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OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

BAHRAIN



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Bahrain 2011

PHASE 1

August 2011
(reflecting the legal and regulatory framework
as at May 2011)



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About the Global Forum

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

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

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

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

All review reports are published once adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org-tax/transparency.

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Bahrain. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.
2. The Kingdom of Bahrain is an archipelago in the Arabian Gulf, and is a member of the Co-operation Council for the Arab States of the Gulf (or Gulf Co-operation Council, GCC). Its economy is driven by the oil, gas and aluminium industries, but also by the financial sector. Income tax in Bahrain is levied only on locally sourced net profits of entities operating in the oil and gas sector. The tax system of Bahrain being limited, the competent authority located within the Ministry of Finance relies on other government institutions to maintain and collect foreseeably relevant information.
3. Ownership and accounting information are maintained by entities themselves and the Ministry of Industry and Commerce via the Commercial Register, pursuant to the rules set forth in the commercial laws of Bahrain and the anti-money laundering rules applicable to financial institutions, licensed trustees and other service providers. These rules are generally sufficient to meet the international standard. Accounting records must be kept in Bahrain for most entities, but some uncertainty remains concerning the scope of the accounting obligations of financial trusts.
4. In respect of banking information, the regulations issued by the Central Bank and the anti-money laundering rules impose appropriate obligations to ensure that all records pertaining to accounts, as well as related financial and transactional information, are available in Bahrain.
5. To obtain information, the competent authority of Bahrain relies on the access powers of other governmental entities, primarily the Ministry of Industry and Commerce concerning ownership and accounting information,

and the Central Bank concerning banking information. This co-operation is formalised in a Government of Bahrain Internal Exchange of Information Procedure and the practical functioning of this arrangement will be reviewed during Phase 2 of the review process. In the meantime, it would be advisable for Bahrain to introduce express statutory provisions dealing with access to information for exchange of information purposes. Bahrain should in particular clearly establish in legislation that some constraints on the gathering of information (such as confidentiality rules on financial trusts and the consent of taxpayers) are lifted for exchange of information purposes.

6. Bahrain has been committed to the international standard of transparency and effective exchange of information since 2001. Bahrain has signed DTCs containing EOI mechanisms with 27 jurisdictions. Of these, 15 meet the standard and 11 other DTCs and protocols will meet the standard once they are brought into force. Bahrain continues to negotiate a number of protocols with a view to upgrade the EOI provision of its existing DTCs or protocol in treaties that do not yet contain one. In addition, Bahrain is in the process of negotiating DTCs and TIEAs with new partners. Bahrain should continue its efforts in these regards.

7. Bahrain's response to the recommendations in this report, as well as the application of the legal framework to the practices of its competent authority will be considered in detail in the Phase 2 Peer Review of Bahrain, which is scheduled for the first half of 2013.

Introduction

Information and methodology used for the peer review of Bahrain

8. The assessment of the legal and regulatory framework of Bahrain was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as of May 2011, Bahrain's responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Bahrain, and information supplied by partner jurisdictions.

9. The assessment was conducted by an assessment team, which consisted of three expert assessors and two representatives of the Global Forum Secretariat: Ms. Idris Fidela Clarke, Director of the Financial Services Regulatory Commission of St. Kitts, St Kitts and Nevis; Messrs. Ioannis Anastasiou and Iossif Fovakis, Tax Officials of the Ministry of Finance of Greece, and Mses. Gwenaëlle Le Coustumer and Renata Fontana from the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Bahrain.

10. The Terms of Reference break down the standards of transparency and exchange of information into ten essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchanging information. This review assesses Bahrain's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out on pages 61-63 of this report.

Overview of Bahrain

Economic context

11. The Kingdom of Bahrain is a small archipelago of thirty-three islands located in the Arabian Gulf, with a total area of 750 km² and a population of 1.2 million inhabitants. Saudi Arabia lies to the west and is connected to Bahrain via the King Fahd Causeway and Qatar is to the southeast across the Gulf of Bahrain. Bahrain Island is the largest of the islands and Manama is the nation's capital. Arabic is the official language of Bahrain though English is widely used.

12. Bahrain maintains a fixed exchange rate between the Bahraini Dinar (BHD) and the US Dollar (USD). The exchange rate peg,¹ effectively unchanged since 1980, provides an anchor for monetary policy, which contributes to controlling inflation and protecting the external value of the BHD. Low inflation and a stable currency are important long-term features of the Bahraini economy which support a stable business environment and high levels of investment, both of domestic and foreign origin. Bahrain has a free market economy, with no restrictions on capital movements, foreign exchange, foreign trade or foreign investment.

13. As a gulf State, Bahrain has an important economic and financial position within the oil trade/business. Oil and aluminium account for 27% and 10% of Bahrain's Gross Domestic Product respectively (GDP of circa BHD 8 300 million, USD 22 billion). The financial sector is the largest single employer in Bahrain, with Bahrainis representing over 80% of the work-force. Overall, the sector contributes 27% of Bahrain's GDP, making it one of the key drivers of growth in the country. Tourism contributes 9.2% to GDP and employs about 17% of the work-force.²

14. Bahrain is part of the Gulf Co-operation Council (GCC), which also comprises Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The unified economic agreement between the GCC members was signed on 11 November 1981. A customs union was declared in 2003, and practical implementation is in progress. A GCC common market was launched on 1 January 2008. It grants national treatment to all GCC firms and citizens in any other GCC member, and in doing so removes all barriers to cross-country investment and trade in services. On 15 December 2009, Bahrain, Kuwait, Qatar and Saudi Arabia announced the creation of a Monetary Council, a step towards establishing a shared currency.

1. BHD 1 = USD 2.65 and USD 1 = BHD 0.378.

2. Source: Central Bank of Bahrain

15. Bahrain’s main trading partners are the European Union (particularly the United Kingdom, France and Germany), the United States,³ and Saudi Arabia, while India and China are growing trading partners.

Governance and legal system

16. The Kingdom of Bahrain is a Constitutional Monarchy ruled by the Al Khalifa royal family (article 1(a) of the Bahrain Constitution of 2002). Bahrain is a unitary state and relies upon a single national law. The Constitution provides that Islamic Shari’a is the main source for legislation (article 2). However, Bahrain’s commercial laws are also largely based on civil law, with some influence from the Common Law in areas such as statutory interpretation and commercial practices.

17. Bahrain’s legislature, the National Assembly, is composed of two chambers: the elected Chamber of Deputies and the appointed Shura Council. Bahrain’s government, as represented by the Council of Ministers, is appointed by the King of Bahrain. The legislature or the government can propose draft laws. It must be approved by the government and the legislature, signed by the King of Bahrain and published in the Official Gazette (Articles 51, 70 and 122 of the Constitution).

18. Ministers, as empowered by laws or Royal decrees, may issue secondary legislation in the form of ministerial orders, which must also be published in the Official Gazette. Ministers may issue internal by-laws governing the conduct and practices of their individual ministries. They must be done in writing and signed by the Minister but they are not published in the Official Gazette. The hierarchy of laws is the following, from the highest to the lowest: Treaties; Constitution, Laws and decrees of law;⁴ Decrees; Regulation orders; Decisions; and Declarations.

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3. In 2004, Bahrain signed the US-Bahrain Free Trade Agreement (FTA), aimed at reducing certain barriers to trade between the two nations. Early stages of the FTA negotiations go back to the year 1999, when Bahrain and the United States signed a Bilateral Investment Treaty, aimed at stimulating the flow of private investment between the two countries, which entered into force in 2001. This was the first such treaty signed between the United States and a GCC country. One year later, in 2002, the Trade and Investment Framework Agreement was signed, representing the prelude to the FTA negotiations.
4. “Laws” and “decrees of law” are synonymous as from 1974 to 2002 the National Assembly was suspended and laws were passed by legislative decrees or decrees of law, such as the tax law (Decree of 1979).

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

19. All commercial entities (companies and partnerships) formed under the laws of Bahrain, as well as foreign companies carrying on business activities in Bahrain, are required to comply with the Law of Commercial Registration (LCR 1961), the Commercial Law (CL 1987) and the Commercial Companies Law (CCL 2001).⁵ All commercial entities and branches of foreign entities established in Bahrain must be registered in the Commercial Register held by the Ministry of Industry and Commerce (MOIC).

The regulatory framework (including the financial sector)

20. The Central Bank of Bahrain is responsible for setting and implementing monetary policy in Bahrain. There are approximately 400 financial institutions licensed by the Central Bank, which are subject to the Central Bank and the Financial Institutions Law (CBBL 2006, promulgated by *Decree Law No. 64 of 2006*), in addition to the LCR 1961, the CL 1987 and the CCL 2001.

21. For the purpose of the *Central Bank's regulatory rulebook* (CBB Rulebook), these are divided into: (i) conventional banks (sub-divided into retail and wholesale banks), (ii) Islamic banks (sub-divided into retail and wholesale banks), (iii) insurance companies, (iv) investment business (sub-divided into broker-dealers, brokers, and advisers), (v) specialised licensees (financing companies, leasing companies, fund administrators, money changers, trust service providers, ancillary services providers, etc.), and (vi) capital market (exchange houses and intermediaries on exchanges, etc.).

22. The concept of a financial trust was recently introduced into the laws of Bahrain by *Decree Law No. 23 of 2006*, the Financial Trust Law (FTL 2006). All financial trusts created under the laws of Bahrain are required to be registered with the Central Bank in order to be legally valid and at least one of the trustees must be licensed by the Central Bank. All Central Bank licensees, including financial institutions and licensed trustees, are subject to the Prevention and Prohibition of Money Laundering Law and Terrorism Finance promulgated by *Legislative Decree No. 4 of 2001* (AML 2001).

The taxation system

23. In Bahrain, income tax is only levied on a body corporate, establishment or company operating in the oil and gas sector, *i.e.* entities which carry

5. promulgated by Decree No. 1 (Finance) 1961, Decree No. 7 of 1987 and *Decree No. 21 of 2001*

out exploration for, production of, or refining of oil or gas in Bahrain, regardless of their place of incorporation or establishment. The Bahrain income tax is governed by *Amiri Decree Law No. 22 of 1979* (Decree 1979).

24. Only locally sourced income is taxed under the Decree 1979, including profits derived from: (i) selling crude oil or other natural hydrocarbons produced from ground in Bahrain; and (ii) selling finished or semi-finished products manufactured in Bahrain from crude oil or other natural hydrocarbons, regardless of the origin of the raw material. Income tax is levied on net profits at a 46% rate.

25. There are no withholding taxes, no taxation on the personal income of individuals, and no estate or gift taxes in Bahrain. Similarly, there is no VAT or other sales tax, except a tax on gasoline and a tax on the use of hotel facilities. Municipalities also levy a tax on the value of immovable properties.

26. In September 2001, Bahrain made a political commitment to cooperate with the OECD initiative on transparency and effective exchange of information (EOI). Bahrain has signed double tax conventions (DTCs) containing EOI mechanisms with 27 jurisdictions, including with most of its main trading partners. The competent authority for exchanging information in Bahrain is the Foreign Economic Relations Directorate at the Ministry of Finance (FERD), by delegation from the Minister of Finance.

Recent developments

27. Bahrain continues to negotiate a number of new protocols with a view to upgrade or introduce EOI provisions to its existing DTCs, as well as new DTCs and TIEAs with new partners.

28. The MOF is currently undertaking a wide ranging study on the possibility of increasing its non-oil revenues and as part of that study the government is examining the introduction of specific legislation which would give full tax information gathering and exchange powers to the MOF.

Compliance with the Standards

A. Availability of information

Overview

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

30. All commercial entities incorporated under the laws of Bahrain, must be registered in the Commercial Register held by the Ministry of Industry and Commerce (MOIC). The same applies to foreign entities (companies or partnerships) carrying on business activities in Bahrain through a branch or agency. Commercial entities must provide and keep updated ownership and identity information about their shareholders, partners, and members of the management or supervisory boards, notwithstanding the nationality of their owners. The Commercial Register is public and any person may obtain an extract from the entries made therein. All the shares in commercial entities and transfers thereof must be registered either with public authorities or by the entity. Bearer shares are foreseen in the law but are not permitted in practice.

31. All financial trusts created under the laws of Bahrain are required to be registered at the Register of Financial Trusts held by the Central Bank of Bahrain, by recording up-to-date identity information of the settlors, trustees, protectors and beneficiaries. Foreign trusts are not recognised in Bahrain and therefore if a trustee were resident in Bahrain, he/she would be viewed as owning the assets. There is no requirement to declare the existence of the trust but professional trustees would have to be licensed by the Central Bank and subject to AML rules. The concept of foundation does not exist under the laws of Bahrain.

32. The disclosure obligations imposed by the commercial laws, other legislation governing the formation and registration of commercial entities, and the anti-money laundering rules applicable to financial institutions, licensed trustees and other service providers, are generally sufficient to meet the international standard. Penalties are generally available to enforce these obligations.

33. The obligations imposed in respect of accounting records are satisfactory, with sufficient specificity in respect of the information to be maintained. Most entities (subject to a *de minimis* exception) are required to keep accounting records and underlying documents for at least ten years. Some uncertainties however remain concerning the obligation for financial trusts to keep underlying documents, and regarding the retention period for their books and records.

34. In respect of banking information, the regulations issued by the Central Bank and the anti-money laundering rules applicable to financial institutions, licensed trustees and other service providers, impose appropriate obligations to ensure that all records pertaining to accounts, as well as related financial and transactional information, are available in Bahrain.

A.1. Ownership and identity information

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

35. Relevant commercial entities and arrangements in Bahrain comprise of shareholding companies, limited liability companies, single person companies, general partnerships, simple *commandites* (or limited partnerships), and *com-mandites* by shares (or partnership limited by shares).⁶ They are regulated by

6. Companies that do not take any of the foregoing forms are deemed null and void, and the persons who have entered into contract in their names are personally and jointly liable to third parties in respect of the obligations resulting there from (article 2(B), CCL 2001).

the Law of Commercial Registration, promulgated by Decree No. 1 (Finance) 1961 (LCR 1961), and the Commercial Companies Law, promulgated by *Decree No. 21 for 2001* (CCL 2001), as are foreign companies carrying on business activities in Bahrain.

36. All commercial entities established in Bahrain must be registered in the Commercial Register held by the MOIC within one month from their establishment (article 6, LCR 1961). The Bahraini authorities add that in practice all commercial entities must complete registration in the Commercial Register before establishing in Bahrain, and that the same applies to changes made to their memorandum of association. This registration (and the subsequent publication of the incorporation order in the Official Gazette) gives legal personality to the entity, which can then commence its activities.⁷ The Commercial Register is public and any person may freely obtain an extract from the entries made therein (article 15, LCR 1961) from the Inquiry Service page on the website of the MOIC.⁸ The type of information available depends on the type of entity.

37. The various types of entities in Bahrain are derived from the Napoleonic Code and are not categorised as companies or partnerships. All have a legal personality separate from their owners (article 8, CCL 2001⁹) and many have characteristics of both companies and partnerships. Shareholding companies, limited liability companies (as well as single person companies), and *commandites* by shares can be described as companies, whereas general partnerships and simple *commandites* are best described as partnerships. Trusts also exist in Bahrain (ToR A.1.4), but not foundations.

7. Articles 8, 80-83, 230, 268 and 297, CCL 2001

8. www.moic.gov.bh/CReServices/inquiry/CREnquiry.aspx (click on the link “Advanced Search” and then on the link “Show More Options” for comprehensive search criteria).

9. Under article 2 of the CCL 2001, a commercial company set up in Bahrain can also take the form of an association in participation (joint venture). It is an arrangement without legal personality, which conceals itself from others and is not subject to the registration requirements imposed on other commercial entities. The company may not issue shares or negotiable instruments, and third parties have no legal relationship in respect of the company’s activities except with the partner(s) whom they have dealt with. Individuals or companies participating in the joint venture must be registered with the Commercial Register in accordance with the LCR 1961 (articles 6-8 and 56-62, CCL 2001).

Companies (ToR¹⁰ A.1.1)

38. The following types of companies may be established under the CCL 2001:

- a *shareholding company* (articles 63 to 245) has a capital divided into negotiable shares and its shareholders are liable for the company's debts and liabilities to the extent of the amount outstanding on their shares; it can be classified as public or closed depending on whether its shares are offered to the public; the minimum capital issued by a public shareholding company is BHD 1 000 000 (USD 2 652 098), and by a closed shareholding company is BHD 250 000 (USD 663 024); the shareholders can be either natural or legal persons, minimum seven for a public shareholding company and two for a closed shareholding company; foreigners must obtain the permission of the MOIC to become shareholders in closed companies; the same obligation applies to non GCC nationals to become shareholders of public companies.
- a *commandite by shares or partnership limited by shares* (articles 246 to 260) is formed between two categories of partners: i) the joint partners who are jointly and severally liable for the company's obligations, and ii) the limited partners (also called silent or shareholding partners), who are the equivalent of shareholders in a shareholding company: the shares of the limited partners are negotiable, indivisible shares of equal value and can be offered to the public in the same conditions as those of shareholding companies (in which case the joint partners must be at the minimum four); the minimum capital is of BHD 20 000 (USD 53 042). This type of company is not used currently.
- a *limited liability company* (articles 261 to 288) is a company the shares of which are not negotiable and cannot be sold without the prior notification of the other members (they cannot use public subscriptions); the liability of the members is limited to the extent of their holding in the capital; the members, between 2 and 50, are either natural or legal persons, Bahraini or non-Bahraini nationals; the minimum capital is BHD 20 000 (USD 53 042).¹¹
- a *single person company* (articles 289 to 297) is every economic activity fully owned by one natural person or corporate body; the minimum capital is BHD 20 000 (USD 53 042); the proprietor is only liable to the extent of the capital allocated for the company, as in a limited liability

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

11. A limited liability company cannot undertake insurance or banking business activities or investment funds for the account of third parties.

company; its principal office must be in Bahrain, as well as its main business activity.

39. In addition, a holding company may take one of the three first forms described above and is established for the purpose of owning more than 50% of their Bahraini or foreign affiliated shareholding companies and/or limited liability companies, participating in their establishment and management, and providing loans and securities thereto before third parties (articles 298 to 304).

40. As of 13 January 2011, there were 1 928 shareholding companies (1 661 closed companies and 265 public companies), 12 408 limited liability companies and 3 685 single person companies registered in Bahrain. In addition, there are 1 816 branches of foreign entities (including representative offices) registered in Bahrain. There are currently no *commandites* by shares active in Bahrain.

Information kept by public authorities

41. All commercial entities are formed on the basis of a memorandum of association, which must be submitted to the MOIC together with the application for registration in the Commercial Register. In addition, the memorandum of association of all entities and any amendment thereto must be legalised by the Notary Public, who is a public servant of the Ministry of Justice (article 6, CCL 2001).

42. In the case of shareholding companies, the memorandum must include identity information concerning its founding shareholders without mentioning their respective shares in capital (article 75, CCL 2001). The same applies to founders of *commandites* by shares (article 249).

43. The memorandum is not amended when shares are issued or each time a shareholder or limited partner changes, but the MOIC receives on an annual basis a copy of the shareholder register (article 171 CCL – see discussion at paragraphs 47ff).

44. The memorandum of association of limited liability companies (and single companies) must include the names, surnames and nationality of its members, together with their respective shares in capital (articles 265 and 297, CCL 2001). The transfer of shares is effective toward members or third parties only once entered in the Commercial Register and published in the Official Gazette (article 271, CCL 2001).

45. Other government entities which are involved in a licensing and/or supervisory process also maintain ownership and identity information for the purpose of their supervisory role. For instance, under the CBBL 2006, the Central Bank must keep a Register of Licensed Financial Institutions, on which all applications and supporting documents for licenses and any actions taken on them is recorded (article 45).

Foreign companies

46. All branches, offices and agencies of foreign entities (companies or partnerships) carrying on business activities in Bahrain through a branch or agency established therein must obtain a licence from the MOIC and must be registered at the Commercial Register, within one month of the establishment of the branch or agency (article 9, LCR 1961 and article 347(B), CCL 2001). In addition to the ownership information required for the registration of domestic entities, the application must contain identity information concerning the branch or agency manager, including full name, date and place of birth, and nationality (article 9, LCR 1961). The provisions dedicated to foreign companies do not require that subsequent changes in the ownership structure of the entity must be reported to the MOIC. However the provisions of the Commercial Company Law (CCL 2001) generally apply to foreign companies incorporated abroad and carrying on business activities in Bahrain. Pursuant to section 346, “without prejudice to the special agreements entered into between the government and some companies, the provisions of this Law shall apply to foreign companies incorporated abroad and are carrying on business activities in the State of Bahrain, except for the provisions relating to incorporation of companies.” The provisions on shareholders registers are found under the chapter on companies’ capital, and not under the chapter dedicated to incorporation. Therefore it would appear that foreign companies must maintain a shareholder register as companies incorporated in Bahrain. In addition, the anti money laundering rules also ensure that partial information is available in Bahrain (see discussion at paragraphs 51ff). The enforcement in practice of these obligations should be assessed as part of the Phase 2 peer review.

Information kept by the companies and service providers

47. Shareholding companies are required to maintain a shareholder register at the company’s head office, containing the shareholders’ names, nationalities, domiciles and addresses, along with the number of shares each of them owns, the serial numbers and amount paid for each share. Corporate shareholders must submit their registration documents. The register also contains the dates at which a person began or ceased to be a shareholder. Disposals or transfers of such shares are not effective unless entered in the shareholder register (articles 118, 119 and 171 CCL). The CCL 2001 permits the identification of the persons in an ownership chain within Bahrain due to the obligation set out in the registration requirement of the MOIC.

48. Anyone may have access to the register after paying a reasonable fee. A copy of this register must be forwarded to the MOIC and the Bahrain Stock Exchange on an annual basis (article 118).

49. The memorandum of association of a *commandite* by shares includes the joint partners' full names, nationalities and domiciles (article 249(D), CCL 2001). These documents must be maintained at the premises of the company, and any person may obtain a true copy thereof after paying a reasonable charge (articles 107 and 249, CCL 2001). In addition, a *commandite* by shares, with respect to its limited partners, is subject to the same legal provisions as a shareholding company with respect to its shareholders to the extent that it does not conflict with the provisions applicable to *commandites* by shares (article 247, CCL 2001).¹² Therefore *commandites* by shares must maintain a register of their limited partners.

50. Limited liability companies must maintain, at their head office, a register of members, containing the names, domiciles, occupations, nationalities and the number of the shares each of them owns. This register must include the transfers of shares and the date of such transfers (article 274, CCL 2001).

Anti money laundering obligations

51. Under article 5 of the AML 2001, financial institutions and many other service providers (such as auditors, accountants, attorneys and financial intermediaries) are required to maintain identity information in respect of their clients.

52. The Mandatory Rules & Guidelines 2009 published by the MOIC for non-financial businesses and professionals request them to identify the “ultimate beneficial owners” of their clients, but interpret this term as covering only the persons behind nominees or bearer shares¹³ (Rule 6 in conjunction with Know Your Customers Guideline 6.3.2).

53. The requirements applicable to persons whose activities are subject to a Central Bank license (e.g. financial institutions) are further detailed in the CBB Rulebook. Under section FC-1.2.11 thereof, Central Bank licensees must adopt specific “know your client protocols” and maintain legal and beneficial ownership information in respect of their clients, as follows:

- a. enquire as to the structure of the legal entity (or trust) sufficient to determine and verify the identity of the ultimate beneficial owner of

12. Article 247 then lists a number of articles of the CCL 2001 but not the ones requiring companies to maintain a shareholder register. However, the CCL 2001 Implementing Regulations further indicates that the provisions of articles 214-225 of the CCL 2001 in respect of shareholding companies apply to *commandites* by shares.

13. The guidelines indicate that “Many jurisdictions permit anonymity of corporate ownership through nominees and bearer shares”. Nominees are not allowed in Bahrain, and bearer shares are not issuable to date, as the required Ministerial order is missing (see paragraphs 55 and 56).

the funds, the ultimate provider of funds (if different), and the ultimate controller of the funds (if different);

- b. obtain the names, country of residence and nationality of directors or partners (only necessary for private or unlisted companies);¹⁴
- c. require, through new customer documentation or other transparent means, updates on significant changes to corporate ownership and/or legal structure;
- d. obtain and verify the identity of shareholders holding 20% or more of the issued capital (where applicable). The requirement to verify the identity of these shareholders does not apply in the case of FATF/GCC listed companies;¹⁵
- e. where a licensee has reasonable grounds for questioning the authenticity of the information supplied by a customer, conduct additional due diligence to confirm the above information.

54. The CBB Rulebook does not provide a definition of “ultimate beneficial owner” used in point (a). A foreign branch, agent or office must provide a security to ensure performance of its obligations, which can take the form of a sponsorship or bank deposit. In the second case, the bank will apply the CDD procedure.

Nominee identity information

55. There are no provisions in the CCL 2001 dealing with nominee shareholding. On the contrary, article 115 CCL 2001 provides that shares shall be issued in the name of their owner and the Bahraini authorities indicate that nominee ownership is therefore not permitted in Bahrain.

Bearer shares (ToR A.1.2)

56. Under article 115 of the CCL 2001, shares in a shareholding company must in principle be issued in the name of their owner. However, pursuant to this provision, the company may issue bearer shares in accordance with the conditions and rules issued in an order by the MOIC. No such order has

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14. The standard does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties (2002 OECD Model TIEA, Article 5(4)).
 15. The customer is a company listed on a GCC or FATF member state stock exchange.

been issued and therefore it is not currently possible to issue bearer shares in Bahrain. In addition the Bahraini authorities indicate that a new Company Law, currently in the legislative process, does not permit bearer shares.

Partnerships (ToR A.1.3)

57. Under the CCL 2001, there are two types of entities that are best described as partnerships:

- a *general partnership* (articles 25 to 49) is formed between two or more partners (either natural or legal persons, Bahraini or non-Bahraini nationals) who are jointly and severally liable for the partnership's obligations.
- a *limited partnership or simple commandite* (articles 50 to 55) is established between one or more partners who are jointly and severally liable for the partnership's obligations (general or joint partners), and one or more partners who invest capital in the partnership but do not undertake management (limited or silent partners), and are not liable for the partnership's obligations save to the extent of their participation in the capital; joint partners must be Bahrainis and their participation in the capital cannot be less than 51%.

58. As of 13 January 2011, there were 2 756 general partnerships and 346 simple *commandites* registered in Bahrain. Of these, only 99 simple *commandites* are active, mainly small traders.

Information held by public authorities

59. Partnerships are formed on the basis of a memorandum of association. The memorandum of a general partnership must include ownership and identity information concerning all partners: names, address, nationality, and their participation in the capital (article 26, CCL 2001). The memorandum of association of a limited partnership must similarly include the name of joint and limited partners (article 55, CCL 2001).

60. The partnership's memorandum of association (and any amendment thereto) must be recorded in the Commercial Register and a summary is published in the Official Gazette.¹⁶ When applying for registration at the Commercial Register, general and limited partnerships must submit to the MOIC the partnership's draft memorandum of association, as well as further

16. Articles 6 and 7, LCR 1961 and articles 8, 30-31 and 51-52, CCL 2001. In the case of limited partnerships, the summary does not contain the names of the silent partners, but must include a sufficient description of their shares in the capital and the values thereof.

details on the identity of all the partners of general partnerships and joint partners (but not limited partners) of limited partnerships, including their full name, date and place of birth, and nationality (article 6(8) and (9), LCR 1961), along with supporting identity documentation: (i) the Population Registration Card for Bahraini individuals, (ii) passport for non-Bahraini individuals, (iii) commercial registration certificate for legal entities registered at the Commercial Register, and (iv) memorandum and articles of association and its amendments (if any), for foreign legal entities.¹⁷

61. Any change of a partner of a general partnership requires the agreement of the other partners and must be registered in the memorandum of association, and in the Commercial Register within a month of the change (articles 30 and 33, CCL 2001 and article 7, LCR 1961). The same applies to joint and limited partners of limited partnerships.¹⁸

62. Like foreign companies (*ToR A.1.1*), foreign partnerships carrying on business activities in Bahrain through a branch or agency established therein must obtain a licence from the MOIC and must be registered at the Commercial Register, within one month of the establishment of the branch or agency (article 9, LCR 1961 and article 347(B), CCL 2001). Therefore the identity of the partners of foreign partnerships must be disclosed to the Commercial Registry, as well as their subsequent changes.

Information held by the partners and service providers

63. As required by law, partnerships must keep their memorandum of association current, and thus know the identities of all of their partners. The memorandum of association of all partnerships and any amendment thereto must be legalised by a Notary Public (article 6, CCL 2001).

64. Under article 5 of the AML 2001, many service providers (including auditors, accountants, attorneys and financial intermediaries) are required to maintain ownership information in respect of their clients, companies and partnerships alike.

Trusts (ToR A.1.4)

65. Common law trusts are not recognised in Bahrain. The only type of trust that can be created in Bahrain is the financial trust. The Financial

17. According to the manual on registration requirements published on the MOIC's website (www.moic.gov.bh/MOIC_Flipbooks/registration_requirements_eng/)

18. Article 52 provides that the provisions applicable to a general partnership apply to a limited partnership even in respect of the silent partners in terms of its incorporation, management, winding up and liquidation.

Trust Law (FTL 2006) governs the creation of financial trusts, the duties and powers of a trustee, relations among trustees and the rights and interests of beneficiaries. There are only 19 trusts registered in Bahrain.

66. The financial trust may have one or more trustees, either natural or legal persons, but at least one of them must be licensed by the Central Bank; otherwise the trust is void (article 10(A)). If a legal entity, the trustee must take one of the forms of commercial entities established in Bahrain, or be a subsidiary of a foreign company licensed to practice commercial activities in Bahrain, in accordance with the CCL 2001 (article 10(B)), or be a branch of a foreign company and the parent company has a good track record and reputation which meets the minimum licensing conditions and requirements for financial trustees (article 1, Central Bank Resolution No. 15 of 2006).

67. The FTL 2006 contains no specific provisions governing non-resident settlors or beneficiaries, or trust assets located in another jurisdiction.

Trust ownership and identity information required to be provided to government authorities

68. Pursuant to article 33 of the FTL 2006, all financial trusts created under the laws of Bahrain are required to be registered with the Central Bank of Bahrain in order to be legally valid. The trustee must submit an application form supported by an identical copy of the trust instrument (article 33(B)). Under article 4 of the FTL 2006, the trust instrument, which must be in writing and authenticated by a competent official authority, must contain the following information to be valid:

1. details of the identity of the settlor and the trustee(s);
2. identification of the purpose of the trust, the beneficiary of the trust, or such information as permits to identify whether the beneficiary is a person not identified by name at the time of creating the trust. The beneficiary may be a person to be in the future;¹⁹
3. identification of the trust property or such description of its basic characteristics as permits to identify it;
4. specification of the duration of the trust;
5. identification of the powers and duties of the trustee(s).

19. If the trust instrument gave rights to the beneficiaries without specifying the share of each of them, such rights shall be divided equally among them. The settlor may be one of the beneficiaries (article 27, FTL).

69. If the settlor decides to appoint a trust protector, this should be mentioned in the trust instrument (article 9). Accordingly, the Register records detailed data on each financial trust, including details of the identities of the settlor, the trustee, the protector of the trust if any, and the beneficiaries if they were identified by name in the trust instrument. If the beneficiaries were not identified by name, data leading to their identification must be recorded (article 33(A), FTL). The trustee and the protector must inform the Central Bank of any modification of this data, which is recorded in the Register of Financial Trusts (article 33(D)).

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

70. Under article 5 of the AML 2001, many service providers (including auditors, accountants, attorneys and financial intermediaries) are required to maintain ownership information in respect of their clients (e.g. settlors, protectors and beneficiaries of a trust). There are no provisions under the AML 2001 specifically referring to trustees, but the trustee of a Bahraini trust, who is a Central Bank licensee, is itself subject to AML rules.

71. The CBB Rulebook establishes that, in the case of trusts or similar arrangements, Central Bank licensees (including trustees) must establish the identity of the settlor(s), trustee(s), and beneficiaries, including making such reasonable enquiries as to ascertain the identity of any other potential beneficiary, in addition to the named beneficiaries of the trust (subsection FC-1.2.11 of the CBB Rulebook). As mentioned above (*ToR A.I.I*), under the “know your client protocols”, Central Bank licensees must “enquire as to the structure of the ... trust sufficient to determine and verify the identity of the ultimate beneficial owner of the funds, the ultimate provider of funds (if different), and the ultimate controller of the funds (if different)”.

Foreign trusts

72. A Bahraini national or resident may act as trustee, protector or administrator of a trust formed under foreign law, whether or not that person is licensed by the Central Bank. Those permissible situations under the laws of Bahrain are not governed by the FTL 2006. The Bahraini authorities advise that it is possible, in theory, to set up a business in Bahrain solely for the purpose of administering foreign law trusts. However, this business would have to be registered pursuant to the LCR 1961 and the CCL 2001. The Bahraini authorities indicate that to date this situation has never occurred. Further a Bahrain based business providing foreign law trust services would require a CBB licence because it would be providing “regulated financial services” (which include trustee services under the FTL 2006). In turn, as a CBB licensee, the professional trustee would be subject the anti-money laundering rules described above.

73. In addition, financial institutions are subject to AML rules on identification of customers. In particular: If the customer is a legal entity or a legal arrangement such as a trust, the financial institution must obtain and record information from original identification documents, databases or websites, in hard copy or electronic form, to verify the customer's legal existence and structure. This information must be verified by obtaining certified copies of the certificate of incorporation and/or certificate of commercial registration or trust deed. The financial institutions must further enquire as to the structure of the legal entity or trust sufficient to determine and verify the identity of the ultimate beneficial owner of the funds, the ultimate provider of funds (if different), and the ultimate controller of the funds (if different), and in the case of trusts or similar arrangements, establish the identity of the settlor(s), trustee(s), and beneficiaries (including making such reasonable enquiries as to ascertain the identity of any other potential beneficiary, in addition to the named beneficiaries of the trust) (CBB Rulebook, rules FC-1.2.7 to FC-1.2.11).

74. There remains a possibility that a situation could arise where a trustee of a foreign trust in Bahrain is not acting by way of business, and would therefore not be a professional subject to anti-money laundering rules, and where the trusts would not have a bank account in Bahrain. The materiality of this potential gap will be reviewed in the Phase 2 of the review process.

Foundations (ToR A.1.5)

75. The concept of foundation does not exist under the laws of Bahrain.

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

76. Bahrain should have in place effective enforcement provisions to ensure the availability of ownership and identity information, one possibility among others being sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B.

77. Every application for the incorporation of a shareholding company is verified by the MOIC within 30 days of its submission, in order to ensure that it is based on sound grounds and that the memorandum of association does not contravene the CCL 2001 (articles 77-78).

78. If a commercial entity does not submit the original, renewed or supplementary application form for registration at the Commercial Register,

the court may impose a fine between BHD 50 and 500 (USD 133 to 1 330), or at least twice these amounts if the default continues for a period of thirty days from the date when the first fine becomes final (article 17, LCR 1961). Directors and managers of shareholding companies, limited liability companies and Bahraini branches or agencies of foreign companies are held jointly liable for any damages resulting from the failure to register the company at the Commercial Register (articles 101, 268 and 347(C), CCL 2001). There is no criminal penalty for not maintaining a share register or partner register, but the changes of ownership not registered therein are not valid.

79. Without prejudice to any other penalty imposed by the CBBL 2006 or the AML 2001, failure by a licensee to comply with the record-keeping requirements can result in the levying by the Central Bank of a fine of up to BHD 20 000, without need of a court order and at the Central Bank’s discretion (subsection FC-9.1.1, CBB Rulebook).

80. The ultimate sanction for all commercial entities (including financial institutions) is that they can be struck-off the Commercial Register and therefore be unable to trade: Any “merchant” who does not comply with the LCR 1961 can be suspended from trading and struck-off the Commercial Register (section 13 of the LCR 1961). In addition, the MOIC has power of “judicial enforcement” and in practice any company in breach of the CCL 2001 and which does not rectify the situation in accordance with the MOIC’s orders can be struck-off the Commercial Register (section 351 CCL 2001).

81. The effectiveness of the enforcement provisions which are in place in Bahrain will be considered as part of the Phase 2 Peer review.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

A.2. Accounting records

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

82. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting

records. This section of the report examines whether this is sufficiently established under Bahrain’s legal and regulatory framework.

General requirements (ToR A.2.1)

Commercial laws

83. Under the Commercial Law, promulgated by Decree No. 7 of 1987 (CL 1987), every “merchant” (or businessperson, including all types of commercial entities²⁰) whose capital exceeds BHD 20 000 (USD 53 042)²¹, whether an individual or a company, is required to maintain the commercial books which are appropriate to the nature and importance of the trade undertaken, in a manner which demonstrates the financial position, and rights and obligations arising in connection with this trade (article 20). In all cases (*i.e.* whatever the capital), at least two books must be kept:

- an original journal, where all commercial transactions must be entered on a daily basis and in detail (article 21); and
- a general ledger, where all accounting operations extracted from the original journal must be entered, based on supporting documents (article 22).

84. Failure to keep those books may be punished with a fine between BHD 100 (USD 265) and BHD 1 000 (USD 2 652) (article 31(1)).

85. Under the CCL 2001, shareholding companies, *commandites* by shares and limited liability companies are required to keep accounting records and to prepare an annual financial statement (including a balance sheet and the profit and loss account) in accordance with the international accounting principles, or in accordance with the standards approved by the competent authority (articles 219, 227, 256, 286 and 303).²² They must have one or more (jointly liable) licensed auditors, who may have at any time the right of accessing the company’s books, registers and documents, of requesting any details he/she deems

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20. The explanatory note to the LCR 1961 indicates that “By definition, a merchant is: ‘who deals in commercial business and takes it as a profession, be he an individual or a company?’”
21. The Bahraini authorities specify that “capital” in the context of a partnership or sole proprietorship means “net assets” as a proxy for capital, as partnerships and sole proprietorships do not have limited liability status. They further indicate that very few businesses in Bahrain have net assets or capital of less than BHD 20 000.
22. The Bahraini authorities indicate that all financial statements must be prepared in accordance with International Financial Reporting Standards and audited in accordance with International Standards on Auditing.

necessary, and of verifying the company's assets and liabilities (articles 217, 218, 227, 256 and 287).²³

86. The CCL 2001 also provides for some special rules that apply to certain types of entities. The managers of a limited liability company must forward to the MOIC a copy of such documents as the annual financial statement and the auditor's report within ten days from the date when such documents are prepared (article 286). At the end of each financial year, a holding company must prepare an aggregated balance sheet and profit and loss accounts for it and all its affiliated companies, along with the notes and statements thereon (article 303).

87. In accordance with articles 59 and 60 of the CBBL 2006, all financial institutions must maintain books and records (whether in electronic or hard copy form) which are sufficiently detailed to produce financial statements and show a complete record of the business undertaken by the financial institution. The same would apply to professional trustees of foreign trusts.

88. Under article 13(5) of the FTL 2006, trustees of Bahraini financial trusts are required to maintain the necessary records and account books, and record in them, in a regular and orderly manner, all transactions and works relating to the trust. Trust accounts must be audited on an annual basis (article 31, FTL). Article 4 of CBB Resolution No. 15 of 2006 adds that licensed trustees must maintain full books and records, which accurately indicate all the activities undertaken by the licensee. These books must be maintained at the premises from which the activities are undertaken in Bahrain, and be available at all times for Central Bank inspections.

Tax laws

89. In Bahrain, income tax is only levied on legal entities operating in the oil and gas sector, *i.e.* entities which carry out exploration for, production of, or refining of oil or gas in Bahrain, regardless of their place of incorporation or establishment.

90. This group of taxpayers must enter in their accounting records all items of income and deductions and all other items affecting the amount of

23. Article 362 of the CCL 2001 provides for a fine not exceeding BHD 5 000 (USD 13 260) in respect to: D) Any manager, member of the board of directors, auditor or liquidator who has omitted material facts in the balance sheet or in the profit and loss account rendering the company's financial position contrary to the truth. [...] G) Any member of the board of directors who has compiled a report or prepared a balance sheet or accounts contrary to the order referred to in article 195, and any auditor who has prepared a report contrary to the particulars referred to in article 219 of this Law.

their income year (articles 8 and 9, Decree 1979). Taxpayers must submit their profit and loss accounts to the MOF. This “tax declaration” must be based on records which are correct and which fairly reflect the taxpayer’s income. If an internationally recognised firm of accountants, approved for the taxable year by the MOF, certifies the records, the income tax shown by such tax declaration will be presumed to be correct and fairly reflect the true income. Every year, the MOF issues a list containing at least two such firms that are approved by it.

Underlying documentation (ToR A.2.2)

91. The CL 1987 provides that merchants must keep true copies of all incoming and outgoing correspondence, telegrams and other documents relating to the trade, organised in a manner that permits easy reference (article 23). However, it is noted that the FTL 2006 is silent in respect of underlying documents to be kept by the trustee.

5-year retention standard (ToR A.2.3)

92. In accordance with article 25 of the CL 1987, the commercial books must be kept for a minimum of ten years from the date of their closure, together with documents supporting entries made therein. Correspondence and telegrams must be kept for at least five years from the date of dispatch or receipt. All accounting books and other information are required to be kept in Bahrain in respect to all businesses registered in the Commercial Register.

93. The CCL 2001 and CBBL 2006 similarly provide for retention periods. For instance, upon liquidation, the company’s or partnership’s books and documents must be maintained for ten years from the date of striking off its name from the Commercial Registry at the place specified by the general assembly (article 344, CCL 2001). Under articles 59 and 60 of the CBBL 2006, accounting records of financial institutions should be kept at their main office in Bahrain, or at such other places as the Central Bank may approve,²⁴ for at least ten years.

94. The FTL 2006 does not establish a minimum retention period for information to be held by a trustee. Under article 4 of CBB Resolution No. 15 of 2006, licensed financial trustees must keep information within Bahrain, and books and records must be available “at all times” for inspection and examination by the Central Bank. The Bahraini authorities indicate that there is no statute of limitations for such inspections. The Bahrain authorities consider that this applies to the books and records of the licensed trustee and

24. The Bahraini authorities indicate that any exception is most likely to be a place another than the main office of the licensee, but still in Bahrain.

the trusts they administer. They also consider that because multiple trustees are required to act collectively (pursuant to article 22 of the FTL 2006), the obligation therefore extends to all transactions or dealings on the trusts. However, the same provision allows for an exception where the trust instrument expressly provides otherwise. Therefore it would be advisable that the law imposes an obligation on at least one licensed trustee to keep the books and records which, additionally, should be for an express minimum period of time.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
Underlying documentation is not expressly required to be kept for financial trusts. In addition, whereas financial trusts have to maintain books and records, there is no express obligation for licensed trustees of Bahraini financial trusts to keep these books and records for a minimum period of time in all cases.	Bahrain should ensure that financial trusts maintain underlying documentation. Additionally, Bahrain should also ensure that financial trusts maintain all their accounting documents for five years or more.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

Banking Laws

95. Under article 5 of the AML 2001 and FC-7 in the CBB Rulebook, financial institutions must keep (i) a customer due diligence (CDD) record containing a copy of the evidence of identity of each client for a period of five years after the customer relationship has ended and (ii) a transaction record of any new or unrelated transaction for a period of five years after the termination of the transaction so recorded (subsection FC-7.1.1). All records must be made available for prompt and swift access by the relevant authorities or other authorised persons (subsection FC-7.1.4).

96. Under article 1 of the AML 2001, “transaction” is defined as any disposition of property including but not limited to purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any stock or bond, certificate of deposit, or use of a safe deposit box. The “transaction record” must include:

- the identification records of the persons who are parties to that transaction;
- details of the transaction including institutions which conducted it; and
- details of any account used for the transaction.

97. As detailed under subsection FC-1.1.2 in the CBB Rulebook, licensees must implement such CDD measures, *inter alia*, when:

- establishing business relations with a new or existing customer;
- carrying out one or more related transactions above BHD 6 000 (USD 15 913) (“significant transactions”) or wire transfers equal or higher than an amount equivalent to USD 1 000;²⁵ or
- there is a material change (i) in the way that an account is operated or in the manner in which the business relationship is conducted; (ii) in the signatory or beneficiary of an existing account or business relationship; or (iii) in the customer’s documentation standards.

98. It is strictly forbidden to keep any secret, fictitious, or anonymous accounts (article 5, AML 2001 and subsection FC-1.1.10). Licensees must establish and verify the identity of not only the customer and (where applicable) the party/parties on whose behalf the customer is acting, but also the beneficial owner of the funds (subsection FC-1.1.8): where licensees maintain a nominee account, which is controlled by or held for the benefit of another person, the identity of that person must be disclosed to the licensee and verified by it in accordance with the CDD measures (subsection FC-1.1.10).

99. In respect of outward money transfers (subsections FC-3.1.1 to FC-3.1.3), licensees must include all required information details on the payer (*i.e.* full name and address, and a transaction or account number or a unique customer identification number) with the accompanying electronic transfers of funds they make on behalf of their customers. It is not necessary for the recipient institution to pass the originator information on to the payee. The obligation is discharged simply by notifying the recipient institution of the originator information at the time the transfer is made.

25. Simplified CDD measures apply to transactions or wire transfers below those thresholds (section FC-1.10).

100. With regard to inward transfers (subsection FC-3.1.4), licensees must maintain records of all originator information received with an inward transfer and carefully scrutinise inward transfers which do not contain originator information (*i.e.* full name, address and account number or a unique customer identification number).

101. With regard to overseas transfers (section FC-3.2), licensees must not transfer funds for customers to a person or organisation in another country by any means other than through an authorised money transferor. The licensee must, in respect of the amount so transferred, maintain records of:

- the identity of its customer(s) in accordance with the CDD protocols and record keeping obligations described above; and
- the exact amount transferred for each such customer (particularly where a single transfer is effected for more than one customer).

102. The Bahraini authorities indicate that where a licensee is found to be in contravention of this rule, the Central Bank will not hesitate to impose sanctions upon that licensee (and in serious cases may revoke the license).

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

B. Access to information

Overview

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

104. The competent authority for exchange of information purposes, a directorate of the Ministry of Finance (MOF), collects no ownership or identity information and has only limited powers to obtain accounting information from taxpayers, *i.e.* companies and partnerships operating in the oil and gas sector.

105. In all other instances, Bahrain relies on the direct applicability of double tax conventions (DTCs), which in Bahrain's view would bind the whole government and empower various public authorities to collect information on behalf of the competent authority. As a result, Bahrain adopted in June 2010 a formal Government of Bahrain Internal EOI Procedure pursuant to which the MOF would rely on the Ministry of Industry and Commerce (MOIC) to obtain information on commercial entities (sole traders, partnerships and companies) and on the Central Bank to obtain bank information and information on trusts and financial institutions. The Bahraini authorities indicate that MOIC and CBB cannot decline to gather information for the MOF where there is a DTC or TIEA in force.

106. It was also unclear whether the secrecy and confidentiality provisions available under domestic law were overridden for the purpose of international exchange of information on tax matters. The Bahraini authorities have indicated

that the DTCs override any secrecy provisions. The practical functioning of this arrangement has never been tested in practice and will be reviewed during the Phase 2 of the review process. In the meantime, it would be advisable for Bahrain to introduce express statutory provisions dealing with access to information for exchange of information purposes.

107. Bahrain's competent authority must obtain the consent of Bahraini taxpayers to exchange information relating to them. Such a restriction is not compatible with effective EOI, but again the Bahraini authorities consider that the provisions of the DTCs would prevail and that in any event the MOIC could obtain that information by other means.

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

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

108. The competent authority for exchanging information in Bahrain is the Foreign Economic Relations Directorate (FERD) at the Ministry of Finance, by delegation from the Minister of Finance. It has limited powers of access to information, because of the limited scope of the Bahraini tax law: income tax is only levied on legal entities operating in the oil and gas sector, *i.e.* which carry out exploration for, production of, or refining of oil or gas in Bahrain, regardless of their place of incorporation or establishment. Therefore, the Decree 1979 has a rather limited scope (only locally sourced oil and gas income) and a wide-ranging number of activities are not covered by the Bahraini tax system.

109. The MOF is currently undertaking a study on the possibility of introducing comprehensive tax legislation which would give full tax information gathering and information exchange powers to the MOF. In the meantime, its access powers have a very limited scope, and it must rely on the powers of other governmental entities for gathering some relevant information.

The inter-governmental EOI procedure

110. For the moment, Bahrain relies on the direct applicability of double tax conventions (DTCs), which bind the whole government and would empower various public authorities to collect information on behalf of the competent authority. As a result, Bahrain adopted in June 2010 a formal Government of Bahrain Internal EOI Procedure pursuant to which the MOF will forward EOI requests to the other administrative authorities of Bahrain

that either maintain or are able to access information.²⁶ The other three signatories are the Ministry of Industry and Commerce (MOIC), the Central Bank of Bahrain and the Central Informatics Organisation.²⁷ Based on these procedures, the MOF relies on the MOIC to obtain information on commercial entities (sole traders, partnerships and companies) and on the Central Bank to obtain bank information and information on trusts and financial institutions.

111. However, the information gathering and inspection powers of the MOIC are granted for the purpose of supervision of commercial entities with respect to the proper implementation and enforcement of the provisions of the CCL 2001 and of the memorandum of associations of these entities (article 351). Similarly, the Central Bank has been granted powers for the purpose of exercising its supervisory duties stipulated by the CBBL 2006, which do not appear to include international exchange of information for tax purposes. Therefore, those statutes do not expressly empower the MOIC or the Central Bank to exercise their powers for obtaining information requested under an exchange of information request for tax purposes.

112. In addition, some DTCs do not contain specific provisions on access powers, similar to Article 26(4) of the Model Tax Convention, which could expressly empower the Bahraini authorities to collect information for exchange purposes:

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

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26. The Bahraini authorities indicate that access to information already would have functioned along the lines of the formal procedure (had they received an EOI request), and that the procedure aims at formalising this agreement.
27. The Central Informatics Organisation may provide Bahrain's competent authority with information regarding individuals legally resident in Bahrain. Article 22 of Legislative Decree No. 9 of 1984 with regard to the Central Population Register allows "any governmental or non governmental entity to view, use or request an official copy of the population information in the central population register, if they have an interest in it or the information required shall assist them in performing their activities". The MOF maintains no information on individuals, since they are not taxpayers.

113. To date, only nine of Bahrain’s DTCs in force contain this provision.²⁸ The other nine treaties simply indicate that Bahrain shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic tax laws... and that this obligation should not be construed so as to impose any obligation to carry out administrative measures at variance with the laws and the existing administrative practice or to supply information which is not obtainable under the laws or in the normal course of administration. This would not be sufficient in many jurisdictions to infer that the domestic authorities have powers to access information. The Bahraini authorities nonetheless consider that this scheme would function properly whether or not the DTC contains an equivalent of Model Article 26(4).

The direct applicability of treaties

114. Pursuant to article 37 of the Constitution, a Treaty has the force of law after its approval and ratification, and its publication in the Official Gazette. It is inferred from this provision that treaties prevail over laws. The Bahraini authorities indicate that this would result from prior interpretation provided by the Legislative and Legal Opinion Commission of Bahrain (LLOC). The LLOC performs the functions of Attorney General and legal advisor to the Government.²⁹ The LLOC confirmed this statement in a written legal opinion dated 8 May 2011:

The Legislation and Legal Opinion Commission (LLOC) is of the opinion that: Bahrain’s Double Taxation Agreements (DTAs) and Tax Information Exchange Agreements (TIEAs), because they are, as treaties, instruments of international law, prevail over Bahrain’s existing and future domestic law provisions i.e. unless future domestic laws expressly provide otherwise; and allow Bahrain to obtain and exchange information for tax purposes with its DTA and TIEA partners. Further, the DTAs and TIEAs as “tax treaties” are incorporated into Bahrain’s domestic law and as specialised legislation prevail over general legislation. Thus, under Bahrain’s DTAs, which include Articles on Exchange of Information (EOI), and TIEAs the Government of the Kingdom of Bahrain is empowered to obtain and exchange of information, as is necessary or foreseeably relevant to honour the government’s

28. The DTCs with Austria, Bulgaria, France, Ireland, Luxembourg, the Netherlands, Turkey and Uzbekistan. The DTCs signed but not yet ratified with eleven other jurisdictions contain this provision.

29. The LLOC is the legal advisor of the government, acts as Chief Legal Officer, and represents the government in front of civil and Constitutional courts; it also reviews all draft legislation, including DTCs submitted to Parliament.

EOI commitments as set out in the DTAs and TIEAs. Finally, the inter-government procedures regarding exchange of tax information are consistent with the laws of Bahrain and are sufficient to meet Bahrain's EOI commitments under its DTAs and TIEAs.

115. The opinion of the LLOC represents the official view of the government of Bahrain. However, the EOI procedure and the interpretation of the LLOC remain untested as Bahrain has not received any exchange of information requests over the last ten years. The opinion of the LLOC is not binding in courts, but the Bahraini authorities indicate that LLOC opinions are highly persuasive, especially where there are no contradictory previous judgements. The functioning of the EOI procedure in practice will be reviewed during the Phase 2 of the review process.

Ownership and identity information (ToR B.1.1)

116. The MOF may obtain some information by consulting publicly available databases, or requesting other governmental authorities to provide information or to use their information gathering powers to collect information on its behalf.

117. Ownership and identity information regarding commercial entities is to a large extent publicly available and can be freely accessed at the *Inquiry Service page* on the website of the MOIC. The MOF can search this database to answer EOI requests on the identity of the owners of general partnerships, limited partnerships, limited liability companies and single person companies registered in Bahrain, as well as the identity of joint partners of partnerships limited by shares. The registry does not contain information on shareholders of shareholding companies and limited partners of partnerships limited by shares. To obtain such information, the MOF relies on the information gathering powers of the MOIC.

118. The MOIC supervises companies and partnerships governed by the CCL 2001 with respect to the implementation of that law and the provisions in memoranda of association. It may, if necessary, inspect the accounts and business activities of companies and partnerships (article 352). In application of this provision, members of the board of directors, managers, the company's staff and the auditors must make available to the MOIC everything related to the company's activities, including books, documents and papers which they have in their custody or those which they have a right of access to (article 357, CCL 2001).

119. With regard to identity information on the parties to a trust, the Central Bank maintains information on settlors, trustees and beneficiaries of Bahraini financial trusts in the Register of Financial Trusts (article 33 of the FTL) (see also sub-section B.1.5 below).

Accounting records (ToR B.1.2)

120. With regard to accounting information, the MOF receives the audited profit and loss accounts of taxpayers every year. In addition, upon its request, taxpayers' books and records must be made available for inspection by the MOF for the purpose of carrying out the provisions of the tax law, at any time deemed proper by the MOF (article 10 of Decree 1979).

121. The MOF has no direct access powers over accounting records kept by entities outside of the oil and gas industry, but article 352 of the CCL 2001 gives the MOIC powers to inspect accounts and business activities of all commercial entities. As noted above, members of the board of directors, managers, the company's staff and the auditors must make available to the MOIC everything related to the company's activities, including books, documents and papers which they have in their custody or those which they have a right of access to (article 357, CCL 2001).

122. Likewise, the Central Bank may demand, by written notice, any information or documents from its licensees, including financial institutions and trust service providers (article 111, CBBL 2006), as well as from any listed company or person who has issued debt instruments in Bahrain (article 112, CBBL 2006).³⁰

123. Trustees of Bahraini financial trusts, which have been licensed by the CBB, must submit audited annual accounts to the Central Bank (article 25, FTL). In addition the Central Bank has access to the accounting records of Bahraini financial trusts pursuant to article 25 of the FTL.

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

124. Under the Decree 1979, the MOF does not seem to have powers to obtain any ownership information, nor any other information not required to be kept by the taxpayers. The information inspection powers of the MOF on accounting documents of taxpayers are to be used "for the purpose of carrying out the provisions of the Decree 1979" (article 10). EOI is not part of the Decree and therefore the use of inspection powers for EOI purposes is not expressly provided for in the law.

30. The CBBL 2006 also provides for assistance upon the request of an overseas authority, meaning an authority involved in the regulation of the financial service markets in another jurisdiction or any foreign central bank (article 122 pursuant to which the information gathering powers of article 111 can be used, but not the inspection powers of article 114).

125. However, the LLOC confirmed that treaties prevail over laws in Bahrain, and considers that article 26(1) of the EOI provisions of the treaties is sufficient. Therefore DTCs and TIEAs would meet the standard, whether or not they contain an equivalent of Model Article 26(4).

Compulsory powers (ToR B.1.4)

126. The MOF, the MOIC and the Central Bank may apply sanctions against persons who refuse to submit or provide access to the requested information. In addition, there are legal provisions within the relevant legislation which provide these agencies with the power to inspect entities (for prudential purposes) over which they have supervisory authority.

127. Failure to file a tax declaration or to pay the income tax due is punishable by a fine amounting to 1% of the amount due for each 30 days or fraction thereof during which such failure continues (article 8). Any person who knowingly falsifies the taxpayer's records, or makes any false statement affecting any declaration or certificate required for the purposes of the Decree 1979 is guilty of an offence and punishable by imprisonment under article 271 of the Penal Code of 1976 (article 12).³¹ In addition, the taxpayer may also be guilty of an offence and liable on conviction to a fine not exceeding BHD 500 (USD 1 326).

128. As noted above, article 352 of the CCL 2001 gives the MOIC inspection powers on the accounts and business activities of all commercial entities. Article 362(J) of the CCL 2001 provides for a fine not exceeding BHD 5 000 (USD 13 260) in respect to “any person who has wilfully refrained from enabling partners, auditors, officers of the Ministry of Commerce and Industry... or those who have the powers to carry out inspection, from having access to the books and documents which they have the right of access thereto in accordance with the provisions of the Law”.

129. The Central Bank may inspect any licensee or listed company, and therefore enter their premises and offices, have access to the books, documents and correspondence and to question any persons that they deem necessary (routine inspection of article 114, CBBL 2006). It can also conduct investigation with respect to the ownership or control of a licensee (specific, more thorough control of article 121) or any other person in possession of information or documents relevant to an investigation conducted by the Central Bank (article 123, CBBL 2006). In the event that the Central Bank is prevented to exercise its right to enter and inspect or investigate any premises

31. Article 271 of the Penal Code does not set minimum or maximum term to the imprisonment sanction.

by a licensee, it may obtain a court order to make a search and seize documents (article 124(A)).

130. Under article 163(1), any officer or employee of a licensee or a listed company is punished by imprisonment and/or a fine not exceeding BHD 20 000 (USD 53 042) if he/she has concealed any records, information or documents relevant to the activities of the licensee or a listed company, requested by the Central Bank or any person appointed by the Central Bank to conduct an investigation or inspection on the business, or provides any of them, in a bad faith, with statements or information which proves to be false or misleading or does not reflect the actual financial position of the licensee or a listed company. Where the Central Bank has initiated or is likely to initiate a formal investigation, any person who falsifies, conceals or destroys a document can be subject to five years imprisonment and/or a fine of up to BHD 20 000 (article 170).

Secrecy provisions (ToR B.1.5)

131. Bahrain has a number of secrecy and confidentiality provisions in various pieces of legislation, primarily the Financial Trust Law 2006 and the CBBL 2006.

Bank secrecy

132. With regard to banks (and other financial institutions), confidentiality is governed by Part 8 of the CBBL 2006 (articles 116-120). Any information on the private affairs of any customers is considered confidential and cannot be disclosed by a licensee, the Central Bank, or any person who directly or indirectly receives this information. A person who discloses in bad faith any confidential information is liable to imprisonment (without limits) and/or a fine not exceeding BHD 10 000 (USD 26 521; article 171).

133. Bank secrecy is lifted for EOI purposes, as bank confidentiality duty is lifted if the disclosure of information is “done in compliance with ... any international agreements to which the Kingdom is a signatory”, pursuant to article 117. Similarly, the Central Bank can disclose any information received directly or indirectly under the same condition (article 118). DTCs and TIEAs are international agreements and confidentiality can therefore be lifted for exchange of information purposes.

Other professional secrecy provisions

134. Article 29 of the Legal Practice Act 1980 (Legislative Decree No. 26/1980, also known as the Advocacy Act) states that: “Any lawyer, who acquires in the course of his practise knowledge of any incident or information, concerning his client may not disclose it even after the expiry of his

appointment as attorney unless he intends to prevent a crime or misdemeanour, or report its occurrence.” This definition goes beyond the definition of the OECD Model Tax Convention as secrecy applies even when lawyers are not acting as legal representatives.

135. Under articles 17 and 25 Financial Trust Law 2006, the confidentiality duty of a trustee is lifted *vis-à-vis* the Central Bank. For the rest, including the MOF, a trustee and the Central Bank are prohibited to disclose to a third party, any accounts or data or information, or deliver any documents relating to the trust, except as imposed by an order issued by a competent court or by the Dispute Resolution Committee (articles 17 and 34).³²

136. Nevertheless, the Bahraini authorities opine that the EOI provisions of their DTCs prevail over any confidentiality and secrecy provisions under domestic law. All Bahrain’s EOI instruments ensure that the contracting States are not obliged to provide information which would disclose any ... “professional secret”... The Bahraini authorities will interpret these provisions taking into account the Commentaries to the Model tax Convention, including on the proper definition of the attorney-client privilege. On the opposite, the Commentaries do not precisely define what should be covered by the professional secrecy and what information should be accessible for exchange purposes. Whether relying on the Commentaries would be sufficient to lift the professional secrecy defined in the Financial Trust Law is uncertain and is a matter to be followed up in Phase 2 of the review process.

32. The Committee consists of two judges of the Civil High Court of Appeal commissioned by the High Judicial Council, and either a high-ranking officer of the Central Bank, or a person well qualified and experienced in financial transactions. The Committee has exclusive jurisdiction in matters assigned to it by the FTL, and in settling disputes that arise between the trustee, the settler, the trust protector and the beneficiary (article 35, FTL 2006).

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
The inter-governmental procedure that organises the access to foreseeably relevant information in Bahrain for exchange of information purposes is implied from the status of treaties under Bahrain's Constitution rather than a clear statutory provision, and has not been tested in practice.	Bahrain should introduce express statutory provisions dealing with access to information for exchange of information purposes.
The Financial Trust Law does not provide for exceptions to its secrecy provisions for EOI purposes. It is unclear whether the confidentiality provision of the Financial Trust Law may be overridden for the purpose of international exchange of information for tax purposes.	Bahrain should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on trusts, do not prevent effective exchange of information for tax purposes.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

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

138. Pursuant to article 11 of the Decree 1979, income tax declarations (i.e. profit and loss accounts) are confidential and shall not, without the consent of the taxpayer, be open to examination or inspection by any person other than “the Minister of Finance or the appropriate body authorised by him”. It expressly provides that they may not disclose information contained in the tax declaration or in the taxpayer’s books and records, or permit the tax

declaration or copy thereof or any record or book containing any abstract or any particulars thereof to be seen or examined by any person.

139. The Bahraini authorities would therefore need to obtain the taxpayer's consent before transmitting to the requesting State information contained in the income tax declarations (*i.e.* profit and loss accounts of companies active in the oil and gas sector). Such a restriction is not compatible with effective EOI and it is recommended that Bahrain amends the Decree 1979 to harmonise its legal framework with the international standard. However, again, the Bahraini authorities consider that this restriction would not apply in EOI cases, since EOI mechanisms prevail over domestic law and would be interpreted in line with the Commentaries to the Model Tax Convention. Some doubts nonetheless remain on whether the LLOC opinion extends to this specific type of provision. On the other hand, the Bahraini authorities also indicate that even if the MOF would be unable to access the information, the MOIC, under its own authority, would be able to access the information, given that it is not subject to the consent provision in the Decree 1979.

140. The MOIC may reject an application to have access to the particulars kept by it in respect of companies and partnerships subject to its supervision and inspection, if disclosing the required particulars would inflict damage to the company or partnership or to the public interest. The MOIC does not consider the provision to apply in the case of an exchange of information request emanating from the competent authority in Bahrain. This will be reviewed in the Phase 2 of the review process.

141. There is no legal provision that requests the Central Bank to notify its licensees when it opens an investigation and asks for information to related parties (rather than the licensee), except in the case of intra-group relationships (article 121, CBBL 2006).

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
There are explicit confidentiality rules in Bahrain's tax laws that apply to the Minister of Finance. While these may be overridden either by the direct application of a tax treaty or be rendered inapplicable where the information is obtained through another authority, this is not unambiguously established under the law.	Bahrain should amend its law so that it expressly provides that the competent authority can exchange tax and accounting information on Bahraini taxpayers without their approval.

C. Exchanging information

Overview

142. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Bahrain, the legal authority to exchange information is derived from double tax conventions (DTCs). This section of the report examines whether Bahrain has a network of information exchange that would allow it to achieve effective exchange of information (EOI) in practice.

143. In September 2001, Bahrain made a political commitment to cooperate with the OECD initiative on transparency and effective exchange of information. Bahrain has now signed DTCs containing EOI mechanisms with 27 jurisdictions, of which 15 are in force and effective (see Annex 2), including with most of its main trading partners.³³ Eleven other DTCs and protocols would meet the standard once in force. Bahrain continues negotiating a number of protocols with a view to upgrade EOI provisions of its existing DTCs or introduce some, as well as DTCs and TIEAs with new partners. Bahrain expects to soon sign its first negotiated TIEAs. Bahrain is encouraged to continue expanding and upgrading its EOI network.

144. Bahrain has powers to exchange information, including bank information. There is no distinction drawn in Bahrain's DTCs between civil and criminal matters as far as taxation is concerned and no dual criminality applies.

145. All EOI provisions in Bahrain's DTCs contain confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the DTCs. This is reinforced by the confidentiality provisions under Bahrain's domestic laws.

33. Austria, Belarus, Brunei, Bulgaria, China, France, Iran, Ireland, Lebanon, Luxembourg, the Netherlands, Pakistan, the Philippines, Turkey and Uzbekistan. The treaties with Malaysia (protocol), Belgium (protocol), Bermuda, Czech Republic, Isle of Man, Malta, Mexico, Seychelles, Singapore (protocol), Turkmenistan and the United Kingdom will also meet the standard once they will have entered into force. The treaties with Algeria and Singapore do not meet the standard.

146. Bahrain’s DTCs ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or trade process, or to make disclosures which would be contrary to public policy. Finally, there are no legal restrictions on the ability of Bahrain’s competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

C.1. Exchange of information mechanisms

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

147. The Minister of Finance, as competent authority under Bahrain’s tax treaty network, has authorised the Foreign Economic Relations Directorate at the Ministry of Finance (FERD) to deal with all EOI requests. The relevant information pertaining to the competent authorities is available on the website of the Ministry of Finance.³⁴

148. Bahrain has no specific laws which allow for EOI for tax purposes, but article 37(1) of the Constitution indicates that ratified treaties have the force of law,³⁵ and a written opinion by the Legislative and Legal Opinion Commission of Bahrain confirms that treaties prevail over laws.

149. Most of the EOI provisions in Bahrain’s DTC are based on the OECD Model Tax Convention, except for the one in the DTC with Turkey, which is based on the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* (Model TIEA).

150. In addition to exchanging information on the basis of its EOI instruments, Bahrain can exchange information directly through its Central Bank, which has specific powers to assist overseas authorities with their requests (article 122, CBBL 2006³⁶).

34. See contact details at www.mofne.gov.bh/categorylist.asp?ctype=author

35. “The Treaty will have the force of law after its approval and ratification and its publication in the Official Gazette”. For comparison, articles 8 and 9 of the AML 2001 allows Bahrain to obtain and exchange information on anti-money laundering criminal matters, which may overlap with criminal tax matters in some cases.

36. In deciding a request by an overseas authority pursuant to paragraph (a) of this Article, the Central Bank may consider in particular: (1) Whether the country or territory of the Overseas authority is adopting the basis of reciprocity in its relation with the Kingdom; (2) The seriousness of the case and its importance to persons in the Kingdom; (3) Whether it is otherwise appropriate in the public interest to give the assistance requested. The Central Bank may decide to reject the

Foreseeably relevant standard (ToR C.1.1)

151. The international standard for exchange of information envisages information exchange to the widest possible extent, but does not allow speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in paragraph 1 of Article 26 of the OECD Model Tax Convention set out below:

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

152. Most of Bahrain’s DTCs provide for the exchange of information that is “foreseeably relevant” for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States. The exceptions are the DTC with the United Kingdom which uses the term “may be relevant” and the DTCs with Algeria, Belarus, Brunei, China, Iran, Lebanon, Pakistan, Philippines,³⁷ Singapore (until the 2009 Protocol enters into force) and Uzbekistan, which use the term “necessary”. The commentary to Article 26 of the OECD Model Tax Convention refers to the standard of “foreseeable relevance” and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary” or “relevant”. The Bahraini authorities confirm that they adhere to this interpretation, and all the DTCs concluded by Bahrain meet the “foreseeably relevant” standard.

153. The DTC with Turkey and the letters exchanged between Bahrain and Luxembourg in connection with their 2009 DTC contain a list of items to provide when requesting information to Bahrain. This list is based on the Article 5(5) of the Model TIEA. The MOF website also indicates that EOI

request unless the Overseas Authority undertakes to make contributions towards the cost of exercising such powers as the Central Bank considers appropriate.

37. The Bahrain-Philippines DTC does not have an EOI provision but its Protocol contains a “most favourite nation clause” pursuant to which the same EOI provision will apply between Bahrain and the Philippines as the next one that will be included into a Bahraini DTC. The Bahrain-China DTC signed on 16 May 2002 was Bahrain’s first DTC to include an EOI provision and therefore Article 26 of the Bahrain-China DTC is the applicable EOI provision in this case.

requests must be made in FERD’s form, which contains a similar list of information to be provided.³⁸

In respect of all persons (ToR C.1.2)

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

155. Article 26(1) of the OECD Model Tax Convention indicates that “the exchange of information is not restricted by Article 1”, which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. Most of Bahrain’s DTCs contain this language under the respective EOI provisions.³⁹

156. The DTCs with Belarus, Pakistan and Singapore (until the 2009 Protocol enters into force) do not contain this language but are nonetheless not limited to residents. Articles 25(1) of the DTCs with Pakistan and Singapore apply to “carrying out the provisions of the Agreement or of the domestic laws of the Contracting States”. Article 25(1) of the DTC with Belarus applies to “[the] implementation of the provisions of this Convention or for the enforcement of the taxes provided for in Article 2 of this Convention”. As a result of this language, these DTCs are not limited to residents because all taxpayers, resident or not, are liable to domestic taxes. EOI in respect of all persons is thus possible under the terms of these DTCs.

38. See MOF website at: www.mof.gov.bh/categorylist.asp?ctype=author; and EOI form at www.mof.gov.bh/ShowDataFile.asp?rid=1909. The form is based on Article 5(5) of the Model TIEA and the *OECD Manual on Implementation of Exchange of Information Provisions for Tax Purposes – Module 1: On Exchange of Information on Request*. It should be understood in light of these instruments.

39. A few DTCs add that the requested party will exchange information held by its authorities or in the possession or control of persons who are within its territorial jurisdiction (DTCs with Bulgaria, Brunei, the Netherlands, Turkey and Uzbekistan, and signed DTCs or protocols with Bermuda), a wording contained in Article 2 of the Model TIEA.

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

157. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity.

Bank information

158. Article 26(5) of the OECD Model Tax Convention states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Bahrain's DTCs contain such a provision, except for nine of Bahrain's DTCs, with Algeria, Belarus, Belgium (until the 2009 Protocol enters into force), Brunei, China, Iran, Lebanon, Pakistan and Singapore (until the 2009 Protocol enters into force).

159. However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The Commentary to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. The Bahraini authorities state that they have access to bank information and information held by fiduciaries for tax purposes via the Central Bank (see Part B above), and that they are able to exchange this type of information when requested.⁴⁰

160. Two of Bahrain's DTCs that do not contain an equivalent to paragraph 5 are not to the standard because their partners – Belgium and Singapore – currently have restrictions, under their domestic laws, on access to bank information in the absence of such a provision.⁴¹ The 2009 Protocols to Bahrain's DTCs with Belgium and Singapore will remedy this situation by

40. According to the Tax Co-operation 2010: Towards a Level Playing Field – Assessment by the Global Forum on Transparency and Exchange of Information for Tax Purposes, Brunei and China reported that information held by banks and fiduciaries can be exchanged under their domestic laws (after notification and court permission is obtained, in Brunei's case). The DTCs concluded with such jurisdictions will not require the inclusion of Article 26(5) of the OECD Model Tax Convention to be considered as meeting the standard.

41. Bahrain also has DTCs that do not contain an equivalent of Article 26(5) with jurisdictions not member of the Global Forum, *i.e.* Belarus, Iran, Lebanon, Pakistan, which are not covered by the Annual Assessment Report. The situation in Lebanon will be clarified with the Phase 1 review of this jurisdiction scheduled in [2012].

introducing a paragraph similar to Article 26(5) of the OECD Model Tax Convention.⁴² Bahrain took all necessary steps to bring the Protocol with Belgium into force and is encouraged to take all steps necessary to bring the Protocol with Singapore into force as quickly as possible.

Absence of domestic tax interest (ToR C.1.4)

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

162. In line with Article 26(4) of the Model Tax Convention, most of Bahrain’s DTCs contain explicit provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest.

163. Eight of Bahrain’s DTCs – with Algeria, Belarus, Brunei, China, Iran, Lebanon, Pakistan and Singapore (this will no longer be the case once the 2009 Protocol enters into force) – do not contain such a provision. However, the absence of a similar provision does not in principle create restrictions on exchange of information provided there is no domestic tax interest impeding to exchange information in the case of either contracting party.⁴³ Bahrain interprets these treaties and its domestic laws in such a way that no domestic tax interest applies (see subsection B.1.3 above). As earlier noted, the effectiveness of the direct applicability of treaties and the interpretation given by the Bahraini authorities will be reviewed during the Phase 2 of the peer review process.

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42. To ensure that the Belgian authorities will be able to access bank information, the Belgian protocol further indicates that in order to obtain such information the tax administration of the requested Contracting State shall have the power to ask for the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws.
43. Paragraph 19.6 of the commentary to Article 26(4) states “Paragraph 4 was added in 2005 to deal explicitly with the obligation to exchange information in situations where the requested information is not needed by the requested State for domestic tax purposes. Prior to the addition of paragraph 4 this obligation was not expressly stated in the Article, but was clearly evidenced by the practices followed by member countries which showed that, when collecting information requested by a treaty partner, Contracting States often use the special examining or investigative powers provided by their laws for purposes of levying their domestic taxes even though they do not themselves need the information these purposes.”

Absence of dual criminality principles (ToR C.1.5)

164. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle. There are no such limiting dual criminality provisions in any of Bahrain’s DTCs.

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

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

166. All Bahrain’s DTCs provide for exchange of information in both civil and criminal tax matters. Most of Bahrain’s DTCs contain the explicit wording of Article 26(1) of the OECD Model Tax Convention, which refers to information foreseeably relevant “for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws”. The DTCs with Iran, Pakistan, Singapore (until the 2009 Protocol enters into force) and Uzbekistan refer more broadly to information necessary for carrying out the provisions of the Convention or of the domestic laws concerning taxes covered by the Convention, without excluding either civil nor criminal matters. In addition, the DTCs with Algeria, Brunei and China specifically mention that the information exchange will occur including for the prevention of fraud and/or evasion in relation to taxes (criminal matters).

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

167. There are no restrictions in Bahrain’s DTCs or laws that would prevent it from providing information in a specific form. Under Article 25(4)(c) of the Bahrain-Turkey DTC, which is largely based on the 2002 OECD Model TIEA, there is an explicit reference to the provision of information “in the form of depositions of witnesses and authenticated copies of original records whether in the Arabic, Turkish or English languages”.

In force (ToR C.1.8)

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

169. Bahrain has signed DTCs containing EOI mechanisms with 27 jurisdictions, of which 17 are in force: Algeria, Austria, Belarus, Brunei, Bulgaria, China, France, Iran, Ireland, Lebanon, Luxembourg, the Netherlands, Pakistan, the Philippines, Singapore (2004), Turkey and Uzbekistan.

170. The DTC and protocol with Belgium were ratified less than a year ago by Bahrain and will enter into force when the other party ratifies them.

171. The DTCs and/or Protocol to existing DTCs with Bermuda, Malta, Malaysia, Mexico, Seychelles, Singapore and the United Kingdom were signed in 2010 but have not been ratified yet by Bahrain. Bahrain is therefore encouraged to take all steps necessary to bring them into force as quickly as possible.

172. Some other DTCs and TIEAs have been initialled by Bahrain in 2010-2011 and Bahrain expects to sign several of these, including with Australia, Canada and seven jurisdictions of the Nordic Council, before the end of 2011 at the occasion of international meetings or official visits.

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

173. For information exchange to be effective the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Under Article 37 of the Constitution, treaties which impose upon the State Exchequer expenses which are not provided for in the budget, such as DTCs, must be promulgated by law to be valid and to allow for EOI on tax matters. Therefore, Bahrain's DTCs are given the force of law once they are approved by the King and published in the Official Gazette.

174. As discussed in part B of the report, Bahrain's authorities have access powers as a result of the direct applicability of the DTCs. The effectiveness of the direct applicability of treaties and the interpretation given by the Bahraini authorities will be reviewed during the Phase 2 of the peer review process.

175. The EOI provision of the DTC with Algeria contains a restrictive provision, in that it will apply only in the case Bahrain adopts a tax law other than the *Amiri Decree Law No. 22 of 1979* on the oil and gas sector. Bahrain therefore cannot exchange information with Algeria on this basis for the moment.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
A significant number of agreements and protocols containing exchange of information mechanisms signed over the past 18 months have not been ratified by Bahrain.	Bahrain should ensure that its agreements and protocols containing exchange of information mechanisms are ratified and brought into force as quickly as possible.

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

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

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

177. Bahrain has signed a total of 27 DTCs that contain an EOI provision⁴⁴ as of May 2011.

178. Bahrain's main trading partners are the European Union (particularly the United Kingdom, France and Germany), the United States,⁴⁵ and Saudi Arabia, while India and China are growing trading partners. Bahrain has EOI instruments with some of these partners, *i.e.* the United Kingdom, France and China and has initialled an instrument with another one.

179. It should be noted that Bahrain's partners in the Gulf Cooperation Council (including Saudi Arabia) globally have only limited tax systems;

44. Bahrain also signed seven other DTCs which do not contain an EOI provision.

45. Bahrain and the United States are parties to a Free Trade Agreement since 2004, and a Bilateral Investment Treaty since 1999.

therefore not having an EOI mechanism with most of these partners cannot be regarded as failing to meet the standard at present.

180. Bahrain is actively working to expand its EOI network by negotiating a number of new DTCs and amending Protocols. It is also on waiting lists for negotiation with several Global Forum members.

181. Bahrain's preference is to negotiate DTCs rather than tax information exchange agreements (TIEAs). Bahrain's practice when approached to negotiate a TIEA is to counter-propose a DTC or TIEA with some additional provisions in respect of double taxation ("TIEA+"). However, Bahrain negotiates a TIEA in the situation where the other party does not wish to negotiate a DTC or TIEA+. In practice, eight TIEAs have been recently finalised and await signature.

182. So far, it appears that Bahrain has never refused to enter an EOI arrangement, be it a DTC or a TIEA.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place	
Factors underlying recommendations	Recommendations
Bahrain is actively negotiating a number of new TIEAs, DTCs and protocols.	Bahrain should continue to develop its network of EOI mechanisms (regardless of their form) with all relevant partners.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards (ToR C.3.1)

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

184. All Bahrain’s DTCs have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the DTCs. While each of these Articles might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 26(2) of the Model Tax Convention.⁴⁶

185. Many of the treaties require the information exchanged to be treated as secret “in the same manner as information obtained under the domestic law”. Bahrain’s domestic legislation contains relevant confidentiality provisions under article 371 of the Penal Code (see below). The confidentiality provisions of the DTCs with Algeria, Belarus, China and the Philippines do not refer to the confidentiality provision of the domestic laws of the Contracting States. In the case of Bahrain, this does not prevent the enforcement of the confidentiality duty since information received from partner jurisdictions are received in their capacity of public officials, and therefore the domestic provision assessed below will apply.

186. Bahrain’s domestic legislation contains relevant confidentiality provisions under article 371 of the Bahrain Penal Code 1976, specifically: a public servant who reveals confidential information learned in the course of or by reason of his employment commits a crime punishable by a prison sentence of up to five years.

187. The Ministry of Finance issued a circular on 18 May 2010 reminding all persons receiving information arising from or pursuant to an EOI request that such information is confidential. It also reminds officials of the sanction available under the Bahrain Penal Code, as noted above. The MOIC, the Central Bank and the Central Informatics Organisation have issued similar administrative circulars.

188. The DTCs with Algeria and Belarus substantially depart from the standard, as they restrict disclosure of confidential information to persons concerned with the assessment and collection of taxes and tax disputes. These provisions would benefit from being upgraded. Indeed, Bahrain has recently concluded an EOI Protocol with Belarus to this effect.

46. Model Article 26(2): “Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.”

189. Five of Bahrain’s signed DTCs provide for the possibility to share the received information for non-tax purposes, in conformity with Commentary 12.3 to the Model Tax Convention (DTC with Luxembourg, and signed DTCs or protocol with Bermuda, France, Malaysia): “information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use”.⁴⁷ The DTC with Turkey contains a similar provision, based on Article 8 to the Model TIEA.⁴⁸

All other information exchanged (ToR C.3.2)

190. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests. Bahrain’s DTCs and domestic law specify that the confidentiality rules spelt out in the DTCs apply to all information received.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

191. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would

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47. Commentary 12.3: “Contracting States may wish to allow the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing). Contracting States wishing to broaden the purposes for which they may use information exchanged under this Article may do so by adding [specific text] to the end of paragraph 2.”
48. “The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested State.”

disclose confidential communications protected by the attorney-client privilege, as defined in the commentary to the OECD Model Tax Convention.

192. All Bahrain’s EOI instruments ensure that the contracting States are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

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

194. There are no provisions in Bahrain’s DTCs or domestic law pertaining to the timeliness of responses or the timeframe within which responses should be provided, except for Article 25(4)(f) of the Bahrain-Turkey DTC, which indicates that the competent authority of the requested party should provide the requested information “as promptly as possible”. The DTC specifies that the requested party should confirm receipt of requests in writing and notify any deficiency of the request within 60 days. It further indicates that the requested authority should inform the requesting party of the status of the request if not answered within 90 days. This provision is similar to Article 5(6) of the Model TIEA.

195. The Internal EOI Procedure between the MOF, MOIC and the Central Bank sets deadlines for various steps in the process of answering an EOI request: first, the competent authority should acknowledge receipt of the request immediately; then within 15 days it checks its conformity with the EOI instrument and forwards the request to the MOIC or the Central Bank, which have 60 days to collect the information and send it to the competent

authority. Finally the MOF provides the information or reasoning for a refusal to the requesting party within 15 days.

196. As such, there appear to be no legal restrictions on the ability of the Bahraini authorities from responding to EOI requests within 90 days of receipt by providing the information requested or providing an update on the status of the request. A review of the practical ability of Bahraini authorities to respond to requests in a timely manner will be conducted in the course of its Phase 2 Review.

Organisational process and resources (ToR C.5.2)

197. A review of Bahrain’s organisational process and resources will be conducted in the context of its Phase 2 review.

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

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

Determination and factors underlying recommendations

Phase 1 Determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>		
The element is in place		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement	Underlying documentation is not expressly required to be kept for financial trusts. In addition, whereas financial trusts have to maintain books and records, there is no express obligation for licensed trustees of Bahraini financial trusts to keep these books and records for a minimum period of time in all cases.	Bahrain should ensure that financial trusts maintain underlying documentation. Additionally, Bahrain should also ensure that financial trusts maintain all their accounting documents for five years or more.
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>		
The element is in place		

Determination	Factors underlying recommendations	Recommendations
<p>Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(Tor B.1.)</i></p>		
<p>The element is in place, but certain aspects of the legal implementation of the element need improvement</p>	<p>The inter-governmental procedure that organises the access to foreseeably relevant information in Bahrain for exchange of information purposes is implied from the status of treaties under Bahrain's Constitution rather than a clear statutory provision, and has not been tested in practice.</p>	<p>Bahrain should introduce express statutory provisions dealing with access to information for exchange of information purposes.</p>
	<p>The Financial Trust Law does not provide for exceptions to its secrecy provisions for EOI purposes. It is unclear whether the confidentiality provision of the Financial Trust Law may be overridden for the purpose of international exchange of information for tax purposes.</p>	<p>Bahrain should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on trusts, do not prevent effective exchange of information for tax purposes.</p>
<p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i></p>		
<p>The element is in place, but certain aspects of the legal implementation of the element need improvement</p>	<p>There are explicit confidentiality rules in Bahrain's tax laws that apply to the Minister of Finance. While these may be overridden either by the direct application of a tax treaty or be rendered inapplicable where the information is obtained through another authority, this is not unambiguously established under the law.</p>	<p>Bahrain should amend its law so that it expressly provides that the competent authority can exchange tax and accounting information on Bahraini taxpayers without their approval.</p>

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1.)		
The element is in place, but certain aspects of the legal implementation of the element need improvement	A significant number of agreements and protocols containing exchange of information mechanisms signed over the past 18 months have not been ratified by Bahrain.	Bahrain should ensure that its agreements and protocols containing exchange of information mechanisms are ratified and brought into force as quickly as possible.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2.)		
The element is in place	Bahrain is actively negotiating a number of new TIEAs, DTCs and protocols.	Bahrain should continue to develop its network of EOI mechanisms (regardless of their form) with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. (ToR C.3.)		
The element is in place		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. (ToR C.4.)		
The element is in place		
The jurisdiction should provide information under its network of agreements in a timely manner. (ToR C.5.)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s Response to the Review Report⁴⁹

In addition to Annex 2: List of Bahrain Exchange of Information Mechanisms, Bahrain has signed DTCs with Sri Lanka and Georgia; initialled 3 DTCs and 10 TIEAs; and is currently negotiating 17 DTCs and 4 TIEAs with various treaty partners.

The Ministry of Finance is currently, in conjunction with international financial and legal consultants, undertaking a wide ranging study on the possibility of increasing its non-oil revenues, and as part of that study the Ministry of Finance is considering the introduction of specific legislation which will give full tax information gathering and exchange powers to the Ministry of Finance. Draft exchange of information legislation is anticipated by the end of 2011 and Bahrain requests Technical Assistance from the GFTEI Secretariat to revue the draft legislation.

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

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

Double Taxation Conventions signed by Bahrain as of May 2011, in alphabetical order:

	Jurisdiction	Type of arrangement	Signed	Date entered into force
1.	Algeria	DTC	11-06-00	29-09-03
2.	Austria	DTC	02-07-09	01-02-11
3.	Belarus	DTC	27-10-02	16-04-2008
4.	Belgium	DTC / EOI Protocol	04-11-07 / 23-11-09	Not ratified by Belgium
5.	Bermuda	DTC	22-04-10	-
6.	Brunei	DTC	14-01-08	18-07-09
7.	Bulgaria	DTC	26-06-09	9-11-10
8.	China	DTC	16-05-02	15-08-02
9.	Czech Republic	DTC	24-05-11	-
10.	France	EOI Protocol	07-05-09	1-02-11
11.	Isle of Man	DTC	03-02-11	-
12.	Iran	DTC	19-10-02	17-11-07
13.	Ireland	DTC	29-10-09	09-11-10
14.	Lebanon	DTC	07-08-03	13-09-05
15.	Luxembourg	DTC	06-05-09	10-11-10
16.	Malaysia	EOI Protocol	14-10-10	-
17.	Malta	DTC	12-04-10	-
18.	Mexico	DTC	10-10-10	-
19.	Netherlands	DTC	16-04-08	24-11-09
20.	Pakistan	DTC	27-06-05	27-10-09

21.	Philippines	DTC	07-11-01	14-10-03
22.	Seychelles	DTC	24-04-10	-
23.	Singapore	DTC / EOI Protocol	18-02-04 / 14-10-09	13-12-04/ -
24.	Turkey	DTC	14-11-05	02-09-07
25.	Turkmenistan	DTC	09-02-11	-
26.	United Kingdom	DTC	10-03-10	-
27.	Uzbekistan	DTC	05-06-09	[14-10-10 or 12-01-11]

DTCs and protocols are available in English and/or Arabic on the website of the Ministry of Finance at: www.mof.gov.bh/CategoryList.asp?ctype=agree.

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

Oil income tax: *Amiri Decree Law No. 22 of 1979* (Decree 1979)

Law of Commercial Registration, promulgated by Decree No. 1 (Finance) 1961 (LCR 1961)

Commercial Law, promulgated by Decree No. 7 of 1987 (CL 1987)

Commercial Companies Law, promulgated by *Decree No. 21 for 2001* (CCL 2001)

Central Bank of Bahrain and Financial Institutions Law promulgated by *Decree Law No. 64 of 2006* (CBBL 2006)

Central Bank of Bahrain *regulatory rulebook* (CBB Rulebook)

Financial Trust Law, promulgated by *Decree Law No. 23 of 2006* (FTL 2006)

Prevention and Prohibition of Money Laundering Law and Terrorism Finance promulgated by *Legislative Decree No. 4 of 2001* (AML 2001)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: BAHRAIN

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

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

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

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

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

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