

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

BAHRAIN



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Bahrain 2013

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2013
(reflecting the legal and regulatory framework
as at August 2013)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

All review reports are published once 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 and www.eoi-tax.org.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Bahrain as well as the practical implementation of that framework. 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. The assessment of effectiveness in practice has been performed in relation to a three year period (July 2009 through June 2012).

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. In practice, relevant ownership, accounting and banking information is generally available in Bahrain, although a lack of control and enforcement is noted concerning the accounts of partnerships, foreign entities and the ownership and accounting information that must be kept on financial trusts. The Bahraini authorities are therefore encouraged to take the appropriate measures to ensure that the relevant laws are implemented in practice.

6. 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 that the parties have integrated into their internal processes. However, it remains that it would be advisable for Bahrain to pursue their project to introduce express statutory provisions dealing with access to information for exchange of information purposes.

7. Bahrain has been committed to the international standard of transparency and effective exchange of information since 2001. Bahrain has signed DTCs containing EOI mechanisms and TIEAs with 42 jurisdictions. Of these, 35 are in force and meet the standard and 5 other EOI mechanisms will meet the standard once they are brought into force. Bahrain continues to negotiate a number of protocols with a view to upgrading 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.

8. During the three year period under review (July 2009-June 2012), Bahrain received no requests for information (nor did it receive any during the previous ten years). Bahrain received and answered its first (and so far only) EOI request in 2013. During the review period, Bahrain nonetheless mobilised appropriate resources and established an organisational processes within the Ministry of Finance so as to be able to answer future requests. Furthermore, Bahrain's procedural guidance on the handling of incoming EOI requests is fully supported by the other governmental authorities that may be involved in the gathering of information for EOI purposes. Bahrain is encouraged to ensure that an adequate level of resources remains dedicated to EOI purposes, should more requests be received in the future.

9. Bahrain has been assigned a rating¹ for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1

1. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report

determinations and any recommendations made in respect of Bahrain’s legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Bahrain has been assigned the following ratings: Compliant for elements A.3, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for elements A.1, B.1 and C.5, and Partially Compliant for element A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Bahrain is Largely Compliant.

10. A follow up report on the steps undertaken by Bahrain to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Bahrain

11. 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 has been conducted in two stages: Phase 1, performed in 2011, assessed Bahrain's legal and regulatory framework for the exchange of information, while Phase 2, performed in 2013, looked at the practical implementation of that framework over a three year period (July 2009 to June 2012), as well as any amendments made to the legal and regulatory framework since the Phase 1 review (a list of relevant laws and regulations is set out in Annex 3). The assessment was, therefore, based on the laws, regulations, and exchange of information mechanisms in force or effect as of 23 August 2013. It reflects Bahrain's responses to the Phase 1 and Phase 2 questionnaires and supplementary questions, other materials supplied by Bahrain during the Phase 2 on-site visit that took place from 21-23 January 2013 in Manama, Bahrain, and information supplied by exchange of information partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance, Ministry of Industry and Commerce within which the Commercial Registrar is located, the Central Bank, the Central Informatics Organisation and the Legislative and Legal Opinion Commission (see Annex 4).

12. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum Secretariat. In 2011, these were 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. In 2013, the assessment team was comprised of Ms Idris Fidela Clarke, Director of the Financial Services Regulatory Commission, St. Kitts Branch, St. Kitts and Nevis; Mr

Kaan Kasim, Head of Group at the Revenue Administration of Turkey; and Ms Gwenaëlle Le Coustumer from the Global Forum Secretariat.

13. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Bahrain’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Bahrain’s legal and regulatory framework 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. In addition, to reflect the Phase 2 component, recommendations are made concerning Bahrain’s practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Bahrain’s overall level of compliance with the standards.

14. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach.

Overview of Bahrain

Economic context

15. 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, with more than half the population being immigrant workers coming mainly from Bangladesh, India, Pakistan, the Philippines and the United States. 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.

16. Bahrain maintains a fixed exchange rate between the Bahraini Dinar (BHD) and the US Dollar (USD). The exchange rate peg,² 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.

17. As a Gulf state, Bahrain has an important economic and financial position within the oil trade/business. Oil and manufacturing account for 22.1% and 14.7% of Bahrain's Gross Domestic Product respectively (2011 real GDP of circa BHD 9 848 million, USD 26.2 billion). The financial sector is one of the largest employers of Bahraini nationals, who represent over 60% of the sector. Overall, the sector contributes 17.1% of Bahrain's GDP, making it one of the key drivers of growth in the country. Tourism contributes 2.2% to GDP.³

18. 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.

19. Bahrain's main trading partners are the European Union (particularly the United Kingdom, France and Germany), the United States,⁴ and Saudi Arabia, while India and China are growing trading partners.

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

3. Source: Central Bank of Bahrain.

4. 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.

Governance and legal system

20. The Kingdom of Bahrain is a Constitutional Monarchy ruled by the Al Khalifa royal family (article 1(a) of the Bahrain Constitution). Bahrain is a unitary state and relies upon a single national law. The Constitution provides that Islamic Shari'a is a 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.

21. Bahrain's Legislature, the National Assembly (*Al-Majlis al-Watani*), is composed of two councils: the elected Council of Deputies (*Majlis al-Nuwwab*) and the appointed Consultative Council (*Majlis al-Shura*). 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 legislature, ratified by the King of Bahrain and published in the Official Gazette (Articles 35(a), 51, 70 and 122 of the Constitution).

22. 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: Constitution and National Action Charter, international Agreements, Laws and Decrees of Law; Royal Orders; Royal Decrees; Decrees; Resolutions; and Declarations).

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

23. 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).

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

The regulatory framework (including the financial sector)

24. The Central Bank of Bahrain is responsible for setting and implementing monetary policy in Bahrain. As at 31 May 2013, there were 411 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. As at end September 2012 the total liabilities of the Bahrain banking system stood at USD 201 billion while total deposits stood at USD 78.3 billion.

25. 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.), (vi) capital market (exchange houses and intermediaries on exchanges, etc.), and “(vii) collective investment undertakings.

26. The concept of a financial trust was 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 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 as amended (AML 2001).

The taxation system

27. 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 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). In 2012, nine entities were subject to income tax. Though foreign entities active in the oil and gas sector in Bahrain undertake their activities in joint ventures or partnerships with Bahraini state-owned companies, they may be separate taxpayers.

28. Only locally sourced income is taxed under the Decree 1979, including profits derived from: (i) selling crude oil or other natural hydrocarbons produced from the 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.

29. 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 levy on gasoline and a levy on the use of hotel facilities. Municipalities also levy a tax on the value of immoveable properties.

30. The MOF is currently undertaking a wide ranging study on the possibility of increasing its non-oil revenue tax base. As part of this project, a position of Assistant Under Secretary for Public Revenue Development has been created, comprising an Enterprise Tax Directorate and a VAT Directorate.

Exchange of information for tax purposes

31. In September 2001, Bahrain made a political commitment to cooperate with the OECD initiative on transparency and effective exchange of information (EOI). As of April 2013, Bahrain has signed double tax conventions (DTCs) containing EOI mechanisms and TIEAs with 42 jurisdictions, including with its main trading partners. It is in particular a signatory to 10 Tax Information Exchange Agreements (TIEAs). 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. A complete list of the DTCs and TIEAs which have been concluded by Bahrain is set out in Annex 2, including their dates of signature and entry into force.

32. Bahrain has set up an internal Global Forum on Transparency and Exchange of Information for Tax Purposes Working Group (GFTEI-WG) that meets on an ad hoc basis to discuss exchange of information matters. The GFTEI-WG is chaired by the Assistant Undersecretary for Public Revenue Development at the Ministry of Finance (MOF) and composed of representatives from MOF, the Company Affairs' Directorate of the Ministry of Industry and Commerce (MOIC), the Executive Director Banking Operations of the Central Bank of Bahrain (CBB) and the Director General Identity and Population Register of the Central Informatics Organisation (CIO). (Other members can be co-opted as required.)

33. During the three year period under review (July 2009 through June 2012), Bahrain received no requests for information. It received one request after that period, with regard to exchange of information for purposes of assistance in the collection of taxes. During the period under review a request for mutual legal assistance in a money laundering case related to an underlying tax offence was also received. Both were answered. The Bahraini

authorities expect to receive more EOI requests in future, particularly as EOI instruments have been signed with countries of origin of important groups of foreign workers in Bahrain.

Recent developments

34. Since its Phase 1 review in 2011, Bahrain has significantly expanded its network of exchange of information instruments. The country has signed an additional 15 EOI agreements (10 TIEAs and 5 DTCs), and brought 14 agreements into force. Bahrain continues to negotiate a number of new protocols with a view to upgrading or introducing EOI provisions to its existing DTCs, as well as DTCs and TIEAs with new partners.

35. The MOF is currently undertaking a wide ranging study on the possibility of increasing its non-oil revenues. Initiated at the time of Phase 1, this study is still in progress. 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. This has led to the drafting of a Bill which is currently being discussed by government authorities and is scheduled to be adopted in 2013. This part of the project is considered non-controversial by the Bahraini authorities (the Legislature has approved DTCs and TIEAs and is thus familiarised with the concept of exchange of information); therefore the Bahraini authorities expect that the Bill will be passed without dissent.

36. The Bahraini authorities are also considering simplifying and amending the companies law with, for instance, the reduction of the number of types of entities and the attribution of more monitoring powers to the Registrar. As this reform is wide ranging, it is not yet possible to indicate any date for its adoption.

Compliance with the Standards

A. Availability of Information

Overview

37. 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. It also assesses the implementation and effectiveness of this framework in practice.

38. 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 and applied to enforce these obligations.

39. 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 either registered with public authorities or kept by the entity. Bearer shares are foreseen in the law but are not permitted in practice. The Ministry of Industry and Commerce ensures that commercial entities respect their obligations through annual reporting and applies enforcement measures in practice. However, despite the applicability of the company law obligations on the availability of ownership information to foreign entities carrying on business in Bahrain, these obligations are not enforced in practice, and the Bahraini authorities should ensure that foreign entities with a place of management or control in their territory keep relevant ownership information.

40. 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 foreign trust but professional trustees would have to be licensed by the Central Bank and subject to AML rules. *Waqfs* (an arrangement with some similarities to trusts) must be registered and provide identity information in Bahrain and are supervised by the Ministry of Justice. The concept of foundation does not exist under the laws of Bahrain.

41. In practice there are only 34 financial trusts registered in Bahrain, 2 939 *waqfs* (mainly charitable entities) and no Bahraini registered trustees of foreign trusts. Bahrain is recommended to take appropriate measures to ensure that the Central Bank licensees which are acting as trustees respect their obligations under the Financial Trust Law and the anti-money laundering law and regulations, and maintain all relevant ownership information on Bahraini financial trusts.

42. 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. The implementation of these obligations is monitored by the MOIC, through annual reporting and inspections where required, except in the case of partnerships. The Bahraini authorities should ensure that partnerships keep reliable accounting records. Some uncertainties however remain concerning the obligation for financial trusts to keep underlying documents, and regarding the retention period for their books and records. The Central Bank is developing further guidance in its Rulebook for licensees to clarify the obligations of trustees of financial trusts in

terms of accounting records. The Bahraini authorities are recommended to take appropriate action to ensure that the law is properly implemented.

43. 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. In practice the Central Bank of Bahrain ensures the proper implementation of the laws and regulations applicable to financial institutions and appropriate measures are taken to ensure that relevant banking information is available in Bahrain.

44. In practice, relevant ownership, accounting and banking information is generally available in Bahrain, although some further controls should be established on partnerships, foreign entities and financial trusts to ensure that proper information is obtained and available.

45. Bahrain received no request for information during the three years under review (July 2009-June 2012) and received one after this period. This request related to banking information and the presence of an individual in Bahrain. The Bahraini competent authority made the necessary internal inquiries and informed the requesting competent authority in a timely manner that the person and the requested information were not 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.

46. 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 *commandites* by shares (or partnership limited by shares).⁶ They are regulated by 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.

47. All individual traders and commercial entities established in Bahrain must be registered in the Commercial Register held by the MOIC within one

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).

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

48. The Commercial Register is public and any person may freely obtain an extract from the entries made therein (article 15, LCR 1961) from the Commercial Registration Inquiry Service page on the website of the MOIC: www.moic.gov.bh/moic/en/.⁸ The type of information available depends on the type of entity.

49. 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.

Companies (ToR 10 A.1.1)

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

- a *shareholding company* (“BSC”, 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

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

8. 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).

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

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-Gulf Co-operation Council 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 in practice.
- 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). A limited liability company cannot undertake insurance or banking business activities or investment funds for the account of third parties.
- a *single person company* (articles 289 to 297) is every economic undertaking 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 company; its principal office must be in Bahrain, as well as its main business activity. Single person companies are governed by the provisions regulating the limited liability company (in as far as they are not inconsistent with their nature).

51. 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).

52. In practice, registration or authorisation is required for a foreign company or foreign individual to conduct business in Bahrain. All non-Bahrainis wishing to reside in Bahrain must have a residency permit which means that all foreigners residing in Bahrain are given a unique identification number. In addition all those non-Bahraini residents who wish to conduct business in Bahrain must receive a work permit from the General Directorate of Immigration and Passports.

53. As of December 2012, there were approximately 14 180 companies registered in Bahrain: 920 shareholding companies (874 closed companies and 46 public companies), 8 350 limited liability companies and 2 806 single person companies. In addition, there are 1 081 branches of foreign entities (including representative offices, but of which only 788 are active) registered in Bahrain. There are currently no *Commandites* by shares companies active in Bahrain. The Bahraini authorities indicate that in practice it does not appear that the different types of entities are used for particular types of activities (except for regulated activities such as banking); the choice of entity depends rather on the size of the business – large entities would favour shareholding companies whereas small business would rather take the form of limited liability companies.

Information kept by public authorities

54. 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).

55. 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).

56. In the case of public listed companies 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 as of 31 December of each year (articles 118, 171 and 227 CCL – see below *Information kept by the companies and service providers*). The Registrar therefore has a record of the shareholders at a specific date. The company itself maintains information on movements of shareholding that have occurred in the interval. All other types of companies must notify the MOIC and amend their memorandum to reflect any changes in shareholders immediately. With regards to the issuance of new shares, a company must

call an Annual General Meeting and the Ministry of Industry and Commerce invited to attend that meeting. As per article no. 212 of the Commercial Company Law (CCL), the validity of the increase in capital will be subject to the Ministry's approval.

57. The memorandum of association of limited liability companies (and single person 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). The name of a single person company must be accompanied with the name of the proprietor of its capital, followed by the phrase "Single Person Company" (or S.P.C.) (article 291, CCL 2001), therefore a change of owner triggers a change of name and must be registered.

58. As noted above, the Commercial Register is available online on the website of the MOIC: www.moic.gov.bh/moic/en/. The chain of ownership in Bahrain is also easily available to the public, as it is possible to go from the entity page to the page of any of its corporate shareholders.

59. 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). In practice, any change of ownership of a bank equal or above 10% cannot be performed without the prior authorisation of the Central Bank.

60. Some specific obligations also apply to listed companies. The Bahrain Stock Exchange also receives annually from public shareholding companies a copy of their shareholder register as at 31 December (article 118, CCL 2001). In addition, all persons must obtain CBB prior written approval to execute any order that will bring their ownership to 10% or more in any listed security, and any transfer of shares bringing the ownership of a member to 5% must be performed by a licensed market operator and reported to the CBB (Rulebook Volume 6, Rules AML-7.1.1 to AML-7.1.3).

Foreign companies

61. The standard provides that ownership information should be available not only on domestic entities, but also foreign entities with a sufficient nexus to the assessed jurisdiction: It is the responsibility of the jurisdiction under whose laws companies or bodies corporate are formed to ensure that ownership information in relation to those entities is available. In addition,

where a company or body corporate has a sufficient nexus to another jurisdiction, including being resident there for tax purposes (for example by reason of having its place of effective management or administration there), that other jurisdiction will also have the responsibility of ensuring that ownership information is available (ToR A.1.1 footnote 5).

62. In Bahrain the nexus retained is not one of tax residence, as the concept is not part of the tax law. The only nexus covered in Bahraini laws relates to the carrying on of business activity, which requires the registration of an undertaking, and to establishment, which confers nationality to the entity.¹¹

63. 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). There are 801 foreign companies registered as active in the Bahrain register of companies in July 2013.

64. 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 and therefore, the MOIC does not require that up-to-date ownership information be provided by foreign companies. Ownership information must nonetheless be kept by the entities themselves and some information must be kept by service providers pursuant to the anti-money laundering laws (see below).

Information kept by the companies and service providers

65. 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

11. Section 4 of the CCL provides that "Each company established in the State of Bahrain shall be domiciled in Bahrain. Such company shall be of Bahraini nationality, but this does not necessarily entail that the Company is entitled to the rights exclusive to Bahrainis".

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.

66. Anyone may have access to the register after paying a reasonable fee. A copy of this register as of 31 December of each year must be forwarded to the MOIC, and public shareholding companies must also send a copy to the Bahrain Stock Exchange (article 118).

67. 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. However, as noted earlier, no such entity existed during the period under review.

68. 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).

Foreign Companies

69. 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 carrying on business activities in the State of Bahrain, except for the provisions relating to incorporation of companies.” The provisions regarding 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. However, in practice, the MOIC does

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.

not require that up-to-date ownership information be maintained by foreign companies.

70. The anti-money laundering rules also ensure that some ownership information is available in Bahrain. In particular, the CBB Rulebook requires banks to perform CDD measures on their customers from overseas jurisdictions (FC-1.2.10). In practice, foreign entities active in Bahrain are clients of at least one entity subject to the anti-money laundering laws and regulations, since it would be difficult for any entity to undertake any meaningful business in Bahrain without using a finance service provider. It is for instance mandatory to pay wages through a bank account in Bahrain. (see discussion below *Anti-money laundering obligations*).

71. As a result of company and AML obligations, some ownership information is available on foreign companies: the registrar holds information on the legal owners of the entity at the time of registration, and the service providers are aware of subsequent substantial changes in the ownership structure (i.e. all changes in partnerships, and changes of 20% or more in shareholding of companies, except for listed companies – see below).

Anti-money laundering obligations

72. 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.

73. 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).

74. 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:

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 below the subsection on *Nominee identity information* and section A.1.2 on *Bearer shares*).

- (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 the funds, the ultimate provider of funds (if different), and the ultimate controller of the funds (if different);
- (c) obtain the names, country of residence and nationality of directors or partners (only necessary for private or unlisted companies);¹⁴
- (d) require, through new customer documentation or other transparent means, updates on significant changes to corporate ownership and/or legal structure;
- (e) 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 companies listed on a GCC or FATF member state stock exchange;
- (g) 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.

75. The CBB Rulebook does not provide a definition of “ultimate beneficial owner” used in point (a). The Central Bank representatives explained that in practice, importance is placed on determining the origin of the funds, rather than on obtaining a full list of shareholders. Licensees gather at least the certificate of incorporation of the client and its memorandum of association or a trust deed, as well as identity documents of the signatories on the account during the due diligence process (FC 1.2.8-FC 1.2.11).

76. A foreign branch, agent or office must provide a guarantee to ensure performance of its obligations, which can take the form of a sponsorship or bank deposit. In the latter instance, the bank will apply the CDD procedure. In practice, any entity or person wishing to perform economic activity in Bahrain must have a bank account, as this is required, for instance, to pay operational expenses.

77. The Central Bank considers that its licensees are well aware of their CDD obligations. All licensed entities must have an AML Reporting Officer (approved by the Central Bank) and such a person is responsible for the training of the licensee’s staff.

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)).

Nominee identity information

78. 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)

79. 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 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. As this reform is wide ranging, it is not yet possible to indicate any date for its adoption.

Partnerships (ToR A.1.3)

80. 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%.

81. As of April 2013, there were 1 198 general partnerships and 143 simple *commandites* registered in Bahrain. Of these, 1 153 and 135 respectively are active, and represent mainly small traders.

Information held by public authorities

82. 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).

83. 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.¹⁵ 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 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 their amendments (if any), for foreign legal entities.¹⁶

84. 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.¹⁷

85. Like foreign companies (*ToR A.I.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). The identity of the partners of foreign partnerships must be disclosed to the Commercial Registry, as well as their subsequent changes.

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15. 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.
16. According to the manual on registration requirements published on the MOIC's website (www.moic.gov.bh/MOIC_Flipbooks/registration_requirements_eng/).
17. 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.

Information held by the partners and service providers

86. 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).

87. 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.

Practice

88. In practice, the Registrar indicates that it receives information on ownership changes regularly and in any event partners must include in their annual renewal form a statement on changes of ownership that have occurred during the year. Should a partnership not file its annual renewal form, it would be considered inactive and could no longer perform economic activities such as using a bank account or entering into any type of relationship with a governmental department, as the first action of these entities would be to check the active status of the entity on the Commercial Registration Enquiry Service webpage of the MOIC. In 2012, 982 partnerships renewed their registration.

89. CBB licensees in practice require that partnerships submit their memorandum of association every three years, and significant changes must also be reported by the customer to the licensee.

90. Bahrain has not received any EOI requests concerning a partnership.

Trusts (ToR A.1.4)

91. Common law trusts are not recognised in Bahrain. The only type of trust that can be created under Bahrain law is the financial trust. In addition, shari'a law recognises the concept of a *waqf*, that has some similarities to a trust.

92. The Financial 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 34 trusts registered in Bahrain.

93. The FTL 2006 contains no specific provisions governing non-resident settlors or beneficiaries, or trust assets located in another jurisdiction. Similarly, no provisions govern foreign trusts having a Bahraini trustee or administrator.

Bahrain Financial Trusts

94. A 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 the trustee is a legal entity, it 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)). In addition, the trustee may be a branch of a foreign company and the parent company must have 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). The CBB Rulebook on the standard conditions and licensing criteria applicable to trust service providers is still under development. In practice, Bahrain has three licensed trust companies, one of which is a branch of an international entity, the other two being locally incorporated.

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

95. 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 authenticated 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 (e.g. a Notary), 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;¹⁸
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).

18. 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).

96. 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).

97. The trustee and the protector must inform the Central Bank of any modification of the data, which is recorded in the Register of Financial Trusts (article 33(D)). In practice, there is no annual form that trusts must complete to report changes in the trust deed. Trustees must inform the Registrar when an event occurs, such as the birth or death of a beneficiary or the addition of assets to the trust.

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

98. 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, which must be a Central Bank licensee, is itself subject to AML rules.

99. The CBB Rulebook establishes that, in the case of trusts or similar arrangements, Central Bank licensees (including trustees) must request the trust deed (subsection FC-1.2.8) and 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(f)). As mentioned above (*ToR A.1.1*), 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)”.¹⁹

19. An April 2013 amendment to the Rulebook specifies that “In the case of employee benefit trusts and occupational savings schemes, the licensee must establish the identity of the settlor and trustee as required in FC-1.2.11(f), but may rely upon the settlor to maintain the identity information of the beneficiaries, subject to written confirmation from the settlor that such information has been collected” (FC-1.2.11A).

Practice

100. As at June 2013, there are three trust companies licensed in Bahrain, one of which is a branch of an international entity. At present, there are no commercial banks licenced by the CBB which serve as trustee to their clients.

101. The Central Bank Compliance Department did not carry out any monitoring or investigations of licensed trustees before 2013, when all three licensees were subject to an onsite inspection. The scope of the inspections covered a review of the documentation kept for trusts, including but not limited to all the “know your customer” and “due diligence” documentation as required by the CBB Rulebook Financial Crime Module. The information available at the CBB’s Trust Registry was cross-checked with the documentation pertaining to the trusts, provided by the licensee during the course of the examination. The findings of the Central Bank indicated minor weaknesses related to updating of information related to trusts at the trust Registry, all of which were rectified either during the examination period or thereafter.

102. The Bahraini authorities have also issued, in April 2013, a circular letter to the three licensees to inform them that Volume 5 of the CBB Rulebook is applicable to trust service providers.

Foreign trusts

103. A Bahraini national or resident may act as a trustee, protector or administrator of a trust formed under foreign law, whether or not that person is licensed by the Central Bank. Such situations are not governed by the FTL 2006.

104. The Bahraini authorities advised 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 a request for registering a business as a trust service provider has never occurred.

105. In addition, financial institutions are subject to AML rules on identification of customers. In particular, as noted above: If the customer is a legal entity or a legal arrangement such as a trust, including foreign trusts with a Bahraini trustee, 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 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).

106. In practice, the Central Bank Compliance department, when performing its supervisory functions, requests a sample of customer files, which may include trusts. However, it has never come across a file of a trust client of a licensee, and is not aware of any person acting as trustee of a foreign trust in Bahrain.

107. 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 have no obligation to register with the Registrar, and where such a trust would not have a bank account in Bahrain.

108. The likelihood of the occurrence of this situation is very remote and would be immaterial, given that the situation of a trustee in Bahrain of a foreign trust has not yet occurred in practice.

Waqfs

109. *Waqfs* are a component of Islamic law (sharia'a) sometimes compared to trusts. The origin of *waqfs* is commonly traced to the Quran, where the Prophet is reported to have advised a disciple to make a newly acquired property inalienable, and to give the profit from it to charity. Today in Bahrain, a *waqf* can be instituted for religious charitable purposes, for family assets management, or a combination of the two. Under Article 1 of Decree No. 6 of 1985, the Board Council of a *waqf* is responsible for the entire management of the *waqf* and has to utilise and control the revenue, and maintain the properties, of the *waqf* in accordance with the endower's conditions, *waqf* articles and sharia'a rules.

110. A *waqf* exists when a *waqif* (founder or endower) grants a property irrevocably and perpetually (endowment) to the benefit of a charitable purpose or relatives. The founder can be one of the beneficiaries of a family *waqf*, although in practice these are more likely to be his heirs. The founder should have full ownership of the property to be endowed (it should not have been pledged previously to someone else) and express his intention to the *Waqf* Directorate of the Ministry of Justice. The property endowed can be real estate property (land and buildings), transferable assets (e.g. Quran, furniture, etc.), or monetary assets such as cash or stocks. Shares of a company or other movable property can be endowed in a *waqf* (if sharia'a compliant, i.e. no shares in a brewery company for instance). In practice in Bahrain any property other than freehold property actually in Bahrain is sold by the *waqf*

Directorate acting as administrator and the proceeds are used to purchase freehold property in Bahrain which will form the basis of the *waqf*.

111. The deed (or endowment title) must be authenticated by the Minor Sharia'a Court, and deposited with the Sharia'a Courts Directorate. If the endowment includes real estate property, it must also be registered at the General Directorate of Land Registration to change its ownership deed status from the endower to the *Waqf*.

112. When registering a *waqf*, the following information must be provided to the *Waqf* Directorate on its beneficiaries:

- The legitimacy ordinance that proves an individual is one of the endowers or the beneficiary's inheritors and a Sharai'a Court advisory opinion (*Fatwa*) to ensure the eligibility of the beneficiaries; Passport or Identity Card, or Birth Certificate for new born children; and Death certificate in case of death of one of the beneficiaries; and
- Bank Account number.

113. The Bahraini authorities rely on the inheritors themselves to inform them about births and deaths and ask them to obtain a new list of inheritors from the court.

114. The *waqf* assets are administered by an administrator (*Al Nader*) who is assigned to protect, maintain and improve the endowment. The Founder can also be the administrator but the Bahraini authorities indicate that the administrator is usually the *Waqf* Directorate in practice. The Board of *Awqaf* is responsible for the supervision of all *Waqfs*, as stipulated in Council of Ministers Resolution no. 11 of 1991.

115. As property is perpetually and irrevocably endowed in a *waqf*, the sale of *waqf* properties is strictly regulated. In case of difficulty in managing the endowment, the administrator (usually the *Waqf* Directorate) can sell and replace it following the restricted procedures below:

- Identify the circumstances or reasons behind the replacement (mostly Government acquisitions for public benefit or it cannot be managed anymore) and present the case to the Board of *Awqaf* to take the decision of a sale or investment;
- Raise the issue to the High Sharia'a Appeal Court to obtain a legitimate justification permitting the sale and publicise the endowment sale in known media channels; and
- Request property valuation from three accredited real estate offices;
- The money generated must be reserved by the *Waqf* Directorate to buy a replacement estate/endowment.

116. The Bahraini authorities indicate that data on the real estate (and tenants) endowed in a registered *waqf* are updated regularly. In practice, when the lease agreement expires the department urges the tenant to update his information before receiving any further rents. Any lawful sale or any change to assets must be mentioned in the ownership title deed.

117. As of July 2013, there were 2 939 *waqfs* registered in Bahrain, of which 95.4% are charitable *waqfs*, 4.3% family *waqfs* and 0.3% mixed purpose *waqfs*. Currently registration of *waqfs* is not mandatory though registration is encouraged. The estimated total assets of *waqfs* is BHD 925 million (USD 2 453 million).

118. The Bahraini authorities indicate that there might be some old endowments that have not been registered with the Directorate nor with the Survey & Land Registration Bureau, which restricts access to their details. The Bahraini authorities intend to survey all the existing *waqfs* in order to identify any unregistered ones. Whenever unregistered *waqfs* are identified, the Bahraini authorities usually obtain an order from the Higher Civil Court to register the *Waqf* at the Land Registration Bureau. Bahrain is encouraged to take appropriate measures to ensure that information on the endowers and beneficiaries of *waqfs* is available in all cases. There are currently no sanctions against persons who do not respect these principles. However, the *Waqf* Directorate is planning to either issue a new law, or amend Resolution no. 11 of 1991, to introduce rules that require administrators to comply with the endowment procedures.

119. In practice, Bahrain has not received any EOI request related to a *waqf*.

Foundations (ToR A.1.5)

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

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

121. 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.

Registration and other corporate obligations

122. Every application for the incorporation of a shareholding company must be 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). In practice the verification is done within one day: the identity of the subscribers is checked against the database of the Central Population Register, the work permits records of the General Direction of Immigration and Passports, and the MOIC register of authorisation of investment of foreign persons. This cross-checking work is simplified by the existence of unique identification numbers for both individuals and legal entities, which therefore allows the results of the searches to be received quickly.

123. If a commercial entity does not submit the original, renewed or supplementary application form for registration at the Commercial Register, the MOIC can refer the matter to the court, which may impose a fine of 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 specifically for not maintaining a share register or partner register, but the changes of ownership not registered therein are not valid.

124. 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). In 2012, almost 2 200 companies were deleted from the Register of Companies, of which 355 were deleted because they had not filed the required documents. 26 cases were also reported to the public prosecutor. In practice, companies struck off the registers are those that do not submit their financial statements and do not respond to the reminder letters sent by the Registrar (see further part A.2.1 on *Accounting records*). Upon liquidation, the company’s or partnership’s books and documents must be maintained for ten years from the date of being struck-off the Commercial Registry, at the place specified by the general assembly (article 344, CCL 2001). The ownership information

received by the Registrar is also indefinitely maintained by the MOIC, whether or not the entity is struck-off.

Anti-money laundering obligations

125. Ministerial Order No. 126 of July 2011 was issued by the Minister of Industry and Commerce to legally enforce the Ministry's existing Anti-Money Laundering Mandatory Rules and Guidelines which were issued in 2006 and to further enhance the implementation of AML/CFT requirements. The MOIC AML enforcement team is comprised of two staff members and their supervisor who ensure that non-financial professionals adhere to their AML obligations. Inspections are carried out in relation to targeted groups (for instance gold dealers) or are launched when complaints or suspicious financial transaction reports are received. The Ministry has also developed a website and distribute brochures to raise the awareness of these professionals concerning their AML obligations.

126. 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 (USD 53 042), without need of a court order and at the Central Bank's discretion (subsection FC-9.1.1, CBB Rulebook).

127. The Central Bank indicates that notable failures related to the CDD obligation of its licensees occurred in the years 2004-05, after which corrective actions were taken, in particular to implement IMF recommendations made in 2005. On an annual basis, the Central Bank compliance department conducts approximately 25 to 28 onsite inspections to determine their licensees level of compliance pertaining to CDD requirements of customers. Every year, all of the licensees of the Central Bank (411 in total) must submit an audited financial report that includes an evaluation of the AML measures implemented by the licensee. When a deficiency is identified, the licensee has one month to correct it. The external auditors of the banks licensed by the Central Bank also test to determine whether any remedial actions and recommendations have been implemented. In 2011, non-compliance letters were issued to 43 companies (compared with 58 companies during the year 2010) for not disclosing ownership information regarding shareholders who possessed 5% and above of shares in listed companies on a timely basis, as required by the Central Bank. Non-compliance letters were issued to 16 companies (compared with 13 companies during the year 2010) for submitting inaccurate ownership information in contravention of the CBB requirements.²⁰

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Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
Foreign companies carrying on business in Bahrain must register with the Registrar of companies, but the ownership information provided does not need to be updated and neither does the MOIC check whether foreign companies keep a register of shareholders. The AML rules only ensure the availability of ownership information on shareholders holding at least 20% of the shares.	Bahrain should ensure that ownership information is available on all foreign companies having their head offices or headquarters in Bahrain.
While legal obligations exist for trustees of financial trusts to maintain identity information, their enforcement started only recently.	The Bahraini authorities should continue to regularly take appropriate measures to ensure that Central Bank licensees acting as trustees meet their obligations under the Financial Trust Law and their anti-money laundering obligations to maintain all relevant identity information on Bahraini financial trusts.

A.2. Accounting records

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

128. 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

129. Under the Commercial Law, promulgated by Decree No. 7 of 1987 (CL 1987), every “merchant” (or businessperson, including all types of commercial entities²¹) whose capital exceeds BHD 20 000 (USD 53 042)²², 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).

130. 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)).

131. Under the CCL 2001, shareholding companies, *commandites* by shares and limited liability companies (as well as single person 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).²³ 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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21. 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”.
 22. 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.
 23. 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).²⁴

132. 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).

133. In practice, the inspection department of the MOIC, which is comprised of 22 persons, ensures that the Ministry receives all the financial statements and auditor's reports due. The main goal of the Ministry is to ensure that the companies are economically viable. If the documents are not submitted on time, reminders are sent after three and six months. Reminders are issued mainly to small companies, for which the accounting requirements may be more burdensome than for larger companies. The MOIC indicates that almost 8 000 companies were required to send financial statements in 2012, of which 4 100 actually made submissions. 1 180 companies appointed an auditor in order to comply with the law. The Ministry also regularly issues a list of offenders, which entails the freezing of all transactions with the State, including the issuance of immigration papers, licences etc. and effectively prevents the company from continuing its economic activity. Since 2008 more than 1 500 companies have been struck off from the Register of Companies. In 2012 alone, 355 were struck off owing to the fact that they had not filed the required documents with the MOIC, and 112 in 2011, compared to 0 in 2010. 26 cases were also reported to the public prosecutor for filing forged documents with the Ministry of Industry and Commerce. The number of companies struck off in 2012 appears quite high (27% of companies that should have sent financial records), and there was an increase in the number of companies that appointed an auditor (approximately 15%). This is due to a recent policy of MOIC to strike off inactive companies from the register – the number of companies struck off was therefore quite high in 2012 but should

24. 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.

decrease in future years, as inactive companies will continue to be struck off on a regular basis.

134. The CCL 2001 reporting obligation does not apply to foreign companies and partnerships, and the MOIC inspection department does not in practice evaluate whether the above-mentioned entities adhere to the book-keeping obligations of the CL 1987. The MOIC should ensure that foreign entities with sufficient nexus to Bahrain and partnerships keep reliable accounting records, and apply appropriate sanctions where relevant.

135. 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.

136. 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 if required by the trustee (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.

137. The Central Bank inspection department is composed of 21 persons that assess the Bank's licensees in terms of compliance. Resolutions regarding the temporary suspension of trading on the Bahrain Bourse were issued to 16 listed companies due to untimely submission of financial statements. In addition, two companies were suspended due to issues relating to their operations and activities.²⁵

138. The enforcement of the Financial Trust Act is recent and the onsite inspections of the three licenced trustees in 2013 did not cover the accounting documentation of the trusts themselves, but covered the books of accounts of the licensee, i.e. its balance sheet, income statement and other related documentation. It is therefore not clear that trustees keep reliable accounting records in practice. The Central Bank should ensure that financial trusts keep reliable accounting records, and apply appropriate sanctions where relevant.

139. The Bahraini authorities have indicated that all relevant data pertaining to registered *waqfs* are stored by the *Waqf* Directorate This includes information on the type of property endowed, the location and size of

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estates endowed, the type of investment made (i.e. whether rented or not), endowment identification documents (such as endowment deed and survey certificate). Any update of any change that occurs to the endowment such as its status, value, acquisition or sales and purchases must also be kept.

140. The Bahraini authorities further indicate that the annual budget must be approved by the Board of *Awqaf* and sent to the Ministry of Justice. The Board of *Awqaf* assigns an external auditor through a tendering procedure along with having an internal auditor within the Directorate.

Tax laws

141. 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.

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

143. In practice, the very narrow scope of taxes in Bahrain means that there are fewer than a dozen taxpayers and, in this context, no sanctions have been applied.

Underlying documentation (ToR A.2.2)

144. The CL 1987 provides that merchants must keep true copies of all incoming and outgoing correspondence, telegrams and other documents relating to their 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.

145. In practice, the MOIC is primarily concerned with the economic viability of entities rather than their strict adherence to the requirements under the corporate laws, but inspections are nonetheless carried out every year, that include the verification of accounting records. The Audit team of the MOIC can nonetheless require commercial entities to provide requested documents when the need arises. The MOIC performed 6 347 inspections

in 2010, 52 in 2011 and 8 484 in 2012. In 2011, the MOIC inspections concentrated on desktop investigations and record updates rather than physical inspections (which led to the high number of companies being struck-off the register in 2012). In 2010 and 2012 the MOIC followed its normal schedule of onsite inspections, whereby MOIC aims to inspect a large number of the registered businesses each year. Breach of the accounting obligations of companies is not among the main deficiencies noted.

146. The Central Bank has indicated that the relevant module of the Rulebooks pertaining to financial trusts is still under consultation with stakeholders. In particular Module 5 relates to accounting rules of CBB licensees and would pertain to trusts. The common module of the Rulebook was issued in April 2013 and the Bahraini authorities expect the specific module to be finalised by the end of 2014. As noted earlier, the Central Bank sent a circular letter in April 2013 to the three licensed trustees to remind them that the common module applies to them, and further enforcement action is encouraged.

147. In the case of *waqfs*, the Directing Manager undertakes the preparation of the budget in coordination with the Chairman of the Directorate adhering to the national regulations regarding budgeting procedures; thereafter the budget is presented to the Board of Directors for approval and subsequently presented to the Minister of Justice and Islami Affairs, and *Waqf* for final approval (Prime Minister’s Cabinet – Resolution No 11 for 1991 item Number 4). The Standard Financial Manual (issued by the Ministry of Finance under Article 59 of 2002 Decree Law No. 39 Regarding the State Budget and binding upon the Ministry of Justice) sets out the rules for retaining financial documents, in particular section 24-1 “ Policy for Keeping Documents and Forms”.

5-year retention standard (ToR A.2.3)

148. 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.

149. 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,²⁶ for at least ten years.

150. In practice, the MOIC receives some accounting information from companies, and keeps this information indefinitely. In addition, the MOIC performs a number of inspections every year as noted above, to ensure that companies maintain proper accounts in accordance with the company laws.

151. 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 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.

152. As noted above, the Central Bank Rulebooks Module 5 on accounting rules is expected to be adopted in Summer 2013 and inspections to start in 2014.

153. As concerns waqfs, accounting and underlying documentation must be retained for 10 years, and this obligation (set out in the Standard Financial Manual) lies with the Accounts Department.

26. 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.

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.
Phase 2 Rating	
Partially Compliant	
Factors underlying recommendations	Recommendations
The provisions requiring the availability of accounting information in partnerships and foreign entities are not enforced in practice.	The Bahraini authorities should ensure that partnerships and relevant foreign entities keep reliable accounting records.
Whereas legal obligations exist for trustees of financial trusts to maintain accounting information, it is not clear that all relevant information is available in practice.	The Bahraini authorities should take appropriate action to ensure that financial trusts implement their obligations to keep reliable accounting records, including underlying documentation, for at least five years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

Banking Laws

154. 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).

155. 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.

156. 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;²⁷ 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.

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

157. It is strictly forbidden to keep any secret, fictitious, or anonymous accounts (article 5, AML 2001 and subsection FC-1.1.9). 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).

158. 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.

159. 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).

160. 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).

161. 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).

162. The Central Bank of Bahrain issued the International Bank Account Number (IBAN) Standard for the Kingdom of Bahrain in February 2011. Retail banks started issuing IBANs to customers from September 2011, and banks and customers have been required to use an IBAN in making the following payments since 31 January 2012:

- (a) Domestic electronic payments to and from customer accounts of banks in Bahrain;

- (b) Cross-border outgoing electronic payments from customer accounts of banks in Bahrain to customer accounts of banks/financial institutions in countries that have adopted IBAN (and made its usage mandatory); and
- (c) Cross-border incoming electronic payments to customer accounts of banks in Bahrain from customer accounts of banks/financial institutions in countries that have adopted IBAN as well as countries that have not adopted IBAN.

163. The introduction of the IBAN system in Bahrain could facilitate the identification of bank accounts involved in an EOI request, but does not amount to enabling the existence of a central database of all bank accounts opened in Bahrain. If a request is received regarding banking information when the account number or bank is unknown, the Central Bank would ask all banks whether the concerned person has an account. This situation has arisen in the case of the sole request received by Bahrain (outside of the period under review).

164. In practice, the Central Bank's inspection department and compliance department ensure that banks and other financial institutions properly implement the laws and regulations regarding the maintenance of proper records.

165. As noted under element A.1.6, the Central Bank had indicated that most non-compliance issues were related to inadequate measures pertaining to CDD obligations of its licensees, in the period 2004-05. It should be noted that corrective actions were taken, in particular to implement IMF recommendations made in 2005. The respect of these obligations is examined during the 25 to 28 inspections carried out annually by the Central Bank compliance department. All licensees of the Central Bank must submit an annual audited financial report that includes an evaluation of the AML measures implemented by the licensee. When a deficiency is identified, the licensee has one month to address it, and a follow-up review is conducted by external auditors of the licensed banks to determine whether remedial actions have been taken and recommendations implemented.

166. The Central Bank took 17 enforcement measures against retail licensees (no enforcement measure against wholesale licensees) including imposition of penalties, during the year 2011, in respect of market discipline matters.²⁸ The enforcement measures taken by the Central Bank relate mainly to prudential matters (e.g. late publication of financial statements or failure to observe regulatory ratios).

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Determination and factors underlying recommendations

Phase 1 Determination
The element is in place
Phase 2 Rating
Compliant

B. Access to Information

Overview

167. 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. It also assesses the effectiveness of this framework in practice.

168. 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.

169. In all other instances, Bahrain relies on the direct applicability of double tax conventions (DTCs) and Tax Information Exchange Agreements (TIEAs), which 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 relies 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 MOIC and CBB cannot decline to gather information for the MOF where there is a DTC or TIEA in force. The Bahraini authorities similarly rely on the direct applicability of treaties to override any secrecy provisions in Bahrain's domestic laws.

170. To date, the practical functioning of this arrangement was not tested, as Bahrain received its first (and so far only) request for information in January 2013. Even though Bahrain was able to answer this request, it remains advisable for Bahrain to introduce express statutory provisions dealing with access to information for exchange of information purposes.

171. Bahrain's tax department 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 and TIEAs would prevail and that in any event the MOIC could obtain that information by other means.

172. In practice, Bahrain received no request for information during the three years under review (July 2009 – June 2012) though it received one after this period. This request related to banking information and the confirmation of the presence of an individual in Bahrain. The Bahraini competent authority made the necessary internal inquiries in accordance with the formal Government of Bahrain Internal EOI Procedure, and informed the requesting competent authority in a timely manner that the person and the requested information were not in Bahrain.

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).

173. 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.

174. The MOF is undertaking a study on the possibility of introducing comprehensive tax legislation. In this framework, the Bahraini authorities are considering the possibility of expressly giving 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

175. For the moment, Bahrain relies on the direct applicability of double tax conventions (DTCs) and TIEAs, which 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 relies on the other administrative authorities of Bahrain that either maintain or are able to access the requested information.²⁹ The other three authorities which may be involved in this procedure are the Ministry of Industry and Commerce (MOIC), the Central Bank of Bahrain and the Central Informatics Organisation. Based on these procedures, the MOF relies on the MOIC to obtain information on commercial entities (sole traders, partnerships and companies), on the Central Bank to obtain bank information and information on trusts and financial institutions, and on the Central Informatics Organisation (CIO) to obtain other information on individuals legally resident in Bahrain, either Bahrainis or foreigners.³⁰

176. 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 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.

177. 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

29. 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.

30. 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”.

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.

178. To date, only eight of Bahrain's DTCs in force do not contain this provision.³¹ They 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 functions properly, whether or not the DTC contains an equivalent of Model Article 26(4).

179. In practice, to date, Bahrain has received only one request for information (after the period under review), and the governmental entities requested to gather information for the competent authority were able to do so, pursuant to the inter-governmental EOI procedure. In addition, all the authorities met during the onsite visit concurred with the above interpretation of the inter-governmental agreement and indicated that they would use their information gathering powers whenever requested to do so by the competent authority.

The direct applicability of treaties

180. 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.³² 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)

31. The DTCs with Algeria, Belarus, Brunei, China, Iran, Lebanon, Pakistan, and the Philippines.

32. 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 and TIEAs submitted to the Legislature.

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 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.

181. 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 essentially untested as Bahrain has received only one exchange of information request over the last twelve 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 relevant authorities confirmed during the onsite visit that they concur with the opinions expressed by the LLOC regarding the conflicts related to the interpretation of laws. To further illustrate the importance of the opinions issued by the LLOC, it was indicated that should a Minister not abide by an LLOC opinion, he/she would be held accountable before the Legislature. In addition, there have not been any instances whereby the LLOC legal opinion has ever been successfully challenged in Bahrain.

182. The MOF is currently undertaking a wide ranging study on the possibility of increasing its non-oil revenues. 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. This part of the project is considered non-controversial by the Bahraini authorities (the Legislature has approved DTCs and TIEAs and is thus familiarised with the concept of exchange of information), and is being discussed as a Bill by the Government, with a view of its adoption in 2013.

183. In practice, to date, Bahrain has received one EOI request (after the review period), and the governmental entity requested to gather information for the competent authority was able to obtain the information and provide it in a timely manner.

Ownership and identity information (ToR B.1.1)

184. 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.

185. The MOF does not maintain information on individuals, as it is not a central repository for tax information and there is no personal income tax on residents of Bahrain. Therefore any EOI request related to an individual would have to be handled with the assistance of the Central Informatics Organisation, which can extract information from the Central Population Register and provide it to Bahrain's competent authority, regarding all individuals legally resident in Bahrain.

186. The Central Informatics Organisation has prepared an internal procedure flowchart depicting how requests from the competent authority should be dealt with. When receiving a request, the General Director of Identity and Population Registry requests an employee to search the central electronic registration system for information on a particular individual. If the person is not found, the competent authority is asked to provide additional identifying information on the individual. If the person is found, the requested information is sent to the competent authority. All communications are properly secured or encrypted. The entire process is expected to be completed within an hour. The Central Informatics Organisation was consulted in order to answer the request received by Bahrain in 2013 and the requested information was provided in a timely manner. As the person could not be located, further information was requested, and ultimately it was confirmed within a week, after some research, that the person concerned was not resident in Bahrain.

187. 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. Should the information requested be publicly available on that website, the competent authority would refer the requesting authority to the information in the website, if no particular form is required. 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 asks the MOIC for information it may hold outside of the public register and otherwise relies on the information gathering powers of the MOIC.

188. 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. The Companies Affairs Directorate of the MOIC 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, within a week, 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).

189. 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). In practice, should an EOI request relate to a financial trust, the Central Bank would provide the information contained in its files to the competent authority, unless more specific information is requested, or the requesting authority asks specific questions on recent changes. The Central Bank has not established internal guidelines or procedures in anticipation of an EOI request. It could usefully consider introducing internal guidelines, in consultation with the competent authority. The Central Bank nonetheless affirmed that the use of its information gathering powers to provide information to the competent authority would not be onerous as inquiries are routinely made to licensees in relation to the implementation of the anti-money laundering legislation. The Central Bank indicated that it would most probably request the needed information using the same communication channels, i.e. emails and telephone. The Central Bank does not routinely inform financial institutions of the reasons for a request and has indicated that it would not inform the licensee that the request for information is based on an EOI request, in order to avoid tipping off issues. The AML compliance officer usually answers requests from the Central Bank within two working days.

190. In practice, Bahrain has not been asked to provide ownership information to any EOI partner. The implementation in practice of the legal and regulatory framework on access to information for EOI purposes therefore cannot be assessed. It should be noted that no practical impediments to an effective exchange of information appears to exist in Bahrain.

Accounting records (ToR B.1.2)

191. 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). In practice, there are only a small number of taxpayers in Bahrain and their audited financial statements are submitted to the authorities in a timely manner.

192. The MOF has no direct access powers over accounting records kept by entities outside of the oil and gas industry, but articles 351 and 352 of the CCL 2001 give 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).

193. 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).

194. 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, but has not yet used this power in practice.

195. Bahrain has not been asked to provide accounting information to any EOI partner. The implementation in practice of the legal and regulatory framework on access to information for EOI purposes therefore cannot be assessed. There do not appear to be any practical impediments to effective exchange of information in Bahrain.

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

196. 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.

197. 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)

198. 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.

199. 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).³³ 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). There are no known offences or sanctions issued with regard to non-compliance regarding the filing of tax returns. This may be due to the fact that there is a strong compliance culture in Bahrain and the entities which are required to pay taxes are few.

200. As noted above, articles 351 and 352 of the CCL 2001 give 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”. During the period 2009-12, the MOIC brought to court one case of a company which refused to provide documents. As the MOIC suspended this company for two years, the Prosecutor's Office considered the sanction sufficient and decided not to continue with the criminal procedure.

201. 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 by a licensee,

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

it may obtain a court order to make a search and seize documents (article 124(A)). The Central Bank has indicated that on two occasions an onsite investigation has been conducted without first notifying the licensee.

202. 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)

203. 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

204. 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).

205. 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.

206. The CBB Internal Procedures Manual for requests for information from licensees provides that as part of its on-going supervisory interaction with banks, the CBB may specifically request information or temporary reporting from a bank, which is in effect a type of “direction”. Recipients of such requests are bound to respond under the terms of their licence. Failure to

respond to such formal requests within the stipulated deadline will be viewed as a significant breach of regulatory requirements and will incur a formal warning or other enforcement measure, as decided by the CBB depending on the circumstances of the case. The Central Bank has indicated that this procedure will apply equally when the competent authority requests it to gather information for exchange of information purposes.

207. In terms of practical experience, Bahrain has been asked to provide banking information in one case, outside of the period under review. The Central Bank asked banks in Bahrain whether the person concerned had opened a bank account and the Bahraini competent authority was able to provide a relevant response.

208. During the onsite visit, the Central Bank representatives were uncertain as to the extent of the investigations they would perform in relation to an EOI request, for instance on whether they would go as far as asking for CDD information on owners of a client. Further discussions between the competent authority and the CBB would be useful in this regard, as there is no impediment in Bahrain’s legal and regulatory framework in this respect. It is also expected that the awareness of the persons involved will grow in parallel to the number of EOI requests.

Other professional secrecy provisions

209. 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. The Bahraini authorities indicate that the EOI provisions of their DTCs and TIEAs prevail over any confidentiality and secrecy provisions under domestic law. The Bahraini authorities will therefore interpret the application of the law in EOI cases in light of the Commentaries to the Model Tax Convention, including on the proper definition of the attorney-client privilege.

210. 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).³⁴

34. The Committee consists of two judges of the Civil High Court of Appeal

211. Nevertheless, as indicated above, 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 and Model TIEA, but these interpretations have not been tested in practice.

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
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. The Government is working towards introducing some statutory provisions to give the competent authority full access powers to all foreseeably relevant information.	Bahrain should pursue its legislative work aimed at introducing express statutory provisions dealing with access to information for exchange of information purposes.
Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
The Central Bank has not adopted internal procedures or guidelines on how to handle EOI requests and does not appear fully prepared to deal with the range of requests that may arise.	The Bahraini authorities should ensure that the Central Bank is fully prepared for the range of requests that may be received.

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).

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)

212. 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).

213. 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.

214. 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. Bahrain is considering the introduction of specific legislation which would give full tax information gathering and exchange powers to the MOF and, in this context, may repeal this provision from the law. 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. The Ministry of Finance confirmed that the taxpayer would not be asked to give his/her consent to exchange of information in practice. The Bahraini authorities also indicate that the MOIC, under its own authority, is able to access the information, given that it is not subject to the consent provision in the Decree 1979. There are therefore no legal impediments to access information and no notification rights.

215. 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. However, this provision does not apply to the Ministry of Finance or the Competent authority but only to individuals who make a request for particulars to the MOIC.

216. 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). The Central Bank adds, concerning financial trusts, that in practice trustees would not be informed that information is requested for EOI purposes rather than domestic compliance purposes. The authorities are therefore confident that no objection based on confidentiality should occur.

217. Finally, appeal rights exist against all acts of the administration if the person concerned considers that the administration has acted *ultra vires*. This Constitutional right would apply with respect to the administrative measures taken to answer an EOI request, in the same way as to any other measures that the administration may take and is not specific to EOI. The Bahraini authorities do not anticipate that appeals on this basis would occur in EOI cases.

218. The competent authority, Ministry of Finance, MOIC and Central Bank all indicated that in practice, should they receive an EOI request, they would not inform the holder of the information of the reasons for the request, and would not notify the person concerned of the measures being taken or likely to be taken, as they do not usually indicate the reasons for any request they make and no notification right exists. They would pay extra attention to EOI requests that specifically ask Bahrain to not inform the person concerned.

219. Bahrain's legal and regulatory framework contains rights and safeguards compatible with effective exchange of information, but since Bahrain did not receive any EOI requests during the three years under review, the implementation in practice of the legal framework in relation to rights and safeguards could not be tested.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 Rating
Compliant

C. Exchanging information

Overview

220. 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) and Tax Information Exchange Agreements (TIEAs). This section of the report examines Bahrain's network of exchange of information agreements against the standards and the adequacy of its institutional framework for effective exchange of information in practice.

221. In September 2001, Bahrain made a political commitment to co-operate with the OECD initiative on transparency and effective exchange of information. Bahrain has now signed DTCs containing EOI mechanisms or TIEAs with 42 jurisdictions, of which 35 are in force and allow Bahrain to exchange of information effectively (see Annex 2), including with most of its main trading partners. 7 other DTCs, protocols, and TIEAs will comply with the standard once in force. Bahrain continues negotiating a number of protocols with a view to upgrading the EOI provisions of its existing DTCs or introducing such provisions, as well as DTCs and TIEAs with new partners. Bahrain is encouraged to continue expanding and upgrading its EOI network.

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

223. All EOI provisions in Bahrain's DTCs and TIEAs contain confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the instrument. This is reinforced by the confidentiality provisions under Bahrain's domestic laws. Bahrain's DTCs and TIEAs 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. In practice, Bahrain has taken appropriate measures to ensure that the confidentiality of the information exchanged is protected.

224. 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.

225. In practice, Bahrain did not receive any EOI requests in the three year period under review (July 2009-June 2011), nor before that period. Accordingly, it has not been possible to assess Bahrain's practice in terms of timeliness of responses to EOI requests. Bahrain did receive an EOI request after the period under review and anticipates receiving others with the entry into force of some of its new EOI instruments.

226. In terms of resources and organisational processes, Bahrain's EOI Unit is located within the Foreign Economic Relations Directorate (FERD) of the Ministry of Finance. Bahrain put in place procedural guidance on the handling of incoming EOI requests in 2010. The resources committed and procedures implemented should allow Bahrain to effectively exchange information in a timely manner, if the number of incoming EOI requests remains low. Bahrain is encouraged to ensure that an adequate level of resources remains dedicated to EOI purposes should more requests be received in future.

C.1. Exchange of information mechanisms

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

227. The Minister of Finance, as competent authority under Bahrain's network of EOI instruments, 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 at www.mofne.gov.bh/categorylist.asp?ctype=author.

228. 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.

229. 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

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.

Tax Matters (Model TIEA). Similarly, the EOI provisions in Bahrain’s TIEAs are based on the OECD Model TIEA.

230. Bahrain does not exchange information automatically or spontaneously for practical reasons: first the tax administration does not collect the type of information that is usually exchanged automatically, and second, the small tax administration does not conduct investigations that may lead to a spontaneous exchange. However, the Bahraini authorities have not ruled out these possibilities in future, should they develop a tax system.

231. Considering that Bahrain has not received any EOI requests during the review period, and only one since, the practical implementation of Bahrain’s exchange of information network cannot be assessed under element C1, except in relation to C.1.8 below on *Entry into force*.

Foreseeably relevant standard (ToR C.1.1)

232. 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 Article 1 of the OECD Model TIEA as well as 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.

233. Most of Bahrain’s DTCs and all of its TIEAs 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 (until the EOI protocol enters into force), China, Iran, Lebanon, Pakistan, Philippines,³⁶ and Uzbekistan, which use the term “necessary”. The commentary to Article 26

36. 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

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.

234. Bahrain’s TIEAs, 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 Article 5(5) of the Model TIEA.

235. The MOF website also indicates that EOI requests should preferably be made using FERD’s form, which contains a similar list of information to be provided.³⁷ The Bahraini authorities indicate that should they receive a request that has not used the form but contains all elements requested in the form, they would proceed with the request. 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 with reference to these sources.

236. In the one request received by Bahrain (after the period under review), the competent authority had difficulties understanding the request and asked the requesting authority to fill in the form, which greatly assisted. The Bahraini authorities did not challenge the foreseeable relevance of the request, and started the necessary enquiries, while awaiting answers to their questions of clarification.

In respect of all persons (ToR C.1.2)

237. 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.

238. 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

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.

37. See MOF website at: www.mof.gov.bh/categorylist.asp?ctype=author; and EOI form at www.mof.gov.bh/ShowDataFile.asp?rid=1909.

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.

239. The DTCs with Belarus, Lebanon and Pakistan do not contain this language but are nonetheless not limited to residents. Article 25(1) of the DTC with Pakistan applies to “carrying out the provisions of the Agreement or of the domestic laws of the Contracting States”. The EOI provisions in the DTCs with Belarus and Lebanon apply to “[the] [implementation/application] 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.

240. The other DTCs and all TIEAs include the wording contained in Article 2 of the Model TIEA, i.e. the requested party will exchange information held by its authorities or in the possession or control of persons who are within its territorial jurisdiction.³⁸

241. In practice, the only EOI request received by Bahrain concerned a person who was not resident in Bahrain during the period of interest to the requesting country, and the Bahraini authorities carried out the requested enquiries necessary to answer the request. The Bahraini authorities indicate that the person concerned appears to have been resident in the requesting country but had left the jurisdiction indicating that he was to take up residence in Bahrain.

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

242. 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

243. 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 (until the 2012 EOI protocol enters into force), China (and the Philippines), Iran, Lebanon and Pakistan.

38. DTCs with Bermuda, Bulgaria, Brunei (until the EOI protocol enters into force), the Netherlands, Turkey and Uzbekistan.

244. 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 exchange purposes via the Central Bank (see Part B above), and that they are able to exchange this type of information when requested.

245. On the other hand, some of these treaty partners' domestic laws contain restrictions on access to and exchange of banking information (Brunei and Lebanon) which might impact EOI.³⁹ However, the Bahraini authorities indicate that they would not apply the principle of reciprocity and would exchange all foreseeably relevant banking information with any treaty partner. This statement could not be checked in practice, as Bahrain has not been asked for banking information by these partners so far.

Absence of domestic tax interest (ToR C.1.4)

246. 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.

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

39. Some restrictions existed in the DTC with Singapore, but a protocol signed in 2009 entered into force in 2012, and the domestic legislation of Singapore was also amended to allow better access to banking information. Similarly, some restrictions existed in Belgium at the time of signature of the DTC and protocol, but the Belgian legislation has been amended since then and Belgium no longer requires a specific provision in the treaty to exchange banking information. Bahrain also has DTCs that do not contain an equivalent of Article 26(5) with jurisdictions not member of the Global Forum, i.e. Algeria, Belarus and Iran, for which no assessment of their conformity to the standards has been performed. The review of Pakistan has not yet taken place and is scheduled for 2014.

248. Eight of Bahrain’s DTCs – with Algeria, Belarus, Brunei (until the EOI protocol enters into force), China (and the Philippines), Iran, Lebanon and Pakistan – 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 impediment to exchange information in the case of either contracting party.⁴⁰ Two of these partners have domestic tax interest requirements in their domestic legislation (Brunei and Lebanon), but Bahrain interprets these treaties and its domestic laws in such a way that no domestic tax interest applies (see subsection B.1.3 above). The Bahraini authorities indicate that they would not apply the principle of reciprocity and would exchange all foreseeably relevant information with any treaty partner. This statement could not be checked in practice, as Bahrain has not been asked to provide banking information so far.

Absence of dual criminality principles (ToR C.1.5)

249. 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 or TIEAs.

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

250. 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”).

40. 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.”

251. All Bahrain’s DTCs and TIEAs provide for exchange of information in both civil and criminal tax matters. Most of Bahrain’s DTCs and all of its TIEAs 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” (with a definition in TIEAs of “criminal tax matters” aligned on the Model TIEA). The DTCs with Iran, Lebanon, Pakistan 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)

252. 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”. A similar provision exists in all Bahrain’s TIEAs. In practice the Bahraini authorities indicate that they would do their utmost to satisfy the procedural requirements of their treaty partners.

In force (ToR C.1.8)

253. 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 exchange of information arrangements that have been signed into force expeditiously.

254. Bahrain has signed DTCs and TIEAs containing EOI mechanisms with 42 jurisdictions, of which 35 are in force (whether or not to the standard).

255. Bahrain has ratified a number of the remaining instruments and awaits its treaty partners doing the same, i.e. Barbados, Belgium, Estonia, Sri Lanka and Sweden. Ratification procedures are in progress for the instruments with Brunei and Canada, signed in December 2012 and June 2013, i.e. less than six months ago.

256. In 2010 the Bahraini authorities created a new unit to negotiate bilateral agreements, which also assisted in reducing the time taken for ratification, as the unit monitors the internal procedure for ratification. The

backlog of instruments awaiting ratification was overcome in the first half of 2012. Bahrain has taken all steps necessary to bring EOI arrangements that have been signed into force expeditiously.

257. The average time between the signature of a new EOI instrument and its ratification is now nine months, with the most time-consuming part of the procedure being the translation of the instruments into Arabic, which can take from three to six months.

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

258. 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. Draft instruments are reviewed by the Legislative and Legal Opinion Commission (LLOC), to ensure that they do not contradict the Constitution or interfere with the sovereignty of the State and to clarify the extent of their compliance with the laws, decrees and regulations of Bahrain. The LLOC is also in charge of checking the translation of the instruments into Arabic. It then makes comments to the governmental body in charge, i.e. the Ministry of Finance in the case of EOI instruments. Once the draft is finalised and the instruments initialled, the Ministry of Finance prepares an explanatory note to the Council of Ministers for approval of the instrument. Upon the approval of the instrument, the Council asks the responsible minister to sign it.

259. Under Article 37 of the Constitution, treaties relating to the public and private rights of citizens as well as treaties which impose upon the State Exchequer expenses which are not provided for in the budget, such as DTCs and TIEAs, must be promulgated by law to be valid and to allow for EOI on tax matters. The LLOC prepares the draft law and submits it to the Council of Ministers, and then to the legislative authority, for approval. Ultimately, Bahrain's DTCs and TIEAs are given the force of law once they are ratified by the King and published in the Official Gazette.

260. As discussed in Part B of the report, Bahrain's authorities have access powers as a result of the direct applicability of the DTCs.

261. 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.
Phase 2 Rating
Compliant

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

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

262. 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.

263. Bahrain has signed a total of 9 TIEAs and 31 DTCs that contain an EOI provision⁴¹ as of August 2013.

264. Bahrain's main trading partners are the European Union (particularly the United Kingdom, France and Germany), the United States,⁴² 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, India and China.

265. It should be noted that Bahrain's partners in the Gulf Cooperation Council (including Saudi Arabia) globally have only limited tax systems; therefore not having an EOI mechanism with most of these partners cannot be regarded as failing to meet the standard at present.

266. Bahrain is actively working to expand its EOI network by negotiating a number of new DTCs and amending Protocols. The FERD has sought inputs from the private sector to gather suggestions on existing and future

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

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

agreements, for its 2013-14 negotiation plan. It is also on waiting lists for negotiation with several Global Forum members.

267. 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+. To date, Bahrain has signed nine TIEAs, eight of which have been ratified.

268. So far, 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.
Phase 2 Rating	
Compliant	

C.3. Confidentiality

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

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

269. 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.

EOI arrangements

270. 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.⁴³

271. The DTCs with Algeria, Belarus and Lebanon 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 concluded an EOI Protocol with Belarus to this effect, and is waiting for Belarus to agree on a date for signing it.

272. 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 (DTCs or protocols with Luxembourg, 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”.⁴⁴ Bahrain’s TIEAs and its DTC with Turkey contain a similar provision, based on Article 8 to the Model TIEA.⁴⁵ This provision has not been used to date.

273. 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

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43. 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.”
44. 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.”
45. “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.”

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 is received in the competent authority's capacity as public officials, and therefore the domestic provision assessed below will apply.

Domestic legislation

274. 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. In addition, all new officials of the Ministry of Finance go through a central vetting process and must sign a confidentiality declaration when hired.

275. 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. In practice, none of the few tax officials and none of the officials of the Ministry of Finance, Central Bank or Ministry of Industry and Commerce has ever been sanctioned for a breach of confidentiality.

Confidentiality in practice

276. In practice, information received or to be sent (and copies of information already sent) is stored in a secure manner and access to files is restricted to the officers handling the request. Only the Director of the FERD, the Head of its Bilateral Relations Section, FERD's Economist (and their administrative assistant) as well as the Legal Adviser of the Minister of Finance have full access to the EOI binder. Other agencies are given information on a "need to know" basis. Compliance with secrecy obligations is monitored by the Director of FERD, and no breach of confidentiality was experienced in practice in relation to the single EOI request received by Bahrain. As noted under part B of the report, the competent authority, Ministry of Finance, MOIC and Central Bank all indicated that in practice, should they receive an EOI request, they would not routinely inform the holder of the information of the reasons for the request.

277. Incoming requests are kept in a binder in a safe in the office of the Director of FERD. The binder also contains the procedure for handling EOI

requests and a reminder about the confidentiality obligations of persons involved in EOI. The competent authority has not developed any electronic archive system or tracking system, as this was not felt necessary, but should information be received electronically, the safeguards of the Ministry are applicable, i.e. password protected individual accounts and network security systems.

278. As noted under Part B on *Access to information*, various institutions outside the Ministry of Finance are involved in the gathering of information. The competent authority mitigates the risk of disclosure of information and breach of confidentiality by giving them the minimum of information necessary to gather each piece of information requested. In addition, the competent authority inserts the following reminder in all communications with other Bahraini authorities:

All persons receiving information arising from or pursuant to a request for Exchange of Information for Tax Purposes are informed that: such information is confidential; and that such information can only be released to the authority requesting it or to a properly constituted tribunal or court of law. Failure to maintain the confidential nature of such information constitutes an offence under Article 371 of the Penal Code.

279. Despite the fact that each of the institutions potentially involved in the gathering of information adopted administrative circulars in 2011 to remind their officials of the confidential nature of information exchanged through an EOI instrument, the competent authority should consider further sensitising the officials involved to the importance of not using the shared information for non-tax purposes. When questioned, the officials of the MOIC indicated that they would not use the shared information for their own purposes, but would seek to derive the same information from their own sources. Officials of the Central Bank seemed less aware of the prohibition on the use of information received from a treaty partner for non-tax purposes absent an express authorisation by this partner. After the onsite visit, a confidentiality statement was obtained from each individual who may be involved in the gathering of information in respect of an EOI request. The Central Bank confirmed afterwards that it will not use information received from a treaty partner for non-tax purposes absent express authorisation by that partner in accordance with the EOI standards.

280. The Ministry is also considering additional safeguards that could be introduced, as recommended in the Global Forum publication *Keeping it Safe*.⁴⁶

46. *Keeping it Safe: Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes*, 2012.

All other information exchanged (ToR C.3.2)

281. 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 TIEAs and domestic law specify that the confidentiality rules spelt out in the DTCs and TIEAs apply to all information received.

282. As mentioned above, letters of request received from EOI partners are kept separately from domestic files and sealed under a lock in the office of the Director of FERD.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 Rating
Compliant

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

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

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

283. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege, as defined in the commentary to the OECD Model Tax Convention.

284. 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.

285. Bahrain did not receive any EOI requests during the three years under review, and the authorities have demonstrated their commitment towards implementing effective exchange of information. Furthermore, Bahrain has not declined to provide requested information in the only EOI request received after the period under review.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 Rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

286. 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.

287. Bahrain's TIEAs as well as the DTC with Turkey use the wording of the Model TIEA. 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. Bahrain's DTC with Turkey as well as Bahrain's TIEAs indicate 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.

288. 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.

289. There are 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.

Response time in practice

290. Bahrain received no request during the three years under review (July 2009 – June 2012). In total to date, Bahrain has received one request for information. Even though this request was received after the period under review, it is presented in this report, as the Bahraini competent authority has answered it and it sheds light on their procedures and practice. In terms of timing, the request was acknowledged and clarifications were sought within two days of receipt. Simultaneously, the competent authority initiated the process of gathering the requested information. The request was answered within 60 days from the date of the initial request (to the effect that the individual and bank account the requesting authority was trying to locate were not in Bahrain).

Organisational process and resources (ToR C.5.2)

Handling of EOI requests

291. The competent authority for exchanging information is the Foreign Economic Relations Directorate (FERD) of the Ministry of Finance, by delegation from the Minister of Finance. As noted under Part B on Access Powers, the competent authority has limited powers of access to information, as the Bahraini tax law covers only legal entities operating in the oil and gas sector.

292. Bahrain adopted in June 2010 a formal Government of Bahrain Internal EOI Procedure pursuant to which the MOF turns to other administrative authorities that either maintain or are able to access the requested information. Based on these procedures, the MOF relies on the MOIC to obtain information on commercial entities (sole traders, partnerships and companies), on the Central Bank to obtain bank information and information on trusts and financial institutions, and on the Central Informatics Organisation to obtain information on the location of individuals.

293. Despite the fact that Bahrain has not received any request up until 2013 (i.e. none during the three years under review), the competent authority has developed an EOI Request Procedure (reproduced in Annex 5) to complement the formal Government of Bahrain Internal EOI Procedure. EOI requests received by the Ministry of Finance, Competent Authority (CA), are handled according to the following steps:

- Immediately: the CA enters EOI request into EOI log (in paper form) and MOF workflow programme and acknowledges receipt of the request;
- Within 15 days: CA and Legal Affairs Office of the MOF check whether the EOI request complies with the bilateral DTC/TIEA, OECD Keeping It Safe Document and Manual on EOI, and EOI request form, in order to determine whether the request is valid, and accordingly informs the requesting party of any doubts it may have or asks for clarifications;
- Gathering of information: the CA sends by tracked emails an internal EOI request to the MOIC, the CIO and/or the Central Bank at determined email addresses, tagged with a 30 day follow-up. The Internal EOI request contains minimum information to identify taxpayer, a confidentiality notice, and a CA certification that the EOI request complies with the EOI agreement, the OECD Manual on EOI, and the Bahraini EOI request form. (The requested authorities must acknowledge receipt immediately.)
- 60 days: the requested authorities provide the information to the CA to a determined email address.
- Within 15 days: the CA checks whether the information is responsive to the foreign request and sends information to the requesting party or informs it of grounds for not answering the request (i.e. why the information could not be gathered).

294. In practice, Bahrain has received only one request for information (after the period under review) and the above procedure was followed meticulously: the request was acknowledged within two days of receipt and the requesting authority was asked to submit a completed request for information form, as the authorities were unsure of the information requested. The treaty partner sent additional information the following week. In the meantime, the competent authority initiated the process of gathering the information. When soliciting other authorities for information, the competent authority provided only the information relevant to gathering the information and not the full letter received from the treaty partner, in order to ensure confidentiality (see also section C.3 above). The two authorities requested to gather information for the competent authority performed the required investigations to locate the requested information, and the competent authority answered the requesting party in a timely manner.

295. As noted under Part B of this report, the three authorities stated that they would share their information or use their information gathering powers each time this is required by the competent authority.

296. The competent authority can receive requests by post mail, fax, or electronically via a generic email address. Its full coordinates are publicly available on its website (www.mof.gov.bh) as well as posted on the secure database of competent authorities of the Global Forum.

Resources

297. The FERD was appointed delegated competent authority five years ago. The head of the department, also appointed five years ago, is a customs official. His head of Bilateral Relations Section was appointed 3 years ago and the Economist was appointed a year and a half ago. The managers hold MBA degrees. The FERD also counts an accountant among its staff. They are supported by the Legal Adviser to the Ministry who is a British solicitor.

298. As noted under “recent developments” in the introduction, the MOF is undertaking a wide ranging study on the possibility of increasing its non-oil revenues. 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. This project includes the possible transfer of the competent authority task from the FERD to the newly established Enterprise Tax Directorate (ETD, in charge of taxation policy and planning) which would be given information gathering powers.

299. The FERD members and director of ETD participate in training seminars on taxation, tax treaties and exchange of information organised by the OECD and the Global Forum. The Legal Advisor has also participated in a number of FATF and MENAFATF events. The competent authority has not developed its own EOI Manual but has adopted the OECD Manual on Implementation of Exchange of Information Provisions for Tax Purposes – Module 1: On Exchange of Information on Request, as well as the Keeping it Safe publication on confidentiality, as noted above. The officials speak Arabic and English, and if a request is not received in Arabic or English, the competent authority would request the treaty partner to submit a translation into one of these languages.

300. The FERD members and director of ETD participated in the two meetings of Global Forum competent authorities that have been organised to date, to familiarise themselves with relevant issues, learn from peers’ best practices, and anticipate practical problems that they may encounter in future. The FERD and ETD officials also plan to visit the competent authority offices of some Global Forum members to better learn from their practices. The ETD has also visited several Gulf Cooperation Council member tax administrations, as well as those of Singapore and Australia, to become more familiar with taxation issues. Finally, the Bahraini authorities also envisage

requesting technical assistance or signing MoUs with more experienced jurisdictions to get dedicated onsite training if needed in future.

301. Since access to information is facilitated by other governmental authorities, proper training and resources should also be available to them. Considering the near-absence of EOI requests to date, no specific position has been created in these authorities, but some persons have been designated to handle EOI requests:

- The MOIC appointed three persons for handling EOI requests from the competent authority of Bahrain: the Assistant Undersecretary of Domestic Trade supervises the Director of Companies' Affairs and of the Chief of Financial Control & Analysis. MOIC staff are trained to analyse financial information.
- The Central Bank appointed three persons for handling EOI requests from the competent authority of Bahrain: the Legal Counsel of the CBB, the Executive Director of Banking Operations and the Advisor on Banking Supervision. CBB staff are given training in the CBB Law and related regulations and resolutions. The CBB Legal Counsel provides interpretative advice on any requests for information.
- The CIO appointed two persons for handling EOI requests from the competent authority of Bahrain: the Legal Adviser, who can provide interpretative advice, and the Director General of Identity and Population Registry.

302. The Manual on EOI and the Keeping it Safe publication have been distributed to FERD and ETD staff as well as to the above-listed persons in the MOIC, CIO and Central Bank. These persons together form the GFTEI-Working Group that meets on an ad hoc basis to discuss issues related to exchange of information for tax purposes.

303. The level of resources and training dedicated to transparency and exchange of information is adequate to date, considering the near-absence of EOI requests. Bahrain is encouraged to ensure that an adequate level of resources remains dedicated to EOI purposes, should more requests be received in future.

Absence of unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

304. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There is no evidence of any such conditions in practice.

Determination and factors underlying recommendations

Phase 1 Determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendation	Recommendation
Bahrain has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Bahrain did not process any EOI requests during the three-year period under review. Consequently, the organisational processes have not been sufficiently tested in practice.	Bahrain should monitor the practical implementation of the organisational processes of the competent authority as well as the level of resources committed to EOI purposes, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that both the processes and level of resources are adequate for effective EOI in practice.

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>		
Phase 1 determination: The element is in place		
Phase 2 rating: Largely Compliant	Foreign companies carrying on business in Bahrain must register with the Registrar of companies, but the ownership information provided does not need to be updated and neither does the MOIC check whether foreign companies keep a register of shareholders. The AML rules only ensure the availability of ownership information on shareholders holding at least 20% of the shares.	Bahrain should ensure that ownership information is available on all foreign companies having their head offices or headquarters in Bahrain.
	While legal obligations exist for trustees of financial trusts to maintain identity information, their enforcement started only recently.	The Bahraini authorities should continue to regularly take appropriate measures to ensure that Central Bank licensees acting as trustees respect their obligations under the Financial Trust Law and their anti-money laundering obligations to maintain all relevant identity information on Bahraini financial trusts.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
Phase 1 determination: 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.
Phase 2 rating: Partially Compliant	The provisions requiring the availability of accounting information in partnerships and foreign entities are not enforced in practice.	The Bahraini authorities should ensure that partnerships and relevant foreign entities keep reliable accounting records.
	Whereas legal obligations exist for trustees of financial trusts to maintain accounting information, it is not clear that all relevant information is available in practice.	The Bahraini authorities should take appropriate action to ensure that financial trusts implement their obligations to keep reliable accounting records, including underlying documentation, for at least five years.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
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>		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement	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. The Government is working towards introducing some statutory provisions to give the competent authority full access powers to all foreseeably relevant information.	Bahrain should pursue its work aimed at introducing express statutory provisions dealing with access to information for exchange of information purposes.
Phase 2 rating: Largely Compliant	The Central Bank has not adopted internal procedures or guidelines on how to handle EOI requests and does not appear fully prepared to deal with the range of requests that may arise.	The Bahraini authorities should ensure that the Central Bank is fully prepared for the range of requests that may be received.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i>		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
Phase 1 determination: The element is in place	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.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2 rating: Largely Compliant</p>	<p>Bahrain has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Bahrain did not process any EOI requests during the three-year period under review. Consequently, the organisational processes have not been sufficiently tested in practice.</p>	<p>Bahrain should monitor the practical implementation of the organisational processes of the competent authority as well as the level of resources committed to EOI purposes, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that both the processes and level of resources are adequate for effective EOI in practice.</p>

Annex 1: Jurisdiction’s Response to the Report⁴⁷

The Government of Bahrain accepts the recommendations of the Review Report and has commenced the following steps to implement them:

- Representatives of the Ministry of Finance (MOF) and the Legislative and Legal Opinions Commission (Bahrain’s legislative draftsmen) have recently met in a bid to finalise the text of Bahrain’s draft Business Records and Exchange of Information Law, which will introduce express statutory provisions dealing with access to information for exchange of information purposes. Once the text is approved by Bahrain’s Council of Ministers a draft law will be presented to the next legislative session of the National Assembly which will commence before the end of November 2013;
- Pending the introduction of legislation, the Central Bank of Bahrain (CBB) and the Ministry of Industry and Commerce (MOIC) have taken the assessors recommendations into account and are examining practical ways of ensuring that they keep up to date information on all trusts and commercial entities;
- In particular, the CBB has commenced regular inspections of trust service providers and the trusts administered by them, and intends to introduce written internal procedures to deal with EOI requests;
- The MOIC is considering simplifying and amending Bahrain’s company and commercial laws in order to reduce the number of commercial entities allowed in Bahrain, to remove the provisions of CCL 2001 relating to bearer shares, to attribute greater monitoring powers to the Registrar and to introduce stiffer penalties for non-compliance. As these reforms are wide ranging, it is not yet possible to indicate any date for their adoption. However, the MOIC intends to use its existing regulatory systems to ensure that partnerships and foreign

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

companies registered in Bahrain provide it with sufficient information to meet Bahrain's EOI commitments; and

- The Competent Authority (CA) is widening Bahrain's network of exchange of information instruments and is hopeful that new instruments will be signed and brought into force by the end of 2013 and beyond. Further, the CA expects that as its network expands the number of requests for information will rise. Accordingly, the CA has introduced internal procedures to deal with this increase, intends to visit other competent authorities to study their practices and procedures, and will continue attending events such as the Global Forum's Competent Authority Meetings.

Annex 2: List of Bahrain Exchange of Information Mechanisms

Double Taxation Conventions (DTC) and Tax Information Exchange Agreements (TIEA) signed by Bahrain as of 23 August 2013:

	Jurisdiction	Type of arrangement	Signed	Date entered into force
1	Algeria	DTC	11-06-00	29-09-03
2	Australia	TIEA	15-12-11	15-12-12
3	Austria	DTC	02-07-09	01-02-11
4	Barbados	DTC	3-12-12	16-07-13
5	Belarus	DTC	27-10-02	16-04-2008
6	Belgium	DTC	04-11-07	Not ratified by Belgium
		EOI Protocol	23-11-09	Not ratified by Belgium
7	Bermuda	DTC	22-04-10	29-01-12
8	Brunei	DTC	14-01-08	18-07-09
		EOI Protocol	18-12-12	-
9	Bulgaria	DTC	26-06-09	9-11-10
10	Canada	TIEA	04-06-13	-
11	China	DTC	16-05-02	15-08-02
12	Czech Republic	DTC	24-05-11	10-04-12
13	Denmark	TIEA	14-10-11	05-09-12
14	Estonia	DTC	12-10-12	Not ratified by Estonia
15	Faroe Islands	TIEA	14-10-11	23-07-13
16	Finland	TIEA	14-10-11	11-07-12
17	France*	EOI Protocol	07-05-09	1-02-11

	Jurisdiction	Type of arrangement	Signed	Date entered into force
18	Georgia	DTC	18-07-11	01-08-12
19	Greenland	TIEA	14-10-11	04-07-12
20	Iceland	TIEA	14-10-11	15-08-12
21	India	TIEA	31-05-12	11-04-13
22	Iran	DTC	19-10-02	17-11-07
23	Ireland	DTC	29-10-09	09-11-10
24	Isle of Man	DTC	03-02-11	08-03-12
25	Korea	DTC	01-05-12	26-04-13
26	Lebanon	DTC	07-08-03	30-09-05
27	Luxembourg	DTC	06-05-09	10-11-10
28	Malaysia*	EOI Protocol	14-10-10	20-02-12
29	Malta	DTC	12-04-10	28-02-12
30	Mexico	DTC	10-10-10	22-02-12
31	Netherlands	DTC	16-04-08	24-12-09
32	Norway	TIEA	14-10-11	12-07-12
33	Pakistan	DTC	27-06-05	27-10-09
34	Philippines	DTC	07-11-01	14-10-03
35	Seychelles	DTC	24-04-10	03-02-12
36	Singapore	DTC	18-02-04	13-12-04
		EOI Protocol	14-10-09	29-09-12
37	Sri Lanka	DTC	24-06-11	Not ratified by Sri Lanka
38	Sweden	TIEA	14-10-11	Not ratified by Sweden
39	Turkey	DTC	14-11-05	02-09-07
40	Turkmenistan	DTC	09-02-11	13-05-12
41	United Kingdom	DTC	10-03-10	19-12-12
42	Uzbekistan	DTC	05-06-09	12-01-11

* There was no EOI provision in the DTCs. Bahrain is a Party to seven other DTCs that do not contain an EOI provision (and are thus not listed in the table) with Egypt, Jordan, Malaysia, Morocco, Sudan, Syria, Thailand and Yemen.

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 Laws, Regulations and Other Material Received

The Constitution of The Kingdom of Bahrain

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* as amended (AML 2001)

Annex 4: People Interviewed During the On-Site Visit

Ministry of Finance (MOF)

Undersecretary

Assistant Undersecretary for Public Revenue Development

Foreign Economic Relations Directorate

Enterprise Tax Directorate

Legal Affairs Office

Ministry of Industry and Commerce (MOIC)

Assistant Undersecretary for Domestic Trade

Company Affairs Directorate

Central Bank of Bahrain (CBB)

Compliance Directorate

Banking Operations Directorate

Legal Counsel

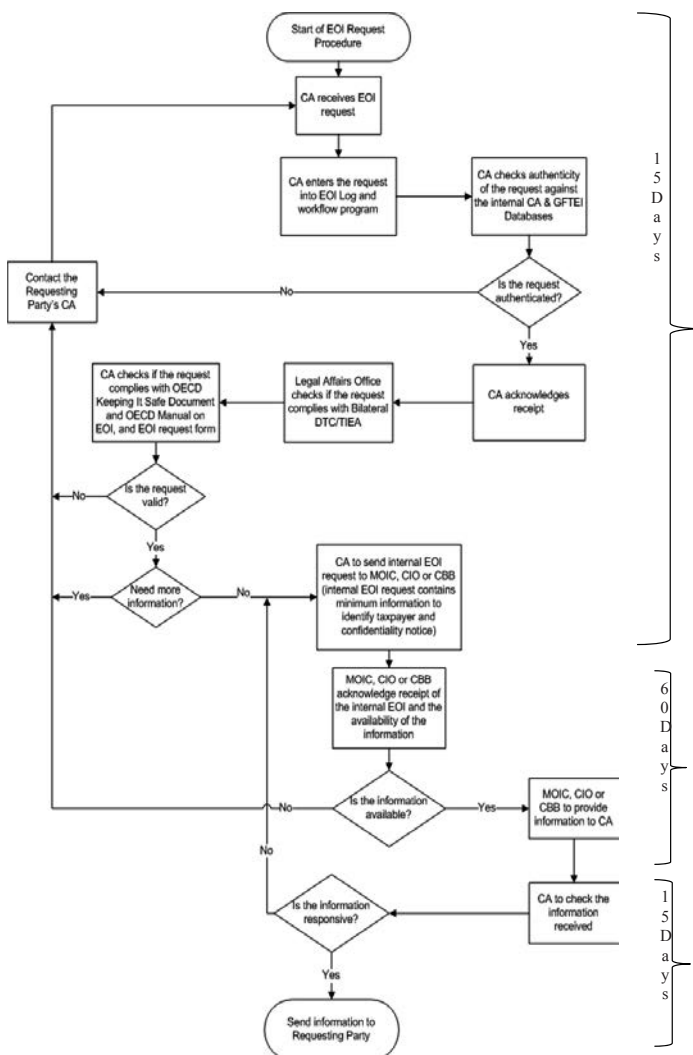
Legislative and Legal Opinion Commission (LLOC)

Central Informatics Organisation

Ministry of Interior

Financial Intelligence Unit

Annex 5: Bahrain EOI Request Procedure



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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: BAHRAIN

This report contains a “Phase 2: Implementation of the Standard in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework” review already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by 120 jurisdictions, which participate in the Global Forum on an equal footing. The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the *UN Model Tax Convention*.

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

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

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

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