate with the examiners and the Secretariat by, among other things, making documents and data available, responding to questions and requests for self-assessment. For reviews of non-members of the Global Forum, cooperation should be invited but the review should proceed in any event using the best available information.

46. The Secretariat supports the process by producing documentation and analysis, organising meetings and missions, stimulating discussion and maintaining continuity. The independence, transparency, accuracy and analytic quality of the Secretariat's work are essential to the effectiveness of the process. How the work is divided up between the Secretariat and the lead examiners, and the degree of interaction between them, varies widely. But as a general rule the Secretariat carries out the most labour-intensive part of the job, particularly if it has the most expertise in the topic under review.

47. Certain conditions can contribute to the effectiveness of a peer review. A strong common understanding of the objective standards or criteria against which to evaluate performance; an adequate

level of commitment by the participating countries – and that means not only supplying enough resources to carry it out, but also being fully engaged in the process, whether reviewing or being reviewed; a large degree of trust and value sharing among the participants should be present from the beginning to facilitate the disclosure of data, information and documentation which are essential to the process. The credibility of the peer review process is essential to its effectiveness.

48. While involvement of the reviewed jurisdiction in the process is important to achieve the reviewed jurisdiction's endorsement of the final report and implementation of its recommendations, the involvement should not go so far as to endanger the fairness and the objectivity of the review. For example, the jurisdiction under review or a small group of like-minded jurisdictions should not be permitted to veto all or part of the final report.

49. Drawing from these existing precedents, a number of issues must be dealt with prior to establishing the peer review mechanism. Guidance from Global Forum participants is sought on the following.

#### **(ii) Who is in charge of the peer review process**

50. It is proposed that the Global Forum agree to undertake the monitoring and peer reviewing of the implementation of the standards on transparency and exchange of information.

51. However, given its size (FATF has 34 members and the WGB 38 members whereas the Global Forum is likely to cover a 100 plus jurisdictions), the Global Forum may wish to set up a smaller group to conduct reviews. This group will report regularly to the Plenary which would remain the decision making body.

52. For the first phase the Peer Review Group would collect comments from all participants through the Global Forum's secure website. This Group could also prepare the field for Phase 2 and Phase 3 by developing a methodology and rating system. Further, it may establish sub-groups and would coordinate the work of these sub-groups in charge of the review itself of Phase 2 and Phase 3 review.

53. The Peer Review Group would report to the Plenary on outstanding difficulties and serious deficiencies, etc. The criteria to establish the membership of the group should reflect the overall composition of the Global Forum in terms of both geography, importance of a financial centre and progress made towards exchange of information and transparency.

54. The Plenary would have the final endorsement of the reports prepared by the Peer Review Group. This could be done through a written procedure where all jurisdictions would be invited to formulate their comments except when the Peer Review Group or the jurisdiction under review would consider that an oral debate in the Plenary is necessary. In any case, the process would not be as burdensome as the FATF model.

#### **(iii) Conduct of the review and decision making rules**

55. Unlike Phase 1, Phase 2 and especially Phase 3 may require some on-site visits. For such visits, it is proposed to generally draw on the examples of the WGB and FATF as described in Annex II. However, on-site visits would be decided only when information provided by the reviewed jurisdictions would be considered insufficient or questionable by the assessors and the Peer Review Group.

56. Each jurisdiction would be reviewed by a team of two or three examiners, plus a representative of the Secretariat. The Secretariat could assist in identifying the suitable experts for each review. One or more training seminars could be organised to present the criteria, methodology and procedures for the reviews to

prospective experts. In order to accelerate preparation of the reports, the Secretariat could prepare initial drafts of the reports for review and comment by the lead examiners, as in the case of the WGB. In accordance with the general nature of peer review and to ensure objective reports, the country under review should have a full opportunity to present its views and information. As in the case of the WGB, the country under review could have the right to have its views, comments, and explanations fully reflected in the report and the evaluation.

57. The Global Forum decisions should continue to be consensus based as is the case of the OECD and FATF. However, effective monitoring and peer review mechanisms call for an adaptation of consensus. In the FATF, consensus is interpreted in a flexible way as the chair can decide there is consensus even when more than one country does not agree with the proposed conclusions. The approach to consensus in the Global Forum should similarly reflect the need for an effective review mechanism.

58. Monitoring can involve a substantial degree of interpretation of the standards as they are applied to specific national legislation and approaches to information exchange. In a well-functioning system, issues that are resolved in one or more reports can be identified and adopted as general principles for subsequent review rounds. It is important to ensure that as the standards are interpreted and applied in a consistent manner, they are maintained and reinforced as necessary to attain the overriding goal of effective exchange. Where the standard contains gaps, these should be filled in a manner so that the overriding goal is achieved. Issues of interpretations would be submitted for decision to the Plenary.

#### **(iv) Output and Ratings**

59. Peer review is a means to ensure progress towards full transparency and exchange of information. It results both in objective assessments and peer pressure which encourages further progress. The OECD Secretariat has issued a progress report, based on the work developed in the framework on the Global Forum. The Global Forum will also publish its fourth assessment on 1<sup>st</sup> September based on available information on all jurisdictions surveyed.

60. The proposed peer review mechanism will gradually allow a more in-depth assessment which will require a clear rating system. In the medium term, the peer review rating of progress made by reviewed countries will replace the existing progress report.

61. Expected outputs could range from short reports on each reviewed jurisdiction to specific recommendations. The reports would be accompanied by recommended actions and decisions about appropriate follow-up. In other areas, reports could provide a less structured evaluation. These areas could give rise to recommendations or to the identification of issues of concern which could be further explored in the context of follow-up or a subsequent round of reviews. The jurisdiction under review should establish to the satisfaction of the reviewers that it meets the applicable criteria and shall have the right to comment on the review report before its discussion and publication.

62. Reports could also identify jurisdictions for priority treatment and “horizontal issues” that are of interest to many countries and where the standards may require clarification. Such issues should be discussed at the Plenary.

63. As regards the ratings, it is suggested to draw in part on FATF experience. This approach was considered by the Sub-Group on Level Playing Field Issues in 2008. Some jurisdictions had then proposed to use the FATF four-tier rating: Compliant, Largely compliant, Partially compliant, Non compliant. Each of the main elements of the standards would receive such a rating. For instance, the standards could be broken down in elements such as A) the extent of legal mechanisms for exchange of information, B) access to the information (e.g. the absence of a domestic tax interest of strict secrecy provisions), C) domestic law

power to obtain and provide information, D) the availability of reliable accounting information, E) the availability of reliable ownership and identity information, F) respect for safeguards, limitations, and strict confidentiality for information exchanged, and G) effective implementation at a practical level.

64. The Global Forum might consider further breaking down these elements into essential criteria. It is recommended though not to develop an unduly large number of elements to be assessed. As the ultimate goal is effective exchange of information (all other elements being pre-requisite) an overall rating per country may also be appropriate.

#### **(v) Scheduling**

65. It is important that the Global Forum is able to deliver the first round of peer review in a short period of time. As stated above, a preliminary Phase 1 factual review should cover all jurisdictions and a first evaluation should be completed before the end of 2009. Refining Phase 1 would take until mid-2010. Phase 2 will have to be completed within the first mandate. All jurisdictions will have to be covered. The scheduling of Phase 3 may depend in part on decisions by the Global Forum with regard to the number of jurisdictions to review as the Global Forum may decide to focus on a selective review of some members or to perform universal review of all members. A balance must be struck between the desirability of a universal review and the consideration of cost and efficiency.

66. Universal review under Phase 2 and prioritised Phase 3 review could present an optimum solution. To limit costs, Phase 2 reviews would not involve on-site visits except, in exceptional circumstances, by proposal of an evaluation team with the approval of the Peer Review Group. Criteria for early inclusion in Phase 3 could be developed in earlier phases. Voluntary participation in Phase 3 could be possible as well. Some countries with extensive experience in information exchange could volunteer for an early Phase 3 process (perhaps conducted together with Phase 2 review, see below).

67. Priority for Phase 2 should obviously be given to jurisdictions which have not yet implemented the standards in order to identify deficiencies and stimulate progress. It would also be worth putting in place a "nomination" process to identify Global Forum members and non members which are considered to raise difficulties. It is possible that some jurisdictions which are now considered to have substantially implemented the standards would no longer be classified as such after Phase 1.

68. Phase 2 and 3 reviews could be usefully and efficiently conducted together for some countries for a number of reasons. For example, for some countries that engage in substantial information exchange, a purely legal analysis in Phase 2 might not capture the overall high degree of effectiveness of their system in practice. In such cases, a country could request to have its Phase 2 and 3 reviews conducted together leading to a single combined report. The report could address both the overall effectiveness and any legal deficiencies. Where appropriate, this approach could be an efficient and cost-effective solution. Some early Phase 3 reviews could assist in developing criteria and standards for use by the Global Forum.

69. For other countries, Phases 2 and 3 would be more efficient and useful as staged processes. The domestic legal framework of countries that have recently committed to the standards can be reviewed during the period in which they are developing a substantial network of exchange agreements. A later Phase 3 could then review how the agreements have operated in practice.

70. Decisions about sequential or concurrent reviews could be recommended by the Peer Review Group. Simultaneous Phase 2 and 3 reviews could be done on a voluntary basis, subject to the proviso that the jurisdiction demonstrate that it has engaged in substantial information exchange.

#### **(vi) Publication of the Monitoring and Peer Reviews**

71. All peer reviews, once approved by the Global Forum, shall be published. Jurisdictions will be expected to act on the recommendations set out in the reports and to report back on what progress has been made. The Global Forum assessments will reflect the progress made as assessed through the peer review.

#### **(vii) Interaction with Global Forum Annual Assessment**

72. The annual Global Forum assessment process has produced the only comprehensive compilation of information on jurisdictions' legal and administrative framework for transparency and exchange of information. The 2009 edition will be the fourth in the series. The information contained in these reports provides a general overview of jurisdictions' capacity to respond to requests for exchange of information. Aspects of the annual assessments as they stand now will undoubtedly have to evolve to reflect changing circumstances as well as concerns raised as a result of the peer review process. Thus, the annual assessments will remain a crucial source of information on the extent to which countries have implemented the standards even if its format changes, although the Global Forum may want to review the frequency of these publications.

### **IV. PROPOSED ACTION PLAN**

73. The following possible action plan is proposed for consideration by the Global Forum.

74. At its September 2009 meeting, the Global Forum would decide in principle on the issues set out in this note and to establish a Peer Review Group to develop detailed terms of reference and a methodology. Members of this group would be chosen to reflect the membership of the Global Forum. The Peer Review Group would finalise by November 2009 the applicable procedures for the identification of the countries that will be reviewed in 2010 and 2011 and, to the extent possible, for subsequent years. It would also finalise the procedures for the peer review, including the calendar for at least the first part of the cycle. Simultaneously, the Peer Review Group will launch the preliminary Phase 1 analysis.

75. The Peer Review Group could also identify mechanisms to ensure that significant financial centres that are not currently members of the Global Forum are subject to a review at least equivalent to that applicable to Global Forum members, and take other measures as necessary to ensure that no country is permitted to profit from being neither a party to the standards nor a part of the process. These could include a review of the jurisdiction's compliance with the standards or whether a jurisdiction refuses to cooperate. The Peer Review Group would also monitor the general progress of peer review and report back on the results to the next Global Forum.

### **PART B - RESTRUCTURING THE GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION IN TAX MATTERS**

76. The Global Forum has been the multilateral framework within which work on transparency and exchange of information has been carried out since early 2000 by both OECD and non-OECD economies (see Annex III). The main achievements of the Global Forum to date have been to articulate the standards on transparency and exchange of information and attain acceptance of them by all significant financial centres. The work on articulating the standards was largely completed by 2006 since in 2002 the Model Agreement on Exchange of Information was completed and in 2005 the Availability and Reliability Standard for accounting records developed by the Joint Ad Hoc Group on Accounts was published.

77. Given the proposals set out in Part I, the main tasks of a restructured Global Forum should be to:
- *Ensure effective implementation of the standards through a robust and comprehensive monitoring and peer review mechanism;*
  - *Monitor emerging financial centres;*
  - *Engage developing countries.*

## **I. Revisiting the Structure of the Global Forum**

78. The work programme set in Part A calls for reconsideration of the current structure of the Global Forum including membership, how it carries out its work, its governance structure and the frequency of its plenary meetings to take forward the work. Any governance structure should also reflect a broader range of voices particularly among emerging economies.

### ***Membership of the Global Forum***

79. Membership is critical to the relevance of the Global Forum. Initial membership of the Global Forum was comprised of OECD countries which did not abstain from this project (all OECD countries but Austria, Belgium, Luxembourg and Switzerland) and jurisdictions identified in 2000 which committed to implement the standards. Later, other countries participated in the Global Forum (see Annex III). It is now time that membership of the Global Forum becomes more inclusive, so that all interested jurisdictions are included in the Global Forum's work, and that all jurisdictions, OECD and non OECD, participate on an equal footing.

80. It is also important to include all relevant jurisdictions in the scope of the Global Forum assessments to ensure a level playing field. The issue here is to prevent jurisdictions with significant or emerging financial markets from benefitting by refusing to participate in the Global Forum. Similarly, it is important not to weaken the standards. For the Global Forum to maintain a strong leadership role, it is critical that jurisdictions which refuse to make progress towards full transparency and effective exchange of information would not be in a position to block the work. Membership of the Global Forum requires a permanent and positive engagement to the project, as assessed by the peers. Finally, the interests of developing countries should be considered taking into account their resource constraints. This is why it could be beneficial if relevant international organisations were invited to be observers.

81. In terms of membership, it is proposed that:

(i) Full membership be initially offered to all jurisdictions that have to date committed to or endorsed the standards. Initial membership would be comprised of: all OECD countries<sup>7</sup>, all G20 countries, and all other jurisdictions currently covered by Global Forum assessments.

(ii) Observership status will be available to jurisdictions which either expressed an interest in participating in the Global Forum or which the majority of the members of the Global Forum agree should be invited to participate in the annual assessment process.

(iii) Observer jurisdictions, once they have endorsed the standards and have had a positive peer review, could become full members. On the other hand, membership should be reconsidered where a peer

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<sup>7</sup> As the European Commission takes part in the work of the OECD on all levels, it would become a full member of the Global Forum.

review finds that a country has failed to make substantial progress or to substantially meet its commitments; in such cases, the member would become an observer.

(iv) Observership would be offered to relevant international organisations.

82. All members, OECD and non OECD, will participate in the Global Forum on an equal footing. As is the case within the existing Global Forum and the OECD, consensus should prevail as a decision making rule. (As noted above, in the context of the adoption of peer review reports, consensus should be interpreted flexibly to ensure the system functions effectively.)

### ***Status of the Global Forum and mandate***

83. It is proposed to draw on the experience gained from the existing Global Forum to reformulate it as a self-standing, self-financing programme. The Global Forum should be established as a self standing programme financed separately from the regular OECD budget (See Annex IV). In other words, the programme would be financed by participating jurisdictions, each of which would have equal rights within the programme. Formally, the status of the Global Forum would be revised by a decision of the OECD Council as it initially established the current Global Forum, and would be based on the recommendations from the participants in the Mexico meeting which would be fed into the Committee on Fiscal Affairs. There are many successful examples of similar programmes (e.g. the OECD Development Centre, see in Annex V a description of its structure) which benefit from a high degree of autonomy.

84. The Global Forum would initially work on the basis of a three year mandate focussed on transparency and exchange of information for tax purposes which would read as follows: (i) Ensure effective and consistent implementation of the standards on transparency and exchange of information (as reflected in the 2002 Model TIEA and Article 26 of the OECD and UN Model Tax Conventions) through a robust and comprehensive monitoring and peer review mechanism on a worldwide scale, (ii) Organise a dialogue between Global Forum members and non members, in particular emerging financial centres, and (iii) Engage developing countries. Technical assistance would be provided to jurisdictions to help them implement the standards. The mandate would be re-examined by the Global Forum after two years. In order to draw on existing expertise, the Global Forum would be serviced by a separate secretariat within the OECD Centre for Tax Policy and Administration.

### ***Governance***

85. The existing Global Forum does not have detailed rules of procedures on the designation of the chair (in practice, the Chair of the OECD's Committee on Fiscal Affairs has co-chaired its meetings with a Non-OECD representative) or on decision making rules (although a consensus rule has been applied in practice). Currently, the Global Forum has no permanent chair or steering committee. It relies heavily on the Secretariat and the Sub-Group on Level Playing Field Issues. Its output is primarily the annual factual assessment prepared by the Secretariat and approved by the Global Forum.

86. Given the anticipated increasing activity of the Global Forum, there may be a case for more detailed rules, with the main issues being decision making rules and governance structure.

87. The OECD is a consensus-based Organisation and the Global Forum has operated under that rule. It is proposed that decision making should continue to be on this basis. As is currently the case at the OECD, abstention on the part of one or more countries would not prevent other interested countries from pursuing the work. Peer reviews would require a flexible approach to consensus so that any one jurisdiction or small group of jurisdictions cannot block the publication of the outcome of a review.

88. Currently, most of the work of the Global Forum is carried on through the Sub-Group on Level Playing Field Issues, which manages the annual Global Forum assessment process and prepares for Global Forum meetings. The work of the Sub-Group has now run its course since all of the participants in the Global Forum have now endorsed the standards. Moreover, membership of the Sub-Group was established before a number of jurisdictions had endorsed the standards and it is desirable that this broader range of jurisdictions should also be represented in any subsidiary bodies. The members of the subsidiary bodies should be selected by the Global Forum in a transparent way and should be truly representative of all members in terms of geography and size and economic profile of the jurisdictions.

89. The Global Forum will need a Steering Committee that is broadly representative of the membership. Final decisions will remain within the Plenary. The Global Forum could have a chair and two vice-chairs. The Chair could rotate on an annual basis, each officer being designated for a three year mandate (except for the first two years where one officer would be designated for one year and the chair for two years). Given the expected size of the Global Forum (90+ countries), the Global Forum might also establish smaller subsidiary bodies, for instance to oversee the peer review (the Peer Review Group). A subsidiary body would also have a chair and two vice-chairs. The chair and vice-chairs of both Global Forum and the chair and the vice-chairs of the Peer Review Group, together with six additional members, would constitute the Steering Committee. The Chair and vice-chairs of the different subsidiary bodies should not be from the same jurisdictions and the composition of the Steering Committee should reflect the composition of the full Global Forum.

#### ***Meeting schedule***

90. Currently the Global Forum does not have a regular meeting schedule. Regular meetings will be necessary to assess progress and are crucial to ensure that all members are engaged in the work and that the Global Forum is in a position to respond to developments in a timely fashion. Initially, a plenary meeting should be held annually, hosted by a participating country. Meetings of the Peer Review Group and the Steering Committee should be held bi-annually or more frequently as necessary. Clearly the schedule of meetings will depend on the programme of work, the revised structure and the resources available.

#### ***Resources***

91. Ensuring that all Global participants participate on an equal footing has consequences in terms of funding. As explained above, it is proposed that the Global Forum becomes a self financing programme at the OECD (known as a “Part II” Programme in OECD terms). Moreover, the establishing of a robust peer review mechanism will increase the cost of operating the Global Forum. The OECD Secretariat is currently trying to roughly evaluate the budget necessary to carry out the work. The Global Forum will have to examine the cost-sharing arrangements between members to the Global Forum. A note on this will shortly be distributed.

## ANNEX I

### TAKING THE PROCESS FORWARD IN A PRACTICAL WAY NOTE BY THE SUB-GROUP ON LEVEL PLAYING FIELD ISSUES

#### A. Introduction

1. The Sub-Group on Level Playing Field Issues (the Sub-Group) met in London on 6-7 November 2007. The meeting focussed on papers prepared by members of the Sub-Group. The origin of these papers lies in a concern on the part of the Non-OECD Participating Partners (NOPPs) and OECD countries, about the limited progress towards a level playing field. In particular, some countries<sup>8</sup> are forging ahead in implementing the standards of transparency and exchange of information for tax purposes whereas others are not. Where progress depends on bilateral negotiations, the inability of countries to agree mutually acceptable benefits is a significant impediment.

2. This paper was prepared by the Sub-Group drawing on the discussions and papers examined at its November 2007, March, June and October 2008 meetings. The following general points emerged from the papers and the discussions surrounding them at the Sub-Group meetings:

- It is necessary to determine why some countries are not moving ahead and what actions should be taken to overcome these difficulties.
- It is necessary to identify more clearly the extent to which countries are making progress towards implementing the standards of transparency and exchange of information for tax purposes in order to have a factual, accurate analysis.
- Countries that are making progress should have their efforts recognised and responded to positively.
- Countries that are not making progress should not be allowed to benefit as a result.

3. The paper provides a way of refining the assessment of the extent to which countries are implementing the standards of transparency and exchange of information. It also proposes that countries inform the next meeting of the Global Forum about individual actions they propose to take to achieve a level playing field. The Sub-Group recognises that this will not address all of the issues inherent in achieving the level playing field. However this process is an important step in that direction.

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<sup>8</sup> References in this document and its tables to “countries” should be taken to apply equally to “territories”, “dependencies” or “jurisdictions”.

## **B. The Existing Process for Achieving a Level Playing Field**

4. The concept of the level playing field agreed at the Global Forum meeting in Berlin in 2004<sup>1</sup> (the Berlin Report) is defined in the context of exchange of information as “the convergence of existing practices to the same high standards for effective exchange of information on both criminal and civil taxation matters within an acceptable timeline for implementation with the aim of achieving equity and fair competition”. These standards may be achieved by a variety of methods, e.g. through exchange of information articles in double taxation conventions (DTCs) or through tax information exchange agreements (TIEAs) or other bilateral or unilateral mechanisms.

5. The Berlin report outlined a series of steps involving individual, bilateral and collective actions which would be needed to both achieve and maintain the goal of a level playing field. The Statement of Outcomes issued after the Global Forum meeting in Melbourne on 15-16 November 2005 further elaborated these steps.<sup>2</sup>

6. In terms of individual actions, countries were encouraged to modify existing laws and practices, where necessary, to fully implement the principles of transparency and exchange of information for tax purposes. Further, they were asked to review their policies in relation to six specific areas and report the outcome of their reviews at the next meeting of the Global Forum. A questionnaire for reporting back on countries’ policy reviews was sent out and has already been responded to by the majority of countries. The Sub-Group has agreed that the responses to the questionnaire should be used to prepare a report on countries’ policy reviews for the next meeting of the Global Forum and that the report should show countries that were making progress in implementing the standards and also show countries that were not making progress.

7. In terms of bilateral actions, the Global Forum has recognised that the principle of effective exchange of information for civil and criminal tax matters will generally be implemented through a process of bilateral negotiations. Accordingly, countries that were in negotiations were encouraged to complete them and countries that had not yet initiated them were encouraged to do so. Countries were also encouraged to try to ensure that their bilateral arrangements for effective exchange of information for all civil and criminal tax matters provide benefits for both parties.

8. As regards collective actions, it was agreed that the Global Forum would undertake a factual review of the legal and administrative frameworks with respect to transparency and effective exchange of information in over eighty countries. The initial report was published in May 2006 and was followed by publication of progress reports in October 2007 and September 2008. It was envisaged that the reports would also serve as public recognition in those cases where the transparency and effective exchange of information standards have been met in whole or in part.<sup>3</sup>

9. Finally, it was recognised that any country that does not adopt high standards of transparency and effective exchange of information must not be permitted to profit as a result but it was considered premature at Berlin to discuss measures to ensure this outcome.<sup>4</sup>

10. The process agreed at Berlin and further developed in Melbourne has resulted in considerable progress towards a level playing field. However, some countries are progressing at a much faster rate than others

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<sup>1</sup> OECD (2004), *A Process for Achieving a Global Level Playing Field*.

<sup>2</sup> See *Progress Towards a Level Playing Field: Outcomes of the OECD Global Forum on Taxation* (hereafter referred to as the Statement of Outcomes).

<sup>3</sup> OECD (2004), *A Process for Achieving a Global Level Playing Field*, paragraph 25.

<sup>4</sup> OECD (2004), *A Process for Achieving a Global Level Playing Field*, paragraph 27 & 28.

which raises the question of whether refinements to the process are now needed to encourage other countries to accelerate their progress. This issue was explored in papers prepared by members of the Sub-Group and the Secretariat that were discussed at the Sub-Group meetings in November 2007, March, June and October 2008.

### **C. Taking the Process Forward in a Practical Way**

11. In the light of the concerns raised at the Sub-Group, this section suggests, as a part of a staged process, refinements to the current process to be able to identify more clearly the extent to which countries are making progress towards implementing the standards of transparency and exchange of information and why progress is being made in some circumstances but not others. As this is a staged process it follows that the approach described here will be reviewed going forward. The bulk of the information needed to do this is contained in the Global Forum assessments and in countries' policy reviews. The remaining information will be supplied by the countries themselves when commenting on their summary assessments as proposed below. This information may include commentary on the outcome of bilateral negotiations. It should be possible to present this information in a more accessible way in the context of the report to be presented to the Global Forum on countries' policy reviews. Second, it suggests that countries should inform the next meeting of the Global Forum about individual actions they propose to take to achieve a level playing field.

- Summary assessment of implementation of standards and policy reviews

The summary assessment will be based on information collected as part of the Global Forum's assessments. This summary assessment will be included in the report on countries' policy reviews which the Sub Group has agreed should be developed for the next Global Forum meeting.

- Update on individual actions to achieve a level playing field

Countries will be asked to inform the next Global Forum meeting about measures that they have taken or propose to take to ensure that countries that do not adopt high standards of transparency and effective exchange of information are not permitted to profit as a result. They will also be asked to inform the next Global Forum meeting about the benefits they have offered or propose to offer to ensure that countries that have adopted high standards of transparency and exchange of information benefit from this.

#### *(i) Summary assessment of implementation and policy reviews*

12. The summary assessment identifies more clearly the extent to which countries are making progress towards implementing the standards of transparency and exchange of information. In developing this approach it was considered important that the resulting assessments:

- be factual and objective,
- be easy to understand,
- allow for comparison between countries, and
- will be part of a staged process and subject to future review.

13. Based on these criteria, it is possible to summarise the facts in the Global Forum assessments for each country covered by those assessments under a few headings which reflect the key features of the high standards of transparency and exchange of information for tax purposes. The following headings are used:

- Exchanging information.
- Access to bank information.
- Access to ownership, identity and accounting information.
- Availability of ownership, identity and accounting information.

14. Countries will also have an opportunity to express their own evaluation of the impact of various factors that they determine are relevant to the assessments made. The result of the exercise is a summary assessment for each country of the extent to which it has implemented the key features referred to above together with the comments of each country regarding the factors that it considers relevant to the summary assessment.

15. The summary assessment is purely factual and based on the information that the country itself has supplied (subject to the established peer review process). On the basis of this assessment the countries considered to have substantially implemented the OECD standard on exchange of information<sup>5</sup> will be identified. For this purpose a country having concluded agreements, or that has in place unilateral mechanisms, to exchange information to the OECD standard with at least 12 OECD countries will be considered to have substantially implemented the OECD standard on exchange of information.

16. Using this approach, the current position for each country will be described on one page (as shown in the example below) so that readers could quickly see where each country is making progress with respect to implementing the standards. Further the summary assessment would show whether a country had committed to or endorsed the standards of transparency and exchange of information for tax purposes.

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<sup>5</sup> The OECD standard requires exchange of information in all tax matters for the administration and enforcement of domestic tax law and no inability to exchange caused by the application of a domestic tax interest requirement or bank secrecy for tax purposes.

## SUMMARY OF PROGRESS IN IMPLEMENTATION<sup>6</sup>

### A HYPOTHETICAL EXAMPLE

Country: [ ]

#### **Country X has substantially implemented the OECD standard on exchange of information**

##### ***Exchanging Information***

Country X has 51 agreements that provide for exchange of information to OECD standard. In addition, under Country X's domestic law, it can exchange information on criminal tax matters with all countries and accepts the OECD common understanding of tax fraud.

##### ***Access to Bank Information***

Country X has no restrictions to access bank information for tax information exchange purposes.

##### ***Access to Ownership, Identity and Accounting Information***

The information gathering powers in place generally allow tax authorities to obtain information from those persons required to maintain such information. As regards ownership information, there are no statutory confidentiality or secrecy provisions in place. Although Country X allows bearer shares, they can only be issued by public companies and shareholdings greater than 5 per cent must be identified in a public register.

##### ***Availability of Ownership, Identity and Accounting Information***

In terms of the availability of ownership information for companies both the government and the company must maintain legal ownership information. In addition anti-money laundering legislation requires financial service providers to undertake customer due diligence. There are no domestic trust laws in Country X, nor does Country X's law recognise a trust formed under foreign law. Similarly, Country X law does not recognise partnerships *per se*, rather all business entities are dealt with under its company law. Country X does have rules regarding the establishment of foundations, which must be formed by way of a public deed indicating its members. A registry of foundations is maintained by the Minister of Justice.

Accounting information for all entities is required to be kept in accordance with the JAHGA standards.

17. In addition to the summary assessment expressed above, a separate box will be included containing the relevant elements of the countries' policy reviews as well as country comments. This will ensure that where a country intends to address any shortcomings in their legal and administrative frameworks for transparency and effective exchange of information and has proposed to undertake specific actions to address particular shortcomings within a specific timeframe, this is clearly indicated. In addition, each country could express comments on factors that they consider relevant to understanding its summary assessment.

##### ***(ii) Update on other actions to achieve a level playing field***

18. Given the concerns that have been expressed about the lack of progress towards a level playing and the loss of business by some countries to countries that are not implementing the standards advocated by the

<sup>6</sup> A country having concluded agreements, or that has in place unilateral mechanisms, to exchange information to the OECD standard with at least 12 OECD countries will be considered to have substantially implemented the OECD standard on exchange of information.

Global Forum it is important that countries now consider what other actions can be taken in their efforts to level the playing field.

19. Countries will therefore be asked to report to the next Global Forum meeting on other actions they have taken or propose to take to achieve a level playing field. When deciding on such actions, countries will consider two types of measures: the provision of mutual benefits for countries that implement the standards or imposition of measures to ensure that those countries that do not implement the standards do not profit as a result. The Global Forum has encouraged countries to ensure that their bilateral arrangements for exchange of information for all civil and criminal tax matters provide benefits for both parties. It has also recognised that any country that does not adopt high standards of transparency and effective exchange of information must not be permitted to profit as a result. Finally, the Global Forum has encouraged all countries choosing to use a list of countries derived from the 2000 OECD list to take account of the progress made in the implementation of the principles of transparency and effective exchange of information in tax matters.

#### **D. Timeline and Next Steps**

20. The report on the outcome of countries' policy reviews will be circulated to the Global Forum in advance of the next meeting to ensure that information on individual countries' situations is up to date. The Global Forum will be informed as early as possible about the form that the report will take. Countries will also have the opportunity to consult individually in order to agree the country summaries.

21. The following procedure will be followed:

- The Secretariat will prepare a summary for each country based on information contained in the Global Forum Reports up to 2008. This will be sent to each country by the end of January 2009 along with requests to: (i) complete the 2009 response form, (ii) update their policy review, if necessary, and (iii) provide comments, if any, on factors they consider relevant to understanding the assessment.
- Secretariat consults countries individually in relation to their own summaries and country comments by March 2009. The assessments will also be updated to incorporate any changes included in the 2009 response forms.
- Sub-Group meets May 2009 to consider draft report prior to Global Forum meeting in late 2009.
- Assessments will put on Global Forum website by the end of June 2009.

## ANNEX II

### PRACTICAL SOLUTIONS TO KEY ISSUES IN SELECTED INTENSIVE PEER REVIEW MECHANISMS

1. This annex reviews FATF and WGB approaches to a number of practical peer review issues. The FATF and WGB are well-developed peer review mechanisms with a track record of two or more rounds of reviews; they involve criminal and civil legal proceedings and sensitive international cooperation issues; and they involve the review of confidential information.

2. As applied by the FATF, FATF-style regional bodies (FSRBs) and associated bodies, the FATF model applies to the review of AML/CFT policies in all regions of the world.<sup>15</sup> The FATF itself has 34 members. While the reach of the WGB is more limited, it extends to all OECD members and eight non-member States, including Argentina, Brazil, Chile, South Africa and Israel. Procedures in both groups have evolved over time. The focus here is generally on current procedures which reflect accumulated learning.

3. The first section of this annex focuses on procedures in “Third Round” FATF reviews and in “Phase 2” WGB reviews, both of which involve on-site visits. Current FATF procedures are primarily set out in the FATF Methodology, the FATF Handbook; and the FATF Procedures.<sup>16</sup> Current WGB procedures for Phase 2 are found principally in the Revised Phase 2 Guidelines and in the Procedure for Self- and Mutual Evaluation of Implementation of the Convention and the Revised Recommendation - Phase 2 (“Phase 2 Procedures”). The second section of the annex briefly reviews accelerated cycles of review, including of non-members of FATF.

#### *1. FATF and WGB procedures for reviews involving on-site visits*

##### *a. Basis for Proceeding and Applicable standards*

4. Agreement to undergo FATF peer reviews is a basic condition of membership of FATF and in the FSRBs. In the WGB, the basis for proceeding with peer review is found in Article 12 of the OECD Anti-Bribery Convention; the 1997 Revised Recommendation on Combating Bribery in International Business Transactions (the “Revised Recommendation”); and the 1997 Decision of the Council concerning further work on Combating Bribery in International Business Transactions.

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<sup>15</sup> FATF has special arrangements for certain AML/CFT evaluations, including those conducted by the IMF/World Bank in the context of an FSAP exercise; those involving States that are members of both FATF and a FATF-style regional body (FSRB), etc. These arrangements are detailed in the FATF Procedures and FATF handbook, and are generally not reviewed here.

<sup>16</sup> The full names of these documents are respectively the Anti-Money Laundering/Combating Terrorist Financing (AML/CFT) Methodology 2004, as revised 2009; the AML/CFT Handbook for Countries and Assessors 2004 (revised 2009); and Third Round of AML/CFT Mutual Evaluation: Process and Procedures. In addition, the FATF has also recently prepared detailed templates for the evaluation report and its executive summary.

5. The principal applicable standards for FATF are set out in the FATF Forty Recommendations 2003 and the FATF Nine Special Recommendations on Terrorist Financing 2001 (the “FATF 40+9 Recommendations”) (including the Interpretive Notes); and the FATF Methodology. The principal applicable standards for the WGB are found in the OECD Anti-Bribery Convention and the Revised Recommendation. The purpose of both FATF reviews and Phase 2 reviews by the WGB is to evaluate both the laws and especially how effectively they are implemented in practice. This focus on evaluating practical implementation results in a systematic use of intensive on-site visits to gather information from a wide variety of sources.

*b. Setting of the Overall Evaluation Schedule*

6. In the FATF, a schedule of fixed or proposed dates for future mutual evaluations is provided to the FATF Working Group on Evaluations and Implementation (WGEI<sup>17</sup>) and updated for each plenary. The FATF generally adopts between five to seven reports a year during its three annual meetings. The WGB seeks to adopt an agreed overall schedule prior to the commencement of each phase of reviews. It includes the approximate timing of each country’s review and the identity of its two lead examining countries. In recent years, the WGB has adopted seven to eight reviews over its four annual meetings.

*c. Composition of Evaluation teams and Selection of Personnel*

7. For FATF, a typical assessment team consists of four experts (“assessors”) from different countries -- a legal expert; two financial experts; and a law enforcement expert. Assessors are selected by the President through the Secretariat. FATF seeks to use assessors who have been to a training seminar or have other relevant evaluation experience. A list of assessors is kept, and the Secretariat tries to keep the process a mutual one.

8. For the WGB, two countries each nominate two or three lead examiners for each country evaluation. The Secretariat ensures that the overall team adequately covers the necessary areas of expertise. Each country serves twice as a lead examining country during each round of reviews. One of the lead examiner countries generally has a similar legal system to the examined country.

9. The Secretariat contributes to the draft report to assist the assessors/examiners as necessary, and is responsible for ensuring consistency between reports. Generally, there are one to two Secretariat staff members on an FATF review and two to four Secretariat staff on a WGB review.

*d. Conduct of the review and preparation of the draft report*

10. Both the FATF and WGB processes begin with the adoption of an agreed schedule for the review containing dates for all steps leading to adoption of the report by the plenary and the choice by the country of language for the review (English or French). A FATF assessment generally takes approximately ten months to one year to complete. WGB Phase 2 assessments have typically taken eight to ten months.

11. In both systems, a standard-form questionnaire is sent by the Secretariat to the country. In the WGB, the evaluating team also develops a country-specific questionnaire that addresses issues raised by prior reviews, important developments since the prior visit, technical questions of statutory or case law interpretation, and enforcement efforts. For both systems, the Secretariat uses the questionnaire responses, follow-up questions, expert input and other input as appropriate to prepare a preliminary document for the

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<sup>17</sup> The WGEI assists the plenary through monitoring, co-ordinating and reviewing the mutual evaluation processes and procedures, and taking steps, as appropriate, to enhance the quality, consistency and transparency of the evaluation/ assessment reports of the FATF, associate members, FSRBs, the OGBS, the IMF and the WB.

experts prior to the on-site visit including key remaining questions. (FATF prepares an outline draft of the report; WGB a preliminary analysis).

12. In both systems, the on-site visit commence with a roughly half-day preparatory meeting between the experts and the Secretariat. FATF visits then generally last approximately eight days, while WGB visits generally last a week. A wide variety of government officials, government agency officials, law enforcement officials and members of civil society participate in panels during the visits in order to provide a variety of perspectives on the issues. Meetings take a question and answer format.

13. After the on-site visit, the Secretariat generally prepares the draft report or consolidates sections of the report drafted by different experts. The evaluation team works together to achieve a draft report that states a consensus view. The evaluation team revises the report as it considers appropriate after receiving comments from the examined country. The draft report is then distributed to the plenary two to three weeks in advance of the plenary meeting.

*e. Plenary consideration and decision-making on the evaluation*

14. The plenary has limited time to consider reports (three to four hours for FATF; four to five hours for the WGB). The procedures allow for input from the experts, the examined country, other countries and the Secretariat as appropriate. In order to effectively use limited plenary time, efforts are made to further narrow and focus the issues prior to the plenary.

15. Under both systems, the draft report prepared by the evaluation team is amended and adopted by the plenary in the name of the full group. Decisions of the FATF are taken by its 34 Members, in plenary meetings, by consensus. As noted above, consensus is interpreted in a flexible way as the chair can decide there is consensus even when more than one country does not agree with the proposed conclusions. The WGB also generally operates by consensus. For the adoption of peer review reports, the country under review agrees not to block consensus on the adoption of the report, recommendations and press release; it has the right to have its views, comments, and explanations fully reflected in the report and the evaluation.

*f. Evaluation standards and ratings*

16. As noted above, FATF uses a four-tier rating system in its evaluations. For each of the 40+9 Recommendations, the Methodology break the Recommendations down into components (Essential Criteria) that can be more easily evaluated. For each Recommendation there are four possible levels of compliance based on the degree to which the country meets the Essential Criteria. The ratings are defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

17. In making decisions about the degree of compliance with the Essential Criteria, the assessors must also consider the degree of effectiveness of the system. The country under review bears the burden of demonstrating its compliance with each Recommendation including with regard to effectiveness.

18. FATF reports include an overall table with the 4-tier score for each Recommendation. When attributing the scores, the FATF takes the financial possibilities of the specific country into consideration. This means that the same policy could be assessed as largely compliant for a developing country, while it is assessed as partially compliant for a developed country.

19. The WGB uses a less structured approach to evaluation. Reports identify shortcomings in the effectiveness of the fight against foreign bribery and the WGB makes specific recommendations for change. These can be with regard to specific criteria or with regard to a general recommendation to take effective measures to fight foreign bribery. The WGB generally adopts a forward-looking approach, focusing on the need to take the recommended action rather than precise evaluation of the compliance of the existing system. The Group's follow-up procedures two years after the report give rise to public findings about whether each recommendation has been implemented, partially implemented or not implemented.

*g. Publication of Reports and Follow-up*

20. After they are adopted by the plenary, FATF assessments are made public together with an executive summary and press release. Most FSRBs have also agreed to publish assessment reports on their websites. Reports and recommendations of the WGB, together with a press release and executive summary, are published on the OECD website shortly after they are adopted by the WGB.

21. For both systems, the plenary decides on the appropriate follow-up regime at the time it adopts the report. In general, if compliance is weak or remedial progress is slow, scrutiny is intensified and made more frequent. Conversely, if compliance is good or progress is satisfactory, follow-up procedures can be less intensive. Criteria and procedures exist for the taking of these decisions.

22. Enhanced follow-up is based on the FATF's traditional policy that deals with non-complying members. It provides for a series of graduated measures from a letter from the FATF President to relevant ministers, high-level missions to reinforce the message; in connection with FATF Recommendation 21, issuing a formal FATF statement to the effect that the member jurisdiction is insufficiently in compliance with the FATF Recommendations, recommending appropriate action, and considering whether additional counter-measures are required; suspending the jurisdiction's membership of the FATF until the Recommendations have been implemented; and terminating the membership of the jurisdiction. Appropriate details of any follow-up action and the result of that action would generally be published.

23. The WGB's follow-up procedures are broadly similar. However, the Group relies more on deciding on an additional on-site review and report in cases of serious concern, and the other enhanced compliance measures are less fully developed.

24. In addition, the FATF has created an International Cooperation Review Group (ICRG) which reviews compliance with by both member and non-member jurisdictions. It can coordinate collective action against jurisdictions where gaps in AML/CFT regulations create systemic risks.

*h. Resources/Budget*

25. For the WGB, countries acting as lead examiners bear the cost of making government officials available to serve as experts, as well as for travel and expenses for the experts. The examined country bears the cost of replying to the questionnaire and preparing the on-site visits, as well for attendance of personnel

as necessary for the plenary. The staff costs to the Secretariat of each Phase 2 review are approximately 160 000 euros. In addition, on-site visits generate travel and per diem costs for the Secretariat.

*i. Confidentiality*

26. Both FATF and WGB procedures involve significant amounts of sensitive and confidential material. At the same time, given the interest of the business sector and the public in the matters under review, transparency of the assessment process is important.

27. Unless allowed for otherwise under FATF procedures, documents produced: (a) by an assessed country during a mutual evaluation exercise, (e.g. documents describing a country's regime or threats faced, responses to the Mutual Evaluation Questionnaire, or responses to assessors' queries); and (b) by the FATF Secretariat or assessors (e.g. reports from assessors, draft Mutual Evaluation Reports etc) should be treated as confidential and should not be made publicly available, unless the assessed country (for documents under (a) above) or the Secretariat (for documents under (b) above) consents to their release.

28. The WGB recognises that the mutual review itself needs confidentiality if it is to be frank and efficient. If the examined country makes available to the examiners information it considers confidential, confidentiality of this information will be respected. Draft reports on country performance remain confidential under both systems until they are released after adoption by the plenary. In some cases, special arrangements have been made to address confidentiality issues during the course of a review in order to adequately protect confidentiality while allowing the review to be effective.

**2. Accelerated procedures**

*a. The FATF NCCT evaluations*

29. The procedures used by the FATF in 2000-2001 to identify non-cooperative countries and territories (NCCT) are of interest for two reasons. They were a highly accelerated form of review, leading to the completion of 47 reviews in approximately 18 months.<sup>18</sup> They were not mutual evaluations and may thus also be of interest with regard to the question of the review of non-members of the Global Forum.

30. The FATF established 25 criteria for a NCCT, which were based on FATF's 40 Recommendations and set forth in a February 2000 report. Once the criteria were established, the identification of the NCCTs involved three steps: (i) selecting countries for fact-finding review; (ii) engaging in the fact-finding survey; and (iii) generating the list of NCCTs.

31. Countries were selected for fact-finding review on a priority basis based on FATF members' experience. FATF members were invited to mention those jurisdictions where, in the recent past, there had been difficulties, with an explanation of the difficulties. Forty-seven jurisdictions were ultimately identified for further fact-finding based on the views of FATF individual members.<sup>19</sup>

32. A highly accelerated fact-finding survey was undertaken. Following the February 2000 report, the jurisdictions to be reviewed were informed and reports were prepared for over 30 jurisdictions in time for adoption at the June 2000 FATF meeting. In order to prepare the reports, the FATF created four

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<sup>18</sup> See generally FATF, About the Non-Cooperative Countries and Territories (NCCT) Initiative, [http://www.fatf-gafi.org/document/51/0,3343,en\\_32250379\\_32236992\\_33916403\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/51/0,3343,en_32250379_32236992_33916403_1_1_1_1,00.html).

<sup>19</sup> The February 2000 report noted that the list of NCCTs should contain all countries and territories, both inside and outside FATF membership, whose detrimental practices seriously and unjustifiably hamper the fight against money laundering.

regional review groups (Americas, Asia/Pacific, Europe, Africa/Middle East) consisting of representatives from the FATF member governments. They served as the main points of contact with the reviewed country or territory. The process involved the gathering of relevant information, including laws and regulations, and available reports and assessments; analysis with respect to the twenty-five criteria and preparation of a draft report; communication of the draft report (together with questions in some cases) to jurisdictions concerned for comment; discussion of the comments and the draft reports between the FATF and the jurisdictions concerned during a series of face-to-face meetings prior to the FATF meeting; and discussion and adoption of the reports by the FATF Plenary.

33. All 47 countries or territories were reviewed in 2000 and 2001, and 23 were listed as NCCTs. The FATF has not reviewed any new jurisdictions since 2001, but has a series of procedures applicable to the removal of jurisdictions from the NCCT list.

*b. The WGB Phase 1 Reviews*

34. WGB Phase 1 reviews principally evaluate whether the country's laws and regulations are consistent with the requirements of the OECD Anti-Bribery Convention and 1997 Revised Recommendation. The Phase 1 review is followed by the more intensive Phase 2 review described above.

35. In consultation with the country examined, two countries are chosen to lead the examination. The lead examining countries choose the experts who take part in the preparation of the preliminary report. The evaluating team also includes Secretariat staff. A standard-form questionnaire is used, together with follow-up questions. The evaluation team prepares a draft report and revises it as appropriate after receiving comments from the examined country. The draft report is then circulated to the plenary.

36. Review by the plenary has as its objective to clarify questions, adopt a final report, and formulate conclusions addressed to the examined country. The procedures provide for input on the draft report from the examined country, the lead examiners and all other delegates. The country under review has a full opportunity to provide information and its views, but it cannot block the adoption of the report and recommendations by the Group.

37. Each country bears the costs of translating their implementing legislation into one of the two official languages of the OECD: English or French. The examined country also bears the costs associated with filling out the questionnaire and reviewing the legislation and related reports. Examining countries bear the costs of making examiners available to review questionnaires, participate in preparing the draft report and in participating in the plenary meeting in Paris.

38. The WGB adopted 15 Phase 1 reports during four meetings in 1999, including five reports on G7 countries. Subsequently, progress on Phase 1 slowed, with 6 reports adopted in 2000, 5 in 2001 and 4 in 2002. The Group was simultaneously concerned during this period with the launch of the Phase 2 process, which was launched in 2001 with an early focus on the G7 countries.

## ANNEX III

### ORIGINS OF THE GLOBAL FORUM

1. The foundations of the Global Forum were laid at a series of meetings held in January and February 2001 in Barbados, Tokyo and Paris. An Informal Contact Group was established early on to plan and structure the meetings of the Global Forum and develop proposals for the full Global Forum to consider. The group provided regional representation through 8 members and several alternate members. This group was later replaced by the Sub-Group on Level Playing Field Issues. Apart from the formation of these two groups, the Global Forum's structure has been informal and it does not have a detailed set of rules governing its operation. Participation in the Global Forum is primarily made up of OECD Member Countries which did not abstain on the harmful tax practices project and countries identified as "tax havens" in the 2000 OECD report which committed to implement the standard, collectively referred to as Participating Partners. Participation in the work of the Global Forum was expanded in 2004 to include CFA observer countries, as well as other jurisdictions which were invited to contribute to the factual assessments and to attend the meetings.

2. Since 2001, four meetings have been held as follows:

- *Cayman Islands 28 October – 1<sup>st</sup> November 2002* The Global Forum participants established the Joint Ad Hoc Group on Accounts (JAHGA) to develop standards regarding the availability and reliability of accounting records for effective exchange of information purposes.
- *Ottawa, Canada on 14-15 October 2003* The Global Forum created a Sub-Group on Level Playing Field Issues (the Sub-Group)<sup>1</sup> to develop proposals for consideration by the Global Forum for achieving a global level playing field and a process by which this work could be taken forward.
- *Berlin, Germany on 3-4 June 2004* The Global Forum broadly endorsed a set of proposals agreed by the Sub-Group, including the parameters of the global level playing field and the actions needed to achieve it. It also established the self-review/peer review process upon which the Global Forum assessments are based.
- *Melbourne, Australia 15-16 November 2005* The Global Forum reviewed the implementation of the process agreed in Berlin, approved the first assessment report and established a policy review process. At that meeting, Argentina; China; Hong Kong, China; Macao, China; the Russian Federation and South Africa endorsed the principles of transparency and effective exchange of information and expressed their willingness to work towards a level playing field in these areas.

Since 2004, the work of the Global Forum has been directed by the Sub-Group which has met at least twice a year. The last meeting of the Sub-Group was held in London on 2 October 2008.

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<sup>1</sup> The current Sub-Group members are: Australia, The Bahamas, Cayman Islands, Cook Islands, France, Germany, Ireland, Isle of Man, Italy, Japan, Jersey, Mauritius, Mexico, Panama, Saint Kitts and Nevis, Samoa, Seychelles and the United States. The Commonwealth Secretariat plays an important facilitator role and generally hosts the meetings of the Sub-Group.

## ANNEX IV

### DESCRIPTION OF PART II PROGRAMMES

Participation in a Part II programme is voluntary, open to OECD member countries, non-member economies, the European Commission and other inter-governmental organisations. The funding by participating countries could be provided in a number of ways, but the four most pragmatic options are described below.

The most commonly used funding method is according to the annual approved OECD scale of contributions, which is based on the principle of “capacity to contribute” as determined by reference to national income data. In addition, no member country shall pay more than 24.975% nor less than 0.1% of the total budget. Whilst some member countries are calling for a revision of this scale at present this is the accepted basis for member contributions and reflects the overall approach to funding Part I. Problems can, of course, arise when this scale is applied to non-members, where some assessed contributions might be considered too high and others too low. The scale is adopted annually by the OECD Council.

Capacity to pay is not the sole cost-sharing method used and some Part II programmes have adopted a sharing formula that is negotiated and agreed, rather than worked out on the approved OECD scale. One option is to adopt a two-tier approach, where the first tier is a fixed fee for all Part II programme participants (OECD and non-OECD), which is revised from time to time. The second tier is an additional contribution, again for all participants, based on the approved scale of contributions. This has the advantage of spreading the costs more evenly by limiting the contributions of the largest economies and ensuring a more significant contribution from smaller economies.

A third option is to require all participants to pay the same amount. This is the practice adopted for the current Part II programme on Fiscal Networks, which is under the joint ownership of the Committees on Fiscal Affairs, Economics Policy and Public Governance. This has the advantage of simplifying administration but it does mean that the smaller economies may be required to pay a disproportionate amount.

Currently there are 25 Part II programmes; 15 of which follow a standard scale and 10 which have ad hoc arrangements. Some Part II programmes are separate organizations (ECMT/ITF), or are independent groups for which the OECD provides Secretariat services (FATF).

The programme/budget/structure should be presented to and approved by the CFA, before presenting to Council for approval. Council approval is required to create the programme and to approve the budget and for creation of any bodies or sub-bodies. Budget Committee approval could also be required.

Budget proposals may be submitted directly to Council after decision by the governing body (IEA); others have budgets approved directly by the governing body, then submitted to the Budget Committee for opinion (IMHE, PEB, PISA).

## ANNEX V

### EXAMPLE OF PART II PROGRAMME: THE DEVELOPMENT CENTRE

On 23 October 1962 the Council decided to establish a Development Centre (DEV) “within the framework of the Organisation” [C(62)144/FINAL]. The Centre enjoys a certain degree of autonomy arising from its particular internal governance that distinguishes it from other OECD bodies and by the fact its mandate expressly provides for the participation of non-member economies as full members of the Centre. The Centre’s mandate provides that it “shall report each year to the Council on its activities. It shall submit, either on request by the Council or on its own initiative, other communications to the Council.” Its work is guided by the priorities set by the Organisation. The Council can modify and terminate its mandate, and can therefore increase or limit its autonomy as it deems appropriate.

In adopting [C(62)144/FINAL] The Council agreed on a certain number of explanatory remarks which stated *inter alia*:

“7. While the Centre should enjoy the autonomy necessary for the performance of its tasks, it is nevertheless considered desirable that the Organisation exercise overall supervision over the Centre and, in particular, that it be aware of the work of the Centre both in retrospect and as regards its future action. It is not intended that the Council should give specific approval to the detailed programmes of work of the Centre.”

“12. With regard to Article 11, it will be recalled that pursuant to Article 12 of the Convention, the Council may in appropriate cases invite non-members to participate in the Centre.” This article also stipulates that a participating country wishing to terminate its participation in the Centre may do so by giving twelve months’ notice to that effect to the Organisation.

On 11 June 1968 The Council decided to establish an Advisory Board on the Development Centre [C(68)70(Final)]. “The Advisory Board shall be kept regularly informed of future trends in the work on the Development Centre. It shall advise the Development Centre and the Council on the programmes and the activities of the Centre”. On 12 October 1971 this Council Resolution was replaced by [C(71)191]. In the context of the 2002 exercise “Reforming the Development Structure of the OECD”, the Council decided to integrate the Development Centre more closely into the work of the Organisation by creating a cluster including the Development Co-operation Directorate (DCD), the Centre for Co-operation with Non-Members (CCNM), DEV and the Club de Sahel. Council agreed that the Advisory Board be replaced by a “Governing Board with competencies similar to that of an OECD Committee, while respecting the necessary intellectual independence of the Development Centre, the results of whose research would continue to be made public and disseminated under the authority of the Secretary-General”. At the same time the Council recommended that the Development Centre Secretariat be headed by an A7 Director [C/M(2002)18/PROV].

**Governing Body:** Advisory Board

**Staffing:** The Centre’s staff is part of the Secretariat of the OECD.

**Budget:** The Centre’s expenses are foreseen in Part II of the Budget of the Organisation. The Centre’s Scale of Contributions is unique in the Organisation and is in the process of being amended again. The Centre is subject to the Financial Regulations, Rules and Instructions of the OECD.