



Global Forum on Transparency  
and Exchange of Information for Tax Purposes



# SUPPLEMENTARY PEER REVIEW REPORT

Phase 1

## Legal and Regulatory Framework

BRUNEI DARUSSALAM



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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 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.

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



## Executive summary

1. This is a supplementary report on the legal and regulatory framework for transparency and exchange of information in Brunei Darussalam (hereafter referred to as “Brunei”). It complements the Phase 1 peer review report on Brunei which was adopted and published by the Global Forum in October 2011.

2. This supplementary report reviews the legislative amendments made, including the exchange of information agreements signed and ratified, by Brunei since June 2011 (the date at which the legal and regulatory framework was previously assessed) to address a number of the recommendations made in the Phase 1 peer review report. These amendments pertain to the determinations and recommendations made in respect of availability of ownership and identity information (element A.1); availability of accounting information (element A.2); access to information (element B.1); exchange of information mechanisms (element C.1); and Brunei’s exchange of information network (element C.2). These elements were determined to be “not in place”. In view of the legislative amendments made, Brunei asked for a supplementary peer review report pursuant to paragraphs 58 and 60 of the Revised Methodology for Peer Reviews and Non-Member Reviews.

3. Significant amendments have been made to Brunei’s legal framework with respect to the recommendations made in the 2011 Report regarding the availability of ownership information. Brunei’s legislation now ensures that ownership and identity information is available with respect to companies incorporated outside Brunei which have their place of effective management in Brunei, foreign international companies, persons in a nominee shareholding arrangement, and all parties of express trusts. In addition, amendments were made to expressly prohibit share warrants to bearer with effect from 1 January 2015 with a deadline for all existing holders to surrender their warrants for cancellation by 31 December 2015 and have their names entered into the register. These amendments and mechanisms introduced are sufficient to address the deficiencies highlighted in the 2011 Report. With the removal of all recommendations from the 2011 Report, the determination for element A.1 has been changed to “in place”.

4. With respect to the availability of accounting information, new legislation has been introduced to address the recommendations of element A.2 made in the 2011 Report. The Record Keeping (Business) Order which entered into force on 23 June 2015 imposes the obligation on all relevant entities and arrangements to keep reliable accounting information and underlying documentation for a minimum period of five years. This new legislation addressed the gaps identified in the 2011 Report and the recommendations have therefore been removed leading to a change in element A.2's determination to "in place".

5. The deficiencies in the 2011 Report regarding the access powers of the competent authority to obtain and provide information have been addressed through several legislative changes. Amendments were made in the Income Tax Act which included removing the requirement to "prescribe" arrangements thus enabling the Brunei's competent authority to exercise its access powers with respect to exchange of information (EOI) requests under all agreements to obtain information on any entity covered under the scope of the Income Tax Act. As regards entities formed under the Brunei International Financial Centre (BIFC) legislation – namely international business companies, international limited partnerships and international trusts, a new legislation, the Record Keeping (Business) Order, was introduced which provides the competent authority access powers to obtain the information from all entities for EOI purposes, including entities under the BIFC legislation. However, the access powers do not apply to entities subjected to statutory secrecy obligation, such as in the case of international trusts, and information in respect of such entities is obtained through Brunei's central bank, the *Autoriti Monetari Brunei Darussalam* (AMBD). The ambiguity of the full extent to which the AMBD can exercise its access powers to obtain information from such entities and share it with the competent authority for EOI purposes, has led to retaining a recommendation that Brunei should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on international trusts, do not prevent effective exchange of information for tax purposes. Notwithstanding, significant improvements have been made which are sufficient to change the determination of element B.1 to "in place, but certain aspects of the legal implementation of the element need improvement".

6. The amendments resolving the restrictions for the competent authority to access information removed the limitations to fully comply with the terms of its exchange of information agreements, as identified under elements C.1 and C.2 in the 2011 Report. As regards Brunei's exchange of information mechanisms, 9 out of 28 agreements signed have not entered into force and have been pending for up to an average of three years. Brunei has completed ratification procedures in most cases but two DTCs have been pending Brunei's ratification for more than three and five years respectively.

A recommendation has been added for Brunei to ensure the swift ratification of all treaties signed. Consequently, the determinations for elements C.1 and C.2 have also been upgraded to “in place, but certain aspects of the legal implementation of the element need improvement” and “in place” respectively.

7. The changes introduced by Brunei since the 2011 Report demonstrates its commitment to implementing the international standards for transparency and exchange of information. Brunei is encouraged to continue to review and update its legal and regulatory framework to address the remaining recommendations. Considering the steps undertaken by Brunei to remedy the deficiencies highlighted in the 2011 Report, Brunei can now move to Phase 2. As the Phase 2 review was originally scheduled to be launched in the first half of 2013 and this time has already passed, the review will be rescheduled to the fourth quarter of 2015. Any further developments in the legal and regulatory framework, as well as the application of the framework to EOI practice in Brunei, will be considered in detail in the Phase 2 peer review.





## Introduction

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

8. The assessment of the legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 60 of the Global Forum’s *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of Brunei based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements signed or in force as at 7 August 2015, and information supplied by Brunei. It follows the Phase 1 peer review report on Brunei which was adopted and published by the Global Forum in October 2011 (“the 2011 Report”).

9. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Brunei’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

10. The assessment was conducted by an assessment team, which consisted of three expert assessors and a representative of the Global Forum Secretariat: Mr. Andres Noel Sanchez Hernandez, Tax Administration of Mexico; Ms Flor Nieto Velázquez, Tax Administration of Mexico; Mr. Duncan Nicol, Director from the Cayman Islands’ Department for International Tax Cooperation; and Ms. Audrey Chua from the Global Forum Secretariat. The assessment team

examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Brunei.

11. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the table at the end of the report.

## Compliance with the Standards

### A. Availability of information

#### Overview

12. 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 accounting 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 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 assesses the adequacy of Brunei's legal and regulatory framework on availability of information.

13. The 2011 Report concluded that there were serious deficiencies under elements A.1 and A.2 which led to the determination of both elements to be "not in place".

14. For element A.1 (ownership and identity information), the deficiencies identified in the 2011 Report pertained to the lack of requirements to keep ownership and identity information on companies incorporated outside of Brunei which have their place of effective management in Brunei. In addition, requirements for foreign international companies were unclear. There were also gaps identified on the availability of ownership and identity information in respect of all persons in a nominee shareholding arrangement; identity information of owners of previously issued share warrants to bearer; and identity information concerning the settlors, trustees and beneficiaries of express trusts formed under common law.

15. In respect of foreign companies, legislative amendments were made after the 2011 Report to ensure that foreign companies with a sufficient nexus to Brunei are obligated to submit all ownership and identity information when filing the annual returns under the Companies Act and the Income Tax Act. The International Business Order was amended to require foreign international companies to keep and submit updated identity information on its members and shareholders. As these amendments ensure the availability of ownership information of these entities, the relevant recommendation has been removed.

16. Amendments were also introduced to the Companies Act and anti-money laundering (AML) laws to expressly require all companies to obtain identity information of the ultimate shareholders whom the nominees represent, and for all lawyers, accountants and registered agents to conduct customer due diligence (CDD) measures and obtain information of the persons they represent. These amendments addressed the gap identified in the 2011 Report and the recommendation has therefore been removed.

17. As regards share warrants to bearer, the Companies Act was amended to expressly prohibit companies from issuing share warrants, with effect on 1 January 2015. In addition, a transition period was provided for existing holders of share warrants to have up to 31 December 2015 to surrender the warrants for cancellation after which the warrants would have no legal status. These mechanisms introduced are sufficient to identify owners of existing share warrants and the recommendation has therefore been removed.

18. The recommendation on trusts has also been removed in view of new provisions introduced to the respective laws governing trusts to ensure that there are clear obligations for the keeping of identity information of all parties of express trusts.

19. These amendments have removed all recommendations from the 2011 Report under element A.1. and the determination has been changed to “in place”.

20. For element A.2 (accounting information), the 2011 Report concluded that the Brunei legislation did not ensure that reliable accounting records were kept for companies formed pursuant to the International Business Companies Order, nor for domestic partnerships or trusts. In addition, obligations to keep underlying documentation only apply to entities subject to income tax and there were no express obligations for all other entities. These deficiencies have been addressed through the introduction of the Record Keeping (Business) Order in June 2015 which ensures that all relevant entities and arrangements keep reliable accounting information and underlying documentation for a minimum period of five years, therefore bringing the legal framework regarding the availability of accounting information in line with

the standard. Enforcement provisions are also provided under the Order in respect of these obligations. The recommendations under A.2 have therefore been removed and the determination has been changed to “in place”.

21. No relevant legislative changes have been made since the 2011 Report in respect of element A.3, which therefore remains “in place” without any recommendations.

## A.1. Ownership and identity information

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

### *Companies (ToR<sup>1</sup> A.1.1)*

22. The 2011 Report concluded that the availability of ownership and identity information in respect of companies was ensured, except for ownership information on foreign companies and Foreign International Companies, and in respect of nominees. Two recommendations were made in this aspect. Section A.1.2 will examine the availability of identity information on holders of share warrants to bearer.

### *Foreign companies and Foreign International Companies (FICs)*

23. The recommendation in the 2011 Report concerning companies incorporated outside Brunei which have their place of effective management in Brunei, and foreign international companies (FICs), was that the requirements were not clear if it ensured the availability of information on the members and shareholders of the companies. FICs are one of three types of company that can be incorporated under the International Business Companies Order (IBCO). They cannot carry out business in Brunei and may be formed only by an agent registered under section 3 of the Registered Agents and Trustees Licensing Order, 2000 (RATLO). There are currently 894 companies incorporated outside Brunei and effectively managed in Brunei (out of a total 11 196 companies) and 6 FICs (out of a total 6 342 BIFC entities) registered in Brunei.

24. Regarding companies incorporated outside Brunei which have their place of effective management in Brunei, the 2011 Report concluded that while there was a requirement in the Companies Act for such foreign companies to submit balance sheets, there was no express requirement for it to include

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

identity information of the shareholders (s. 302(3)). Notwithstanding, Bruneian authorities have since clarified that such foreign companies are subjected to the same obligations as domestic companies to file annual returns to the Registrar of Companies (s. 107). It is interpreted that the template annual return form under the Companies Act also requires companies incorporated outside of Brunei to provide a list with identity information of their members and shareholders in the Annual Return form (Fifth Schedule). For the avoidance of doubt, the annual return form has been amended through legislative changes in the Companies Act (Amendment) Order 2014 which came into effect on 1 January 2015 to specifically include mention that it is also applicable to foreign companies. In addition, the Income Tax Return form was introduced to be in effect from Year of Assessment 2012 and requires all companies to submit, as part of its tax return, identity information of all shareholders (Section B, Income Tax Return Form). The form also applies to foreign companies. The clarified requirements under the Companies Act and the new tax return form ensures that identity information on all shareholders of foreign companies are to be made available and would have to be kept by foreign companies to comply with their obligations to submit the information when filing the returns. These changes appear to be adequate in addressing the recommendation on foreign companies having sufficient nexus with Brunei. The availability of ownership information in practice will be examined in the Phase 2 review.

25. Regarding FICs, the 2011 Report concluded that it was unclear if FICs were subjected to obligations under the IBCO to ensure that the annual returns lodged included identity information. There were also no requirements for FICs to maintain registers of members or shareholders. To address these gaps, the International Business Companies (Amendment) Order 2013, which came into effect on 23 November 2013, introduced specific requirements for FICs on the items to be submitted to the Registrar during registration, and when there are fundamental changes to its organisation such as changes of its shareholders or members as described in the following paragraph.

26. The amendments indicate that the additional items that FICs have to submit during registration include “a list of its members containing similar particulars as are required to be contained in the share register or register of members of an international business company (IBC) under section 47” (s. 134(2)(h), IBCO) and “such other information and documents as the Registrar may require” (s. 134(2)(i), IBCO). However, the referenced section 47 in the amendment only refers to IBCs that are limited by guarantee and it is not clear if the same obligation applies in respect of submitting identity information of shareholders. It is section 46 which provides for the obligation in respect of IBCs with shares. Bruneian authorities have indicated that the amendment specifically mentions “share register” and is intended to also require FICs to submit identity information of the shareholders. It would regardless be also considered a required “information” by the Registrar under

s. 134(2)(i) of the IBCO. For absolute clarity, Brunei authorities have advised it is in the process of further amending the section to incorporate reference to section 46 in section 134. It is recommended that Brunei ensures there is no ambiguity in the obligations of FICs to have available the identity information of its shareholders. Notwithstanding, the availability of ownership information of FICs is also supported under another amendment that specifically provides for FICs to lodge returns with the Registrar to report changes of its shareholders or register of members (s. 137(1), IBCO), thereby indicating that FICs are also required to keep updated identity information on its members and shareholders, and submit this information during registration and when there are changes. Failure to observe these obligations would be liable to general penalties under the Order which include imprisonment up to two years and a fine up to BND 100 000 (EUR 65 630)<sup>2</sup> (s. 158(2), IBCO).

27. These amendments in respect of foreign companies and FICs are sufficient to ensure the availability of ownership information and addresses the first recommendation listed under element A.1. The recommendation has thus been removed.

### *Nominees*

28. The 2011 Report concluded that nominees that are not financial service licensees are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners. There were no express requirements in the company law and the CDD obligations under the AML law were assessed as ineffective due to the lack of guidelines for lawyers, accountants and registered agents. It was recommended that obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.

29. To address this recommendation, amendments were made in two areas of the legal framework. First, notices were issued by the AMBD under AML legislation that came into effect on 4 April 2012 to provide further guidance to the CDD obligations of designated non-financial businesses and professions, including lawyers and accountants, and another notice for registered agents and licensed trustees.<sup>3</sup> Such notices are “directions” from the AMBD and are given legal effect under the AMBD Order (s.34(1)). These notices issued included requirements that these persons maintain identification information, including the beneficial owners of their customers for

2. 1 Bruneian Dollar (BND) is equivalent to 0.6563 Euros (EUR). Retrieved from XE.com, 4 June 2015.

3. Notice to Designated Non-financial Businesses and Professions (AMBD/R/21/2012/1) and Notice to Registered Agents and Licensed Trustees – Prevention of Money Laundering and Combating the Financing of Terrorism (AMBD/R/34/2012/1).



whom they are providing nominee services. These requirements would apply in respect of international business companies. In accordance to this notice, all identity information on their customers must be obtained, including full name, unique identification number, existing residential address, date of birth, and nationality or place of incorporation and registration. For customers which are companies, partnerships or other body corporate or unincorporate, identity information must also be obtained on the directors of the company, partners and all persons having executive authority in that body corporate or unincorporate. In addition, beneficial owners of the customer must also be obtained and where the customer is not a natural person, reasonable measures must be taken to understand the ownership and control structure of the customer apart from obtaining the identity information of all owners of the entity as described earlier. The exceptions to obtaining information on the beneficial owners is when the customer is a government entity, listed on the stock exchange, already supervised by the AMBD, a financial institution incorporated or established outside Brunei that is subject to and supervised for compliance with FATF standards. Contravention of any provision under these notices is considered an offence (s. 34(2), AMBD Order) and the entity or person would be subjected to a fine of BND 1 000 000 (EUR 656 300), and in the case of a continuing offence, to a further fine of BND 100 000 (EUR 65 630) for every day the offence continues. These notices adequately cover lawyers, accountants and registered agents, and therefore close the gap identified in the recommendation in the 2011 Report.

30. The second area where amendments were made was the Companies Act through the Companies Act (Amendment) Order 2014 which came into effect on 1 January 2015. An obligation was introduced for companies to require all nominees to disclose the identity of each person for whom the shares are held (s. 65, Companies Act). Fraudulently providing information would be liable to a fine up to BND 5 000 (EUR 3 282) and/or imprisonment up to two years. Companies are also required to maintain a register of disclosure of nominee shareholdings (s. 65(5), Companies Act) thus ensuring the availability of identity information of persons for whom the nominees represent. Companies' compliance with this requirement in practice will be assessed during the Phase 2 review.

31. Brunei authorities also highlight that these two areas of amendments complement existing provisions under the Business Names Act (effective 1 March 1958) which require the registration of all types of nominees having a place of business within Brunei (s. 5, Business Names Act). This requirement is useful for identifying persons acting as nominees and for cross-checking that companies have complied with their obligations, but does not on itself enable the Bruneian authorities to ensure the availability of identity information of all owners of the companies whom the nominees represent.

32. The above amendments address the gap identified in the 2011 Report, expressly requiring all companies to obtain identity information of the ultimate shareholders whom the nominees represent, and for all lawyers, accountants and registered agents to conduct CDD measures and obtain information of the persons they represent. The recommendation has therefore been removed.

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

33. The 2011 Report noted that share warrants may be issued by companies limited by shares formed under the Companies Act if so authorised under their articles of association (s. 73(1) CA), and there were insufficient mechanisms in place that ensure the availability of information allowing for identification of the owners of previously issued share warrants to bearer. It was recommended that Brunei should either take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of share warrants to bearer or eliminate such share warrants.

34. The Companies Act has been amended to expressly prohibit companies from issuing any share warrant which enables the shares to be transferred by delivery of the warrant (s. 73, Companies Act). The amendment took effect on 1 January 2015. In addition, a transition period was provided for existing holders of share warrants to have up to 31 December 2015 to surrender the warrants for cancellation and have their names entered as a member in the register of members (s. 97(2)). Brunei authorities have indicated that they are not aware of any company that has issued share warrants. As share warrants are no longer permitted as of 1 January 2015, any share warrant held by any person after the deadline of 31 December 2015 would not have legal effect and cannot be surrendered thereafter. Brunei authorities indicate that the possibility of any share warrants that may be in circulation is very minimal although there are also no statistics available as regards the number of companies limited by shares that may be allowed to issue share warrants. The Phase 2 review will examine the legislative changes in practice.

35. These legal amendments are sufficient in identifying owners of the share warrants surrendered and the prohibition of share warrants in the law ensures the risk concerning share warrants to bearer is mitigated. The recommendation has therefore been removed.

36. It was also identified in the 2011 Report that while all shares in an IBC must be registered and no shares may be issued to bearer (s. 5(5), IBCO), IBCs are permitted to issue warrants (s. 17(2)(d)) which the holder of the warrant can trade such that the bearer of it can redeem the warrant for the issued shares. The 2011 Report noted that it may present the same risks as bearer shares and the issue was deferred for further investigation in the course of

the Phase 2 review. A closer inspection of the IBCO indicates that while IBCs are permitted to issue warrants (s. 17(2)(d)), there is no indication in the provisions that such warrants include share warrants “to bearer”. This interpretation of the provisions provides greater assurance that the risk presented by share warrants to bearer in Brunei would be minimised. There have been no legal amendments with respect to this matter since the 2011 Report.

37. In any case, Brunei authorities have since clarified that share warrants to bearer are also prohibited, as in accordance to the same provision pertaining to the prohibition of shares issued to bearer (s. 5(5), IBCO). This is on the basis that “shares” is defined under the IBCO to include warrants (s. 2(1), IBCO) and therefore the prohibition of *shares* to bearer would extend to *share warrants* to bearer. It should be examined in greater detail during the Phase 2 review the mechanisms used by the Brunei authorities in practice to ensure that the prohibition on issuing shares and/or share warrants to bearer is observed by all entities, including IBCs.

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

38. The 2011 Report noted that comprehensive, up-to-date ownership and identity information is available in respect of all partnerships operating in Brunei. Such information is either filed with the Registry of Companies (for domestic partnerships and LLPs) or kept at the licensed agent’s registered office (for ILPs). This is complemented by AML obligations on a wide range of financial institutions. No changes have been made since.

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

39. The 2011 Report concluded that a combination of requirements under the International Trusts Order, 2000 (ITO) and the Registered Agents and Trustees Licensing Order, 2000 (RATLO) result in full identity and ownership information being available in respect of all trusts formed under the ITO. However, for the common law trusts that are formed with the assistance of lawyers, the lack of binding AML/CFT guidelines for lawyers may result in information on the settlors or beneficiaries not being available to the competent authority. It was recommended that an obligation should be established in Brunei to maintain information on the settlors, trustees and beneficiaries of all types of trusts.

40. Two changes have been made to the legal framework relating to trusts. The first change concerns express trusts formed under common law and addresses the recommendation pertaining to trusts under element A.1. A Criminal Asset Recovery Order was issued in 2012, which came into effect on 16 June 2012, introduced requirements for identity information on the trustees, settlor and beneficiary of the express trust to be obtained and

verified (s. 6(1)(c), Criminal Asset Recovery Order). This obligation applies to financial institutions and designated non-financial business and professions, which cover “advocates and solicitors, notaries, other independent legal professions and accountants” (s. 2(1)). Failure to fulfil these obligations is liable to penalties which include a fine up to BND 1 000 000 (EUR 656 300) and imprisonment up to one year. Continuing offence would include a further fine of BND 100 000 (EUR 65 630) for every day during which the offence continues (s. 24). These provisions are sufficient to ensure the availability of all identity information of trustees, settlors and beneficiaries must be kept, and therefore addresses the recommendation in element A.1 pertaining to common law trusts.

41. The second change complements existing obligations of trustees of international trusts to keep identity information of all parties to the trust. Such obligations were assessed to be in line with the standard in the 2011 Report. A Notice to Registered Agents and Licensed Trustee (Prevention of Money Laundering and Combating the Financing of Terrorism) was issued and came into effect on 4 April 2012. The 2011 Report noted the forthcoming issuance of this notice. The effect of this Notice clarifies the scope of “reasonable measures” that licensed trustees of international trusts should take in identifying their clients, which entails obtaining information “sufficient to identify and verify the identities of the beneficial owner” (para 4.15, Notice to Registered Agents and Licensed Trustees). While the Notice does not expressly extend the obligation to include identifying the settlors, the express obligations under the International Trust Order, as assessed in the 2011 Report are sufficient in ensuring the availability of information on the identity of all parties since trustees are obligated to identify the trustee, settlor, and beneficiaries of international trusts (s. 85-90, International Trust Order). The Phase 2 review will examine if all obligations analysed in both the 2011 Report and this supplementary report ensure the availability in practice of all ownership information of trusts.

### ***Foundations (ToR A.1.5) and Other Relevant Entities and Arrangements (ToR A.1.6)***

42. The 2011 Report noted that there is no statute which permits the establishment of foundations under Bruneian law and the two entities called “foundations” established under specific laws<sup>4</sup> have charitable purposes and thus are outside the scope of the TOR. The non-profit organisations (NPOs) also qualify as companies operating for “charitable purposes” and are therefore considered outside the scope of the TOR. This has not changed since.

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4. The Yayasan Sultan Haji Hassanal Bolkiah Act and the Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans Act.

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

43. The 2011 Report concluded that enforcement provisions are in place to ensure all relevant entities maintain information and/or provide it to government authorities as required under the various laws. The two main enforcement provisions introduced with the amendments are:

- Failure by FICs to observe obligations to keep identity information of its shareholders and lodge returns with the Registrar reporting changes of its shareholders or register of members, would be liable to general penalties under the Order which include imprisonment up to two years and a fine up to BND 100 000 (EUR 65 630) (s. 158(2), IBCO).
- Failure by financial institutions, designated non-financial business and professions and registered agents and licensed trustees to fulfil obligations to keep identity information on their customers is liable to penalties which include a fine up to BND 1 000 000 (EUR 656 300) and imprisonment up to one year. Continuing offence would include a further fine of BND 100 000 (EUR 65 630) for every day during which the offence continues (s.24, Criminal Asset Recovery Order and s.34(2), AMBD Order).

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

**Determination and factors underlying recommendations**

| Phase 1 determination   |  |
|---|--|
| The element is <b>not</b> in place.   |  |
| Factors underlying recommendations  | Recommendations  |
| Companies incorporated outside Brunei which have their place of effective management in Brunei are not expressly required to keep information on their members or shareholders. The requirements applying to foreign international companies are not clear. | An express obligation should be established for foreign companies and Foreign International Companies having sufficient nexus with Brunei to keep identity information concerning their members or shareholders. |
| Nominees that are not financial service licensees are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.  | An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.  |

| Phase 1 determination   |  |
|---|--|
| The element is <b>not</b> in place.   |  |
| Factors underlying recommendations  | Recommendations  |
| For share warrants to bearer issued by companies formed under the Companies Act there are insufficient mechanisms in place that ensure the availability of information allowing for identification of the owners of previously issued share warrants to bearer. | Brunei should either take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of share warrants to bearer or eliminate such share warrants. |
| There is no specific requirement that information concerning the settlor, trustees and beneficiaries of express trusts formed under common law be maintained.   | An obligation should be established in Brunei to maintain information on the settlors, trustees and beneficiaries of all types of trusts.  |

## A.2. Accounting records

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

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

45. The 2011 Report concluded that Brunei legislation did not ensure that reliable accounting records were kept for companies formed pursuant to the International Business Companies Order, nor for domestic partnerships or trusts. In addition, obligations to keep underlying documentation only apply to entities subject to income tax and there were no express obligations for all other entities. There were also no clear retention period rules for accounting information. It was recommended that Brunei ensures all relevant entities and arrangements should be required to maintain reliable accounting records and underlying documentation for a minimum of five years.

46. Amendments were made in two areas to address the recommendations. First, the Record Keeping (Business) Order 2015 which came into effect on 23 June 2015 under the Constitution (Art. 83(3)) requires every business to keep and maintain records of every transaction carried out in respect of the business, and issue a printed receipt serially numbered for every sum received in respect of goods sold or services performed in the course of the business (s. 5(1)).

47. “Records” include all accounting records and underlying documentation required under the standard, such as “books of account recording

receipts, payments, incomes and expenditure; invoices, vouchers, receipts and such other documents as in the opinion of the Competent Authority are necessary to verify the entries in any books of account; and any records relating to any business” (s. 5(5)). It may be read that such detailed requirements of the records to be maintained would correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time and allow financial statements to be prepared. The retention period of such records is also consistent with the standard with all records to be retained for at least five years from the date the transaction takes place on or after the commencement of this Order (s. 5(2)).

48. These provisions under the Record Keeping (Business) Order are in line with the requirements under the standard. The Order also covers a broad scope and applies to all persons carrying on or exercising any “business” which is defined as including “every form of trade, commerce, craftsmanship, calling, profession, vocation and any activity carried on for the purposes of gain”. This broad definition, especially the reference to “any activity carried on for the purposes of gain”, ensures that the requirements of the Record Keeping (Business) Order apply to all entities in Brunei, including all domestic and foreign companies incorporated or registered under the Companies Act, partnerships, trusts, and all entities formed under Brunei’s International Financial Centre (BIFC) legislation such as international business companies, international limited partnerships and international trusts. This covers all relevant entities in Brunei for purposes of this review and is in line with the standard. Brunei has advised that the intention of a fresh, separate and independent legislation on the subject is to ensure its universal application to all entities. As is the practice whenever new legislation is introduced, Brunei authorities are also in the process of launching awareness campaigns to ensure that all stakeholders are well aware of their statutory obligations under the new legislation. In addition, there are enforcement provisions that any person found to have failed to comply with the record keeping obligation would be guilty of an offence (s. 5(4)), and is liable on conviction to a fine not exceeding BND 10 000 (EUR 6 563). The application of these new rules and the extent to which they are implemented by all entities as intended will be further examined during the Phase 2 review.

49. The second area where amendments were made was the International Business Companies Order that complements the requirements under the Record Keeping (Business) Order. The amendments under the International Business Companies Order which came into effect on 23 November 2013 were made to introduce specific obligations for all IBCs, FICs and DCCs to keep proper accounting and other records that will “sufficiently explain the transaction and financial position of the company” (s. 93(1), International Business Companies Order). Financial statements must also be prepared annually for the company’s general meeting (s. 93(3)) which supports the fact that proper accounting records must be kept in order to report on the profit and loss and

balance sheet accounts. It is also provided that “accounts” must be kept and be available at all times to be inspected by any director of the company (s. 93(2)). Since these accounts are to explain the transaction and financial position of the company and must be readily available at any time to be inspected, it may be inferred that this would include underlying documentation which details records of money received and expended, sales and purchases and records of the assets and liabilities of the entities. Nonetheless, all IBCs, FICs and DCCs would also be subjected to the requirements under the Record Keeping (Business) Order that applies to all entities to keep all underlying documentation as required under the standard, including “books of account recording receipts, payments, incomes and expenditure; invoices, vouchers, receipts and such other documents as in the opinion of the Competent Authority are necessary to verify the entries in any books of account; and any records relating to any business” (s. 5(5)). The International Business Companies Order also indicates that such records would have to be kept in Brunei for at least seven years from the date of completion of the transactions to which they relate (s. 93(4)). These requirements are in line with the TOR.

### *Conclusion*

50. The provisions under the Record Keeping (Business) Order, primarily, and the amendments made to the International Business Companies Order address all areas highlighted in the two recommendations which have thus been removed. The determination has been changed to “in place”.

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

| <b>Phase 1 determination</b>   |   |
|--|---|
| <b>The element is not in place.</b>  |   |
| <b>Factors underlying recommendations</b>  | <b>Recommendations</b>  |
| Brunei legislation does not ensure that reliable accounting records are kept for companies formed pursuant to the International Business Companies Order, nor for domestic partnerships or trusts. | All relevant entities and arrangements should be required to maintain reliable accounting records for a minimum of 5 years.       |
| Obligations to keep underlying documentation only apply to entities subject to income tax, that is companies formed under the Companies Act and foreign companies carrying on business in Brunei.  | All relevant entities and arrangements should be required to maintain reliable underlying documentation for a minimum of 5 years. |



### A.3. Banking information

Banking information should be available for all account-holders.

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

51. The 2011 Report found that Brunei has a legal framework in place to ensure the availability of relevant banking information for all account holders. No relevant legislative changes have been made since the 2011 Report.

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

| <b>Phase 1 determination</b>    |
|---------------------------------|
| <b>The element is in place.</b> |

## B. Access to information

### Overview

52. A variety of information may be needed in a tax inquiry 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 Brunei’s legal and regulatory framework gives to the authorities access powers that cover relevant persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

53. The 2011 Report found significant deficiencies concerning the ability of the competent authority to access information for EOI purposes and four recommendations were made in respect of element B.1. The deficiencies were related to the restriction to obtaining information for non-domestic purposes since the EOI agreements were not “prescribed” as would be necessary for the exercise of access powers to obtain all information. There were also restrictions on the conditions to which Brunei would accede to an EOI request. In addition, there were no clear access powers for entities formed under BIFC legislation, and statutory obligations to observe secrecy were found to restrict the obtaining of information relating to international trusts. Brunei has since taken measures to address all recommendations.

54. Amendments were made to the Income Tax Act to remove the requirement to “prescribe” arrangements thereby allowing the competent authority to exercise all access powers in respect of requests under all EOI agreements in force and regardless of domestic tax interest. Brunei has also removed the restriction on the conditions to which it may accede to an EOI request by clarifying that the name and address of the person believed to have possession or control of the information will be required to be included in the EOI request from its EOI partner only “to the extent known”. The two recommendations in respect of these issues have been removed.

55. As regards to accessing information in respect of entities formed under the BIFC legislation, including international trusts, the Record Keeping (Business) Order was introduced to provide access powers to obtain information from all entities that conduct a business in Brunei. As was analysed under A.2, and which Brunei authorities also confirm, all entities formed under the BIFC legislation would therefore be subjected to these obligations. An exception exists as regards international trusts (also a BIFC entity) since the Order did not expressly override the existing secrecy provisions under the ITO and RATLO which therefore restricts the use of the new Order. However, a letter issued by AMBD in 2011 clarifies it can exercise its access powers to obtain all information necessary for EOI purposes from the licensed trustees of international trusts and share the information with the competent authority. The respective legal provisions under the AMBD Order pertaining to AMBD's "Co-operation with the Government" also appears to support the AMBD's authority to do so, notwithstanding secrecy provisions under the RATLO. As the changes introduced improve overall accessibility to information within the legal framework, the recommendation pertaining to accessing information on BIFC entities has therefore been removed. However, given the ambiguities that remain as regards the full extent to which the AMBD can exert its discretion and authority to exercise its access powers to obtain from its supervised entities information protected by statutory secrecy obligation and share it with the competent authority for EOI purposes, the fourth recommendation has been retained that Brunei should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on international trusts, do not prevent effective exchange of information for tax purposes.

56. Significant improvements have been made in the legal and regulatory framework of Brunei which are sufficient to change the determination of element B.1 to "in place, but certain aspects of the legal implementation of the element need improvement".

57. No relevant legislative changes have been made since the 2011 Report in respect of element B.2, which therefore remains "in place" without any recommendations.

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

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

### *Ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2), Use of information gathering measures absent domestic tax interest (ToR B.1.3)*

58. The 2011 Report noted that Brunei’s Competent Authority, the Collector of Income Tax, has broad powers to access and obtain information on any person’s income at any time and from any person, including persons who are in possession and control of the information. However, the recommendations given in the 2011 Report highlighted the following restrictions that would have prevented the Collector in obtaining information:

- domestic tax access powers could only be used for EOI purposes in respect of prescribed DTCs;
- if the requested information related to IBCs, international partnerships, international trusts<sup>5</sup> and other entities formed under the BIFC legislation;
- if the “name and address of any person believed to have possession or control of the information requested” was not provided in the EOI request; and
- in respect of information on international trusts as the trustees were licensed under the Registered Agents and Trustees Licensing Order which do not provide exceptions to their secrecy provisions (also addressed under B.1.5).

59. As regards the first restriction, the 2011 Report concluded that the Collector would not be able to collect any information (including bank information) where it is not required for its own tax purposes. Such information could only be obtained if it was related to an EOI request under one of

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5. As detailed in the 2011 Report, an IBC and international partnerships can be formed under the International Business Companies Order. An IBC can only be formed by a registered agent under the Registered Agents and Trustees Licensing Order (RATLO); and an international partnership must have at least one partner which is an IBC, a trust corporation or another international partnership. An international trust is formed under the International Trust Order where one of its trustees is licensed under the RATLO.

the “prescribed arrangements” of the Income Tax Act where the Collector would have access powers to obtain information regarding any person’s “tax position” (s. 86F, s. 55-55C) and where information was protected by bank secrecy, it could be obtained through a court order (s. 86J). However, as none of Brunei’s agreements were declared as “prescribed arrangements” through a Sultan’s Order, the Collector would not have been able to obtain banking information or other information not required for its own tax purposes. In addition, as the Income Tax Act only provided for DTCs to be considered as “prescribed arrangements”, the overriding provisions would not apply to any TIEA that Brunei would have entered into.

60. Brunei has since addressed the first restriction through the Income Tax Act (Amendment) (No. 2) Order 2012 which came into effect on 20 December 2012. The Order removed the requirement for arrangements to be “prescribed” through a Sultan’s Order, and to have “arrangements” apply to TIEAs in addition to DTCs (s. 86A(1), Income Tax Act). The amendment also provides for the definition of a TIEA also to refer to “an arrangement to exchange information on tax matters” and therefore not limited to just TIEAs but any arrangement that includes an exchange of information mechanism for tax matters (s. 41). This may include other multilateral exchange of information mechanisms that Brunei may wish to enter into in the future. The effect of these amendments is that the Collector can now access all information in response to an EOI request made under any of Brunei’s DTCs or TIEAs. The Collector can also proceed to obtain a court order for information protected by bank secrecy. However, the Income Tax Act does not expressly override statutory secrecy obligations which is discussed as part of the fourth restriction in the later paragraphs.

61. Regarding the second restriction, the 2011 Report concluded that the Collector would not be able to exercise its access powers under the Income Tax Act to obtain ownership, accounting and banking information related to IBCs, international partnerships, international trusts and other entities formed under the BIFC legislation. The basis of this was two-fold:

- a. All these entities are expressly excluded from any kind of tax and tax reporting obligations and not covered under the scope of the ITA, irrespective whether the request was made under a “prescribed” arrangement.
- b. The 2011 Report then explored if information of these entities could instead be sought from their registered agents and licensed trustees. However, the 2011 Report concluded that this was not possible since the ITA does not expressly override secrecy provisions, including those applying to registered agents and licensed trustees under the RATLO. This led to the fourth restriction (recommendation) of the 2011 Report. It was noted that the registered agents and licensed

trustees were under the supervision of the AMBD and while the AMBD might have access to the information related to these entities, it was not clear if the AMBD was permitted to share the information with the competent authority. In addition, it was also noted that the information that the Brunei tax authorities could obtain from the AMBD only included some statistics and information held by the AMBD (s. 45 and 47, AMBDO).

62. For this second restriction, the 2011 Report concluded that for prescribed arrangements, the access powers of Brunei's competent authority under the Income Tax Act do not normally apply to IBCs, international partnerships, international trusts and other entities formed under the BIFC legislation as all these entities are expressly excluded from any kind of tax and tax reporting obligations. These entities are nonetheless required to keep relevant information at their registered office or at the office of their respective registered agents. The Monetary Authority can obtain such information in certain circumstances. It was therefore recommended in the 2011 Report that apart from prescribing all EOI arrangements, Brunei should also enact legislation ensuring that the competent authority can access information on entities under BIFC legislation for EOI purposes.

63. To address the second restriction, Brunei introduced the Record Keeping (Business) Order which came into effect on 23 June 2015 that imposes obligations on all persons carrying on or exercising any business. The provisions in this law are "in addition to and not in derogation of any provisions of any other written law" (s. 2). This Order introduced the obligation for all businesses to keep accounting records (as analysed in A.2) and provides the "competent authority" access powers to obtain information on all "businesses" in Brunei including "every trade, commerce, craftsmanship, calling, profession, vocation and any activity carried on for the purposes of gain" (s. 3). Brunei authorities have advised that the purpose of this Order is to provide clear access powers to the competent authority, which is designated to the Collector of Income Tax, to obtain information from any persons, including from the entities formed under the BIFC legislation.

64. While the Order imposes the obligation on all businesses to maintain "records" pertaining to accounting information as analysed in A.2, the access powers are broader and applicable to any type of information. Apart from requiring any person through issuance of a notice, to submit to the competent authority any "record in such form as may be approved by the competent authority" (s. 7), the competent authority can also "in addition or alternatively" require any person carrying on or exercising a business to produce for examination "any books, documents, accounts and records which the competent authority may deem necessary" (s. 8). This would include access by the competent authority to any type of information – ownership, accounting and banking

information. In addition, the competent authority can have full and free access to any premise, information that may be kept encrypted and can seize any information kept on any device “for any of the purposes of this Order” (s. 9(1)). Since one of the purposes to which the competent authority can disclose the information obtained is for EOI under any arrangements made by Brunei with another country (s. 12(2)), these provisions taken together, allow the competent authority broader access powers to obtain any information. This separate set of powers complement the access powers provided under the ITA. The enforcement provisions also ensure that all persons comply to produce any information required or would be found guilty of an offence and liable to a fine not exceeding BND 1000 (EUR 656) and BND 50 (EUR 33) for every day during which the offence continues after conviction (s. 10(1)).

65. The preceding paragraphs assess that the access powers under the Record Keeping (Business) Order apply to obtaining any information from all businesses, including entities formed under BIFC legislation. However, the access powers continue to be limited as regards persons who may be “under any statutory obligation to observe secrecy” (s. 9(2)). This means that information cannot be obtained from international trusts or through their licensed trustees registered under the RATLO given the statutory secrecy obligations under the International Trusts Order (s. 90(3)(c)) and the RATLO (s. 35). This links to the fourth restriction highlighted in the 2011 Report, which is discussed in subsequent paragraphs. The 2011 Report also noted that provisions protecting the confidentiality of customer information are also found in section 77 of the Insurance Order, section 77 of the Takaful Order, sections 4 and 40-42 of the International Insurance and Takaful Order, sections 33-34 of the Mutual Funds Order (now replaced by sections 47-48 of the Securities Markets Order, 2013)<sup>6</sup> and section 29 of the AMBDO.

66. To address this fourth restriction where information protected by statutory secrecy obligation remains inaccessible, Brunei authorities advise that the information can be obtained through the AMBD. The AMBD is Brunei’s central bank and the regulatory authority for all entities formed under the BIFC legislation, its registered agents and licensed trustees as well as the other entities listed above that are subjected to statutory secrecy obligations.

67. The use of the AMBD’s access powers for tax information exchange purposes are expressly confirmed through a letter issued to Brunei’s competent

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6. The Securities Markets Order, 2013, came into force in June 2013 and replaces the Mutual Funds Order, 2011 and the Securities Order, 2001. The AMBD continues to be the supervisory authority referenced to in the Securities Markets Order which indicates that “any reference in any written law to the repealed Order or any provision thereof shall, as from the commencement of this Order, be a reference to this Order or the corresponding provision of this Order.” (s. 271(5)).

authority on 16 September 2011 which states that the AMBD will provide any information to the competent authority when so required “in respect of international trusts and other entities formed under the BIFC legislation”. This letter is published on the AMBD’s public website and which Brunei has confirmed takes effect in respect of all entities under the AMBD’s supervision. In respect of international trusts and other entities formed under the BIFC legislation, the AMBD can therefore obtain all information necessary for EOI purposes from the registered agents and licensed trustees and share the information with the competent authority. This is also supported by the following analysis of the application of AMBD’s letter in the legal framework:

- AMBD’s letter rendering assistance to the competent authority is consistent with provisions in the AMBD Order pertaining to AMBD’s “Co-operation with Government” that states the AMBD “shall, on request of the Government, provide the Government with information regarding the functions of the Authority (AMBD), specific information relating to the supervised banks and financial institutions may be provided only subject to such restrictions to preserve confidentiality as the Authority (AMBD) may consider appropriate” (s. 51(3)). This provision appears to enable the AMBD to have the discretion to share information with the competent authority notwithstanding confidentiality obligations. Further, since the AMBD Order prevails over any other written law relating to the “exercise of the powers and the performance of the functions” of the AMBD (s. 73), it may be read that the AMBD has the discretion and authority to proceed in sharing the information notwithstanding the secrecy provisions in the various legislation of the institutions it supervises, including registered agents and licensed trustees under the RATLO. Brunei authorities advise that there is no limit to the type of information that may be requested from its supervised entities and is deemed to include information of the entity’s account holders.
- The AMBD Order also gives the AMBD express authority over its supervised entities, indicating that it is “charged with the general administration of the functions and duties” and the “exercised of the functions and duties” imposed on the AMBD under the various laws (s. 56(5)). Such laws cover all entities under the BIFC legislation as well as other laws which were highlighted as containing secrecy provisions – i.e. the Insurance Order, Takaful Order, International Insurance and Takaful Order, International Business Companies Order, International Limited Partnerships Order, International Trusts Order, Registered Agents and Trustees Licensing Order and the Securities Markets Order 2013<sup>7</sup>.

7. Replaces the Mutual Funds Order, 2001 and the Securities Order, 2001.



- This large extent of AMBD’s authority over its supervised entities appears to enable it to access from its supervised entities the full range of information for EOI purposes. The AMBD Order provides that the AMBD is “exclusively responsible for the regulation, licensing, registration and supervision” (s. 42(1)) of “banks and financial institutions” which are required to “furnish the Authority (AMBD) information concerning their operations and financial condition as the Authority (AMBD) may require” (s. 42(3)). The AMBD also has authority to request any information from any bank or financial institution if it thinks it “necessary in the public interest” (s. 54(1)). The broad term “public interest” can relate to governmental purposes which is taken by Brunei authorities to cover EOI purposes. Brunei authorities also advise that under these sections, it can obtain any financial information on the entities and its account holders. “Financial institutions” cover registered agents and licensed trustees under the RATLO and the other entities that were identified in the 2011 Report to have statutory secrecy obligations such as insurers registered under the Insurance Order, Takaful Order, International Insurance and Takaful Order, finance company under the Finance Companies Act and the Securities Markets Order (s. 2).
- Adequate enforcement provisions also ensure that the supervised entities provide the requested information to the AMBD. This is done through issuance of “directions for the purpose of securing that effect is given to any such request” (s. 54(1)). The supervised entity can make representations in response to such a direction (s. 54(2)) to which the AMBD would consider but has authority to make the final decision and compel the production of information (s. 54(3)). Any supervised entity that fails or refuses to comply would be guilty of an offence and liable on conviction to a fine not exceeding BND 20 000 (EUR 13 126) (s. 54(4)).

68. In view of the above, the second and fourth restrictions appear to be addressed through the introduction of the Record Keeping (Business) Order to obtain information from entities under BIFC legislation or through the AMBD’s authority to obtain information from the licensed trustees and financial institutions it supervises. However, a few ambiguities remain:

- While it appears that the AMBD has authority to access information from its supervised entities, including information protected under statutory secrecy obligation, it is not ensured in the legal framework that the AMBD is obligated to share such information with the competent authority for EOI purposes in all cases. It is not clear when the AMBD is at discretion to provide the competent authority with information when it “may consider appropriate” and “subject to restrictions

to preserve confidentiality”. Brunei authorities advise that when disclosing information to the competent authority, the AMBD would require a written undertaking that such information shall only be used (including disclosure to a third party) in order to meet the government’s international obligation in responding to an EOI request.

- There is also insufficient certainty whether the access route through the AMBD can be relied on for all information as the legal framework again provides the AMBD discretion to determine if the information it has to seek from the supervised entity is “necessary in the public interest”. This may pose a possible restriction and presents a risk that the AMBD’s powers could be challenged by the parties which are protected from disclosing information. A possible contention is that the information to be obtained by the AMBD in response to an EOI request could be considered not within the scope of the AMBD’s supervisory functions and that AMBD’s discretionary authority to share information notwithstanding confidentiality obligations could be called into question.

69. Some uncertainties therefore remain, especially affecting international trusts which are key entities relevant for purposes of this review. The fourth recommendation has thus been retained that Brunei should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on international trusts, do not prevent effective exchange of information for tax purposes.

70. The third restriction highlighted in the 2011 Report was that one of the items that must be included in a request for information is the “name and address of any person believed to have possession or control of the information requested” (para 6, Fourth Schedule, ITA). This was assessed to be restrictive since the standard only requires that this information be furnished only “to the extent known”. Brunei has accordingly amended the Schedule to remove this restriction by adding the phrase “to the extent known” for this particular item, thus bringing it in line with the standard.

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

71. The 2011 Report concluded that Brunei had in place effective enforcement provisions to compel the production of information for EOI purposes. Under the recently introduced Record Keeping (Business) Order, there are enforcement provisions to ensure that all persons comply to produce any information required or would be found guilty of an offence and liable to a fine not exceeding BND 1000 (EUR 656) and BND 50 (EUR 33) for every day during which the offence continues after conviction (s. 10(1)).

72. Following the AMBD’s confirmation in its letter of 16 September 2011 to provide the competent authority any information requested from any of its supervised entities, it should also be noted that the enforcement provisions in the AMBD Order are adequate to ensure that the supervised entities comply. Any supervised entity that fails or refuses to comply with the AMBD’s request for information would be guilty of an offence and liable on conviction to a fine not exceeding BND 20 000 (EUR 13 126) (s. 54(4), AMBD Order).

73. There have been no other changes since the 2011 Report. The effectiveness of these enforcement provisions in practice will be examined during the Phase 2 review.

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

74. The 2011 Report concluded that the fourth restriction to obtaining information on international trusts was due to specific secrecy provisions in the ITO and the RATLO and a recommendation was made. As analysed above in B.1.1, B.1.2 and B.1.3, while a new Record Keeping (Business) Order was introduced to enable wide access to information from all entities in Brunei, including BIFC entities, it continued to provide for an exception to persons that have statutory obligation to observe secrecy. In this regard, the secrecy provisions under the ITO and RATLO would thus continue to apply as regards international trusts but, as described under B.1.1, B.1.2 and B.1.3 above, information concerning such entities can be obtained by the AMBD. However, it is not clear the full extent of AMBD’s authority to exercise its access powers to obtain information on its supervised entities and provide it to the competent authority notwithstanding any confidentiality obligations. The recommendation in the 2011 Report is thus retained that Brunei should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on international trusts, do not prevent effective exchange of information for tax purposes. The Phase 2 review should assess if there is any restriction encountered in practice.

### ***Conclusion***

75. Brunei has taken measures to address all recommendations. The removal of the requirement to “prescribe” arrangements ensures that the competent authority can exercise all access powers in respect of requests under all EOI agreements in force. Brunei has also clarified that the name and address of the person believed to have possession or control of the information will be required only “to the extent known”. The two recommendations in respect of these issues have been removed.

76. As regards to accessing information in respect of entities formed under the BIFC, including international trusts, the new legislation introduced

– Record Keeping (Business) Order provides access powers to obtain information from all entities, including those formed under BIFC legislation. An exception exists as regards entities protected under statutory secrecy obligations, such as international trusts (also a BIFC entity) since the Order did not expressly override the existing secrecy provisions under the ITO and RATLO which therefore restricts the use of the new Order. However, AMBD’s published letter of 16 September 2011 clarifies that it can obtain all information necessary for EOI purposes from the licensed trustees of international trusts, and share the information with the competent authority. The respective legal provisions under the AMBD Order support the AMBD’s authority to do so, notwithstanding secrecy provisions under the RATLO. As the changes introduced improve overall accessibility to information within the legal framework, the recommendation pertaining to accessing information on BIFC entities has been removed. However, given the ambiguities that remain as regards the full extent to which the AMBD can exert its discretion and authority to exercise its access powers to obtain from its supervised entities information protected by statutory secrecy obligation and share it with the competent authority for EOI purposes, the fourth recommendation has been retained that Brunei should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on international trusts, do not prevent effective exchange of information for tax purposes. It should also be assessed in the Phase 2 review the practical application of Brunei’s legal framework in accessing the information. In view of this recommendation, the determination for element B.1 has been changed to “in place, but certain aspects of the legal implementation of the element need improvement”.

**Determination and factors underlying recommendations**

| Phase 1 determination   |   |
|---|---|
| <b>The element is <u>not</u> in place, but certain aspects of the legal implementation of the element need improvement.</b>   |   |
| Factors underlying recommendations  | Recommendations   |
| <del>In cases where it is not required for its own tax purposes, Brunei has powers to access information (including bank information) only in respect of requests made under agreements that have been declared “prescribed arrangements” by a Sultan’s Order. So far, no such Orders have been made for any of Brunei’s agreements. Only double tax conventions can be prescribed by the Sultan.</del> | Brunei’s law should ensure that all its exchange of information agreements (regardless of their form) that are in force are declared “prescribed arrangements” by a Sultan’s Order. |

| Phase 1 determination   |  |
|---|--|
| <b>The element is <u>not</u> in place, but certain aspects of the legal implementation of the element need improvement.</b>   |  |
| Factors underlying recommendations  | Recommendations  |
| The powers to access information given to Brunei's competent authority under the Income Tax Act do not extend to information in respect of entities formed under the Brunei International Financial Centre legislation.   | Brunei should ensure that its competent authority can access information on all types of entities operating in Brunei, included those formed under the BIFC.   |
| The circumstances under which the requirement to include the name and address of the person believed to have possession or control of the information in each EOI request can be waived are not clear.  | Brunei should clarify that the name and address of the person believed to have possession or control of the information will be required only "to the extent known".   |
| The Registered Agents and Trustees Licensing Order does not provide for exceptions to their secrecy provisions for EOI purposes, <u>and while Brunei authorities advise that information may be obtained through the AMBD, it is not clear the full extent to which the AMBD can exert its discretion and authority to exercise its access powers to obtain information from its supervised entities protected by statutory secrecy obligations, such as in the case of international trusts, and share it with the competent authority for EOI purposes.</u> | Brunei should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on international trusts, do not prevent effective exchange of information for tax purposes. |

## B.2. Notification requirements and rights and safeguards

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

77. The 2011 Report found that the rights and safeguards that apply to persons in Brunei are compatible with effective exchange of information, and no relevant legislative changes have been made since 2011.

**Determination and factors underlying recommendations**

| <b>Phase 1 determination</b>    |
|---------------------------------|
| <b>The element is in place.</b> |



## C. Exchanging information

### Overview

78. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether Brunei has a network of agreements that would allow it to achieve effective exchange of information in practice.

79. In the 2011 Report, both elements C.1 and C.2 were determined to be “not in place”. These determinations arose mainly from the assessment that Brunei’s information exchange agreements had not been given effect due to the limitations of the access powers of Brunei’s competent authority to obtain information from entities established under BIFC legislation. Further, bank, mutual fund and trust information could only be exchanged in respect of “prescribed” arrangements, but none of Brunei’s agreements had been declared as “prescribed” arrangements. As discussed in Part B of this supplementary report, Brunei has addressed all of the deficiencies regarding its access powers resulting in an upgrade of the determination of element B.1 to “in place, but certain aspects of the legal implementation of the elements need improvement”. Consequently, the determinations for elements C.1 and C.2 have also been upgraded to “in place, but certain aspects of the legal implementation of the element need improvement” and “in place” respectively.

80. Regarding element C.1, a recommendation has now been added for Brunei to ensure the swift ratification of all agreements signed due to the long average period between the date when the agreement is signed to when it enters into force. In addition, 9 out of Brunei’s total 28 EOI signed agreements have not entered into force, and have been pending for up to three years. Brunei has completed ratification procedures in most cases but one DTC has been pending Brunei’s ratification for more than three years, and the other DTC pending ratification from both sides for more than five years. In view of this recommendation, the determination for element C.1 has been changed to “in place, but certain aspects of the legal implementation of the element need improvement”.



81. The 2011 Report also concluded that elements C.3 and C.4 were “in place”. The additional EOI agreements entered into by Brunei following the 2011 Report contain confidentiality provisions that meet the international standard. Those EOI agreements also ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret of information the disclosure of which would be contrary to public policy. Hence, the determinations for elements C.3 and C.4 remain unchanged.

82. The 2011 Report did not identify any issues relating to Brunei’s ability 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 or any restrictive conditions on exchange of information. Similar to the 2011 Report, this supplementary report does not address element C.5, as this involves issues of practice that will be dealt with in the Phase 2 review.

### C.1. Exchange of information mechanisms

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

83. Since the 2011 Report, Brunei has signed a further 13 agreements with new EOI partners that provide for exchange of information, expanding its EOI network to 28 jurisdictions. The new agreements include 4 DTCs and 9 TIEAs. Brunei also amended 2 of its existing DTCs with Bahrain and the UK to bring the wording closer in line with the standard.

***Foreseeably relevant standard (ToR C.1.1), In respect of all persons (ToR C.1.2), Obligation to exchange all types of information (ToR C.1.3), Absence of domestic tax interest (ToR C.1.4), Absence of dual criminality principles (ToR C.1.5), Exchange of information in both civil and criminal tax matters (ToR C.1.6) and Provide information in specific form requested (ToR C.1.7)***

84. The 2011 Report concluded that the text in all of Brunei’s EOI mechanisms were in line with the standard. However, the EOI mechanisms were not given full effect by domestic law as there was no provision granting tax authorities the power to obtain information for its exchange of information partners on entities and arrangements established under the Brunei International Financial Centre legislation. Further, bank, mutual fund and trust information could not be exchanged as Brunei’s agreements were not “prescribed” as was required under the Income Tax Act. Brunei has addressed most of these deficiencies as described in Part B of this supplementary report.

85. The 13 further agreements that provide for EOI which Brunei signed since the 2011 Report mostly contain text akin to Article 26 of the OECD Model Tax Convention and the OECD Model TIEA.

86. Paragraph 4 of the Protocol attached to the DTC with Korea signed in December 2014 includes further details on the EOI mechanism agreed in Article 25 of the DTC. When compared to Art. 5(5) of the OECD Model TIEA, it provides for additional items to be included in the EOI request to demonstrate the foreseeable relevance of the information. These additional items include “the relevance of the information to the purpose of the request” and “the details of the period within which that requesting Contracting State wishes the request to be met”. It does not appear that any of these additional items may be inconsistent with the international standard. Nonetheless, the Phase 2 assessment should examine if there is any practical implication.

87. The 2011 Report noted that Brunei’s 1951 DTC with the United Kingdom, notwithstanding that it was interpreted to be in line with standard, included language that was unclear as to whether the agreement provided for EOI where it was foreseeably relevant to the administration and enforcement of domestic tax laws. Brunei and the United Kingdom have since signed an amending agreement on 23 November 2013 to update the wording in line with that of Article 26 of the OECD Model Tax Convention, therefore eliminating any ambiguity.

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

88. The ratification process in Brunei involves a publication in the Gazette of an order made by the Sultan in Council. There has been no change to this process since the 2011 Report.

89. No recommendation was made in the 2011 Report with regard to element C.1.8. It was noted then that Brunei had 15 bilateral tax agreements, of which only three were not in force. These were a DTC with Tajikistan (signed 3 April 2010) and a TIEA with France (signed 30 December 2010). The remaining DTC with Kuwait was pending confirmation from Kuwait on the date of agreement’s entry into force.

90. Since the 2011 Report, Brunei signed a further 13 bilateral agreements. Of the total 28 bilateral tax agreements which Brunei has signed, 9 are not yet in force. The average period between when the agreement is signed and when it enters into force, including agreements which were still pending at the cut-off date of this report, is two years. Most of the agreements which are not in force have been pending for an average time of up to three years. Of these 9 agreements that have not yet entered into force, Brunei has completed its ratification processes and is awaiting confirmation of ratification by its partners on four agreements. The remaining five agreements where

Brunei has not yet completed ratification processes are the agreements with Australia, Korea, Luxembourg, Qatar and Tajikistan. The DTC with Qatar and Tajikistan is at an advanced stage of ratification with Brunei. Ratification process on the TIEA with Australia has recently commenced on both sides following the conclusion and signing of a Memorandum of Understanding (MOU) which was required before the TIEA can be ratified. The DTCs with Korea and Luxembourg were recently signed on 9 December 2014 and 14 July 2015 respectively. The DTC with Qatar has been pending Brunei's ratification for more than three years; and the DTC with Tajikistan has been pending ratification by both sides for more than five years. The delays are attributed to the internal processes requiring co-ordination across various government departments in Brunei. It is recommended that Brunei ensures the expeditious ratification of all agreements signed.

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

91. The 2011 Report concluded that Brunei's EOI agreements had not been given effect due to the limitations of the access powers of the Brunei competent authority to obtain information on entities formed under the BIFC legislation, and that it could not access bank information to respond to EOI requests as none of the EOI agreements were "prescribed". This resulted in a recommendation and a determination of element C.1. as "not in place". As discussed in Part B of this supplementary report, Brunei has addressed the deficiencies regarding its access powers, resulting in an upgrade of the determination of element B.1 to "in place, but certain aspects of the legal implementation of the element need improvement". The remaining lack of clarity on the exercise of access powers is not sufficiently serious to merit a further recommendation here that it prevents agreements from being given effect through domestic law. Consequently, the recommendation under element C.1 has been removed.

### ***Conclusion***

92. As described above, Brunei has substantially addressed the deficiencies regarding its access powers which thus consequently removed the recommendation in the 2011 Report under element C.1. Since the 2011 Report, Brunei has entered into 13 further EOI agreements bringing the total of EOI agreements to 28 of which 9 are not yet in force. The average period between the signing and entering into force of all of Brunei's EOI agreements is two years, and up to three years for agreements which are still pending entry into force. Brunei has completed ratification procedures on four agreements. The remaining five agreements where Brunei has not yet completed ratification processes are the agreements with Australia, Korea, Luxembourg, Qatar and Tajikistan. Three agreements were signed in the

past year (including the MOU with Australia) and processes are underway in Brunei and the partner jurisdictions to ratify them. However, two DTCs have been pending ratification for more than three years by Brunei and five years by both sides respectively. The delays are attributed to the internal processes involving co-ordination between various government departments in Brunei. A recommendation has been added that Brunei ensures the swift ratification of all treaties signed. The determination for C.1 has been changed to “in place, but certain aspects of the legal implementation of the element need improvement”.

### Determination and factors underlying recommendations

| Phase 1 determination  |   |
|--|---|
| <b>The element is <u>not</u> in place, but certain aspects of the legal implementation of the element need improvement.</b>  |   |
| Factors underlying recommendations   | Recommendations   |
| Brunei's agreements have not been given full effect to by domestic law as there is no provision granting tax authorities the power to obtain information for its exchange of information partners on entities and arrangements established under the Brunei International Financial Centre legislation. Further, bank, mutual fund and trust information can only be exchanged in respect of prescribed arrangements, but so far none of Brunei's agreements have been declared “prescribed” arrangements. | It is recommended that Brunei enact necessary legislation to remove various deficiencies noted in this report, which will enable it to comply with and give effect to its EOI agreements. |
| <u>Of the 28 EOI agreements signed, 9 have not entered into force and in most cases Brunei has completed its ratification procedures but two DTCs have been pending Brunei's ratification for more than three years.</u>   | <u>Brunei should ensure the ratification of all agreements signed with counterparts expeditiously.</u>  |

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

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

93. The 2011 Report concluded that Brunei has a network of EOI arrangements with relevant partners but none of them were given full effect through domestic law due to deficiencies in the access powers of the Brunei competent authority to obtain the information. As discussed in B.1 of this supplementary report, Brunei has addressed the deficiency regarding its access powers, resulting in an upgrade of the determination of element B.1 to “in place, but certain aspects of the legal implementation of the elements need improvement”. It is considered that the deficiencies identified in the 2011 Report under element B.1 are no longer sufficiently serious to have an impact on element C.2, which is primarily focused on the scope of Brunei’s network of EOI mechanisms. The recommendation has therefore been removed.

94. In the 2011 Report, it was noted that no jurisdiction advised the assessment team that Brunei had refused to negotiate or conclude an EOI agreement with it. Since the 2011 Report, Brunei has signed a further 13 agreements with new EOI partners that provide for exchange of information, expanding its EOI network to 28 jurisdictions. When peer input was sought for this supplementary report, one jurisdiction indicated that there were negotiations with Brunei on a TIEA but it was not concluded because of the “outcomes of Brunei’s 2011 Report and other priorities of both countries”. Brunei authorities have confirmed that Brunei is ready to conclude this agreement at the earliest opportunity and is in communications with the peer in this regard. As such, this occurrence does not imply any lack of willingness on the part of Brunei to conclude a TIEA with this jurisdiction.

95. Brunei has also conducted DTC negotiations with five other countries – Bosnia and Herzegovina, Belgium, Monaco, Philippines and Thailand. Some of these are pending final processes before signing takes place. Brunei has also initiated negotiations with some other jurisdictions by sending them the draft agreements for negotiation.

96. As there are no other remaining deficiencies, the determination has been changed to “in place”. Brunei should nevertheless continue to develop its EOI network with all relevant partners.

### Determination and factors underlying recommendations

| Phase 1 determination   |   |
|---|---|
| The element is <del>not</del> in place.   |   |
| Factors underlying recommendations  | Recommendations   |
| Brunei has a network of EOI arrangements with relevant partners but none of them has been given full effect through domestic law. | Brunei should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners. |
|   | Brunei should continue to develop its EOI network with all relevant partners.   |

### C.3. Confidentiality

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

#### *Information received: disclosure, use and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)*

97. The 2011 Report concluded that there were adequate provisions in Brunei to ensure confidentiality of the information received. Furthermore, all of Brunei's EOI arrangements require that any information received be treated as secret, and that disclosure of information received by the Brunei authorities under an EOI arrangement is restricted to the circumstances covered by the arrangement. For requests where the information is sought through the AMBD (as discussed under B.1.1), AMBD staff is also bound confidentiality rules that are in line with the standard. AMBD officials cannot disclose to any other person any information relating to the affairs of the Authority or of any person which he has acquired in the performance of his duties under the AMBD Order or any other written law (s.29(1)). Contravention of these confidentiality requirements would lead to a fine up to BND 20 000 (EUR 13 126) and/or imprisonment up to six years. The further 13 agreements which Brunei signed are consistent with the wording in the OECD Model Tax Convention and the Model TIEA, and therefore meet the standard.

98. As noted in the 2011 Report, the confidentiality provisions in the agreements and in Brunei's domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all

requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

#### Determination and factors underlying recommendations

| Phase 1 determination    |
|--------------------------|
| The element is in place. |

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

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

99. The 2011 Report found that the rights and safeguards applicable in Brunei did not unduly prevent or delay effective exchange of information. It was noted that the treaty with UK did not explicitly mention the exception for professional secrets but this treaty has since been updated to reflect wording consistent with the Article 26(3)(c) and (d) of the OECD Model Tax Convention.

100. All of the 13 further agreements which Brunei signed since the 2011 Report also contain wording consistent with Article 26 and Article 7 of the OECD Model Tax Convention, Model TIEA and their commentaries.

#### Determination and factors underlying recommendations

| Phase 1 determination    |
|--------------------------|
| The element is in place. |

### C.5. Timeliness of responses to requests for information

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

#### ***Responses within 90 days (ToR C.5.1), Organisational process and resources (ToR C.5.2), Absence of restrictive conditions on exchange of information (ToR C.5.3)***

101. The 2011 Report did not identify any issues relating to Brunei's ability to respond to EOI requests within 90 days, organisational processes and resources, or any restrictive conditions on the exchange of information. All but

one of the 13 agreements signed by Brunei after the 2011 Report, in particular the 9 TIEAs, adopted wording foreshadowing the timeframes in Article 5(6) of the Model TIEA regarding request acknowledgements, status updates and provision of the requested information. The TIEA with Canada provided for the requested Party to “use its best endeavours to forward the requested information to the applicant Party within a reasonable time”. Brunei authorities have confirmed that there is no intention for this provision to be inconsistent with the standard. No issues have been identified in the preparation of this supplementary report.

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

#### **Phase 1 determination**

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





## Summary of determinations and factors underlying recommendations

| Determination  | Factors underlying recommendations   | Recommendations  |
|--|--|--|
| Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>   |  |  |
| <b>The element is in place.</b>  |  |  |
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>   |  |  |
| <b>The element is in place.</b>  |  |  |
| Banking information should be available for all account-holders. <i>(ToR A.3)</i>  |  |  |
| <b>The element is in place.</b>  |  |  |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i> |  |  |
| <b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>   | The Registered Agents and Trustees Licensing Order does not provide for exceptions to their secrecy provisions for EOI purposes, and while Brunei authorities advise that information may be obtained through the AMBD, it is not clear the full extent to which the AMBD can exert its discretion and authority to exercise its access powers to obtain information from its supervised entities protected by statutory secrecy obligations, such as in the case of international trusts, and share it with the competent authority for EOI purposes. | Brunei should ensure that its domestic law provisions regarding confidentiality or secrecy duties, in particular regarding access to information on international trusts, do not prevent effective exchange of information for tax purposes. |

| Determination  | Factors underlying recommendations  | Recommendations   |
|--|---|---|
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i> |   |   |
| <b>The element is in place.</b>  |   |   |
| Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>  |   |   |
| <b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>   | Of the 28 EOI agreements signed, 9 have not entered into force and in most cases Brunei has completed its ratification procedures but two DTCs have been pending Brunei's ratification for more than three years. | Brunei should ensure the ratification of all agreements signed with counterparts expeditiously. |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>   |   |   |
| <b>The element is in place.</b>  |   | Brunei should continue to develop its EOI network with all relevant partners.                   |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>                              |   |   |
| <b>The element is in place.</b>  |   |   |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>   |   |   |
| <b>The element is in place.</b>  |   |   |
| The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>   |   |   |
| <b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>                     |   |   |

## **Annex 1: Jurisdiction’s response to the review report<sup>8</sup>**

Brunei Darussalam would like to express its gratitude to the Global Forum Secretariat and the assessment team on the tremendous work and assistance to putting together the Supplementary Phase 1 Peer Review report.

It was reported in the Brunei Darussalam Phase 1 Peer Review in 2011 that there were several deficiencies in the legal framework relating to effective Exchange of Information (EOI). Since then Brunei Darussalam has taken tremendous effort to tackle these deficiencies with significant amendments made to the legal and regulatory framework and thus setting all previously insufficient elements to be “in place”.

In respect of availability of information, Brunei Darussalam made several amendments to the Companies Act together with the International Business Companies Order to ensure the availability of ownership and identity information on all entities. In addition to this, Brunei Darussalam also introduced the Record Keeping (Business) Order, 2015, which requires any person who runs a business to keep and maintain records of bookkeeping for a period of at least 5 years. Since then, the Ministry of Finance has been actively conducting awareness campaigns to promote and educate the public on the Record Keeping (Business) Order, 2015.

On the issue of access to information, it was assessed in the Phase 1 Review in 2011 that the competent authority was previously unable to access information because none of the agreements had been declared as “prescribed arrangements”. Brunei Darussalam has amended its Income Tax Act to remove the requirement to prescribe arrangements. Furthermore, the introduction of the Record Keeping (Business) Order, 2015 together with a letter issued by our central bank – Autoriti Monetari Brunei Darussalam, provides the competent authority wider access powers to obtain information from all entities including Brunei International Financial Centre (BIFC).

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

On the issue of Exchange of Information especially in ratification, Brunei Darussalam will continue to improve its internal procedure. We have also set up an Exchange of Information office which will not only focus on requests but also streamlining processes. As of now, the Tax Information Exchange Agreement (TIEA) with Greenland has been enforced on 7 August 2015. Also, Brunei Darussalam has already informed Tajikistan that the internal ratification process for the Avoidance of Double Taxation Agreement (DTA) has been completed and as regards to the DTA with Qatar, Brunei Darussalam is currently expediting the internal ratification process. Brunei Darussalam is also actively expanding its EOI network, to date, we have 8 on-going DTA and TIEA negotiations.

Overall, we agree with the outcomes of this supplementary report and will work on addressing the recommendations swiftly as we also prepare for the Phase 2 review. As a member of the Global Forum, Brunei Darussalam is continuously committed to the implementation of the international standards of transparency and effective exchange of information for tax purposes.

## Annex 2: List of all exchange-of-information mechanisms

|    | Partner                     | Type of EOI arrangement                   | Date signed | Date in force    |
|----|-----------------------------|---|-------------|------------------|
| 1  | Australia                   | TIEA                                      | 06 Aug 2013 | Not yet in force |
| 2  | Bahrain                     | DTC (Double Tax Convention)               | 14 Jan 2008 | 18 July 2009     |
|    |                             | Protocol                                  | 14 Oct 2014 | 31 Dec 2014      |
| 3  | Canada                      | TIEA                                      | 09 May 2013 | 26 Dec 2014      |
| 4  | China, People's Republic of | DTC                                       | 21 Sep 2004 | 29 Dec 2006      |
| 5  | Denmark                     | TIEA                                      | 27 Jun 2012 | 18 March 2015    |
| 6  | Faroe Islands               | TIEA                                      | 27 Jun 2012 | Not yet in force |
| 7  | Finland                     | TIEA                                      | 27 Jun 2012 | Not yet in force |
| 8  | France                      | TIEA (Tax Information Exchange Agreement) | 30 Dec 2010 | Not yet in force |
| 9  | Greenland                   | TIEA                                      | 27 Jun 2012 | 7 Aug 2015       |
| 10 | Hong Kong, China            | DTC                                       | 20 Mar 2010 | 19 Dec 2010      |
| 11 | Iceland                     | TIEA                                      | 27 Jun 2012 | 19 April 2015    |
| 12 | Indonesia                   | DTC                                       | 27 Feb 2000 | 03 Apr 2002      |
| 13 | Japan                       | DTC                                       | 20 Jan 2009 | 19 Dec 2009      |
| 14 | Korea                       | DTC                                       | 09 Dec 2014 | Not yet in force |
|    |                             | Protocol                                  | 09 Dec 2014 | Not yet in force |
| 15 | Kuwait                      | DTC                                       | 13 Apr 2009 | 02 Jun 2011      |
| 16 | Laos                        | DTC                                       | 22 Apr 2006 | 20 Oct 2006      |
| 17 | Luxembourg                  | DTC                                       | 14 Jul 2015 | Not yet in force |
| 18 | Malaysia                    | DTC                                       | 05 Aug 2009 | 17 Jun 2010      |
| 19 | Norway                      | TIEA                                      | 27 Jun 2012 | 25 Apr 2015      |
| 20 | Oman                        | DTC                                       | 25 Feb 2008 | 28 Jun 2009      |
| 21 | Pakistan                    | DTC                                       | 20 Nov 2008 | 25 Dec 2009      |

|    | <b>Partner</b>           | <b>Type of EOI arrangement</b> | <b>Date signed</b> | <b>Date in force</b> |
|----|--------------------------|--------------------------------|--------------------|----------------------|
| 22 | Qatar                    | DTC                            | 17 Jan 2012        | Not yet in force     |
|    |                          | Protocol                       | 17 Jan 2012        | Not yet in force     |
| 23 | Singapore                | DTC                            | 19 Aug 2005        | 14 Dec 2006          |
|    |                          | Protocol                       | 13 Nov 2009        | 29 Aug 2010          |
| 24 | Sweden                   | TIEA                           | 27 Jun 2012        | Not yet in force     |
| 25 | Tajikistan               | DTC                            | 03 Apr 2010        | Not yet in force     |
| 26 | The United Arab Emirates | DTC                            | 21 May 2013        | 21 Nov 2014          |
|    |                          | Protocol                       | 21 May 2013        | 21 Nov 2014          |
| 27 | United Kingdom           | DTC                            | 08 Dec 1950        | 08 Dec 1950          |
|    |                          | Agreement to amend DTC         | 11 Dec 2012        | 19 Dec 2013          |
| 28 | Viet Nam                 | DTC                            | 16 Aug 2007        | 01 Jan 2009          |

## **Annex 3: List of laws, regulations and other relevant material**

### **New or updates to Acts, Orders, Regulations and other material**

Companies Act (Amendment) Order, 2010

Companies Act (Amendment) Order, 2014

Criminal Asset Recovery Order, 2012

Income Tax (Amendment) Order, 2012

International Business Companies (Amendment) Order, 2013

Record Keeping (Business) Order 2015

Notice to Designated Non-Financial Businesses and Professions, Prevention of Money Laundering and Combating the Financing of Terrorism, AMBD/R/21/2012/1

Notice to Registered Agents and Licensed Trustees, Prevention of Money Laundering and Combating the Financing of Terrorism, AMBD/R/34/2012/1

Letter from Autoriti Monetari Brunei Darussalam (AMBD) to the Ministry of Finance on sharing information that the AMBD obtains from the entities it supervises as required for EOI purposes, 16 September 2011

Brunei's laws can be found on the website of the Attorney General's Chambers: [www.agc.gov.bn](http://www.agc.gov.bn)





For more information  
**Global Forum on Transparency and  
Exchange of Information for Tax Purposes**  
[www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency)  
[www.eoi-tax.org](http://www.eoi-tax.org)  
Email: [gftaxcooperation@oecd.org](mailto:gftaxcooperation@oecd.org)