GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

BRUNEI DARUSSALAM

OECD

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PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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(reflecting the legal and regulatory framework
as at August 2016)

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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 130 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 and www.eoi-tax.org.

Abbreviations

AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
AML/CFT Law	Anti-Money Laundering and Countering the Financing of Terrorism Law
AMBD	Authoriti Monetari Brunei Darussalam
BIFC	Brunei International Financial Centre
CARO	Criminal Asset Recovery Order 2012
CDD	Customer Due Diligence
DTC	Double Tax Convention
EOI	Exchange of Information
KYC	Know your customer
MOF	Brunei Ministry of Finance
RATLO	Registered Agents and Trustees Licensing Order
RD	Revenue Division
RIBC	Registry of International Business Companies
ROCBN	Register of Companies and Business Names
TIEA	Tax Information Exchange Agreement

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Brunei Darussalam (hereafter referred to as "Brunei") as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three year period (1 July 2012 through 30 June 2015). The international standard, which is set out in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.

2. Brunei is a small and wealthy oil-based economy in South-East Asia. A member of the Global Forum, in 2010 Brunei passed new legislation to implement the international standards of transparency and effective exchange of information for tax purposes. Moreover since October 2011 (the date which the Phase 1 Report was published), Brunei passed several legislative amendments to address a number of the recommendations made in the 2011 Phase 1 Report. These amendments pertain to the determinations and recommendations made in respect of *(i)* availability of ownership and identity information; *(ii)* availability of accounting information; *(iii)* access to information; *(iv)* exchange of information mechanisms; and *(v)* Brunei's exchange of information network.

3. Information on the legal ownership of domestic companies, partnerships, offshore companies and other offshore entities is available to Brunei's government authorities, as are accounting records and transaction records held by financial institutions. A system of penalties supports the enforcement of these requirements.

4. Brunei has since introduced the Record Keeping (Business) Order which entered into force in 23 June 2015, which imposes the obligation on all relevant entities and arrangements to keep reliable accounting information and underlying documentation for a minimum period of five years. The Order only came into effect toward the end of the review period. The Bruneian

authorities have been focusing their efforts on educational and outreach activities and the oversight of the Order has not been developed sufficiently. It is recommended that Brunei monitors the enforcement of the Order to ensure that accounting records and underlying documentation are available in respect of all entities.

5. Brunei has made substantive amendments to its legal framework to ensure the availability of ownership information for *(i)* companies incorporated outside Brunei which have their place of effective management in Brunei, *(ii)* foreign international companies, *(iii)* persons in a nominee shareholding arrangement, and *(iv)* 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.

6. In practice, various government agencies within Brunei have been requested for ownership, accounting and banking information over the review period, and the information is generally available. It is noted though that some of the regulatory authorities (such as the Registrar for International Business Companies) are still in the primary stages of implementing an effective system of monitoring and oversight of the entities which they regulate. It is recommended that Brunei ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases.

7. Brunei has amended the Income Tax Act to remove the requirement that access to bank information for exchange of information (EOI) purposes can only be carried out for tax treaties that have been "prescribed" by the Sultan. With this legislative change, the Bruneian competent authority is able to exercise its access powers with respect to EOI requests under all tax agreements, and to obtain information on any entity covered under the Income Tax Act. Regarding access to information on international business companies and international limited partnerships formed under the Brunei International Financial Centre (BIFC) legislation and now under the jurisdiction of Autoriti Monetari Brunei Darussalam (AMBD), the new Record Keeping (Business) Order provides the Bruneian competent authority access powers to obtain the information from such entities for EOI purposes. However, it is not clear whether such the access powers apply to international trusts, which are subjected to statutory secrecy obligations under the International Trust Order (ITO) and Registered Agents and Trustees Licensing Order (RATLO).

8. The specific amendments made under the ITA to allow access to information for EOI purposes in accordance with the standard as well as the powers under Record Keeping (Business) Order to access information on

entities that are not subject to tax remain untested. Brunei is recommended to monitor the application of its access powers provided under the 2012 amendments to the ITA and the Record Keeping (Business) Order 2015 and ensure they are effective when gathering information for EOI purposes in accordance with the international standard.

9. Brunei has a network of 28 bilateral EOI relationships, of which four are not in force as at 15 September 2016. Brunei has completed its ratification processes and is awaiting confirmation of ratification by its partners for all four agreements. Brunei has taken steps to improve the communication among the authorities involved in the ratification process and is confident that going forward, the process to complete internal procedures to ratify tax agreements would be smoother, and time taken to complete the process will be shortened. Brunei's network of exchange agreements covers all its main trading partners. Comments were sought from Global Forum members in the course of the preparation of this report and one jurisdiction indicated that it has conveyed its intent to negotiate an *Agreement for Exchange of Information and Assistance in Collection with respect to Taxes* with Brunei in 2012, but Brunei has yet to respond to its request. Brunei has recently commenced TIEA negotiations with this jurisdiction and has forwarded Brunei's draft TIEA model to the jurisdiction for comments. Brunei is recommended to respond to all requests for entering into EOI agreements in a timely manner.

10. Brunei's practical experience with exchanging information is relatively limited to date. During the review period, Brunei did not receive any EOI requests. Brunei has a sound organisational structure in place and clear written procedures to respond to EOI requests. The policies and practices with respect to confidentiality also appear to be sound.

11. The changes introduced by Brunei since 2011 demonstrate its commitment to implement 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.

12. Brunei has been assigned a rating[1] for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Brunei's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Brunei has been assigned the following ratings:

1. This report reflects the legal and regulatory framework as at 1 August 2016. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

Compliant for A.3, B.2, C.1, C.3 and C.4; Largely Compliant for A.1, A.2, B.1, C.2 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Brunei is Largely Compliant.

13. A follow up report on the steps undertaken by Brunei to answer the recommendations made in this report should be provided to the PRG by June 2017 and thereafter in accordance with the process set out under the Methodology for the second round of reviews.

Introduction

Information and methodology used for the peer review of Brunei

14. The assessment of the legal and regulatory framework of Brunei was 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*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment has been conducted in three stages: Phase 1, conducted in 2011, assessed Brunei's legal and regulatory framework for transparency and the exchange of information, and was followed by a Supplementary assessment in 2015 of the improvements made by Brunei to this framework, while Phase 2, conducted in 2016, assesses the practical implementation of that framework over a three year period (1 July 2012 to 30 June 2015), as well as any amendments made to the legal and regulatory framework since the Phase 1 and Supplementary review up to 1 August 2016 (a list of relevant laws and regulations is set out in Annex 3).

15. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 1 August 2016, Brunei's responses to the Phase 1 and Phase 2 questionnaire, information supplied by exchange of information partners and explanations provided by Brunei during the on-site visit that took place from 8 to 10 March 2016 in Bandar Seri Begawan, Brunei. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance, Revenue Division, Registry of Companies and Business Names, Autoriti Monetari Brunei Darussalam, Attorney General's Chambers, Judiciary Department and Law Society of Brunei Darussalam.

16. The *Terms of Reference* break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Brunei's legal and regulatory framework and its application in practice 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. In addition, to reflect the Phase 2 component, recommendations are made concerning Brunei's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards. A summary of the findings against those elements can be found in the table at the end of the report.

17. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum secretariat. The Phase 1 assessment was conducted by a team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Ms. Mônica Sionara Schpallir Calijuri, from the Secretariat of the Federal Revenue of Brazil; Mr. Duncan Nicol, Director from the Cayman Islands' Department for International Tax Cooperation; and Ms. Francesca Vitale from the Global Forum Secretariat. The supplementary Phase 1 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. Both assessment teams examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Brunei. The 2016 Phase 2 assessment was conducted by an assessment team, which consisted of two expert assessors: Mr. Duncan Nicol, Director from the Cayman Islands' Department for International Tax Cooperation and Ms. Flor Nieto Velázquez, Subadministrator for International Audits, Tax Administration Service of Mexico; and Ms. Elaine Leong from the Global Forum Secretariat.

Overview of Brunei

18. Brunei is a sovereign state in South East Asia. Brunei's territory consists of two unconnected parts both located on the north coast of the Island of Borneo. Apart from the coastline with the South China Sea, Brunei is entirely surrounded by Malaysia. Brunei has a territory of approximately 5 765 square kilometres and a population of about 400 000. The capital is Bandar Seri Begawan. The territory is divided into four administrative districts (or "daerah"), which, in turn, are subdivided into 38 "mukims". The official language is Malay, and English is also widely spoken.

19. Brunei is a member of the Asia Pacific Economic Cooperation (APEC), the Association of Southeast Asian Nations (ASEAN), the Commonwealth, the United Nations and the World Trade Organisation. In 2010, Brunei became a member of the Global Forum.

20. Brunei's economy is small and wealthy, dominated by revenues from its substantial crude oil and natural gas reserves. The industry sector, including the oil and gas sector, constitutes by far the largest part of gross domestic product (GDP) with 62.2%, followed by services (37.0%) and agriculture (0.8%).[2] Brunei is the fourth largest oil producer in the South East Asia and the ninth largest producer of liquefied natural gas in the world. Hydrocarbon resources account for over 90% of its exports and more than 50% of its Gross Domestic Product.

21. In 2015, Brunei's economy contracted by 0.4% with Real GDP amounting to BND 18.94 billion. However, there is a rising awareness in the country of depleting natural resources and the subsequent need to diversify the economy away from its over-reliance on oil and gas. Oil production has declined in recent years and growth rates have fallen significantly. Brunei's oil reserves are expected to last 25 years, and natural gas reserves, 40 years. Plans for the future include upgrading the labour force, reducing unemployment, strengthening the banking and tourist sectors, and further widening the economic base beyond oil and gas.

22. In recent years, Brunei's authorities have tried to diversify the economy and expand into the value-added financial sector. Brunei International Financial Centre (BIFC) was established in 2000 as part of this drive towards economic diversification. A number of additional corporate forms are available to business operations in the BIFC, including international business companies, international limited partnerships, and international trusts. As of 1 January 2011, the supervision of the entities formed under the BIFC legislation as well as the other functions and prerogatives previously attributed to the BIFC have been transferred to an independent statutory body, the Autoriti Monetari Brunei Darussalam (AMBD).

23. Brunei's exports consist of three major commodities – crude oil, petroleum products and liquefied natural gas – and are largely destined for, in order, Japan, the Republic of Korea and Indonesia. Other relevant export partners are India, Australia and the United States. Brunei's main import partners, in order, are Malaysia, Singapore, Japan and other Asian jurisdictions (especially the People's Republic of China and Thailand).

2. 2008 estimates from the CIA World Factbook: https://www.cia.gov/library/publications/the-world-factbook/geos/bx.html.

24. Brunei's currency is the Bruneian dollar (BND) with a floating exchange rate of EUR 1 = BND 1.55 on 27 May 2016.[3] Since 1967 the Bruneian dollar has been pegged to the Singaporean dollar.

General information on the legal and tax system

Governance and legal system

25. Formerly a protectorate state, Brunei gained full independence from the United Kingdom in 1984. Brunei's governance is based on the country's written Constitution and the tradition of the Malay Islamic Monarchy. The Sultan of Brunei, His Majesty Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, is both head of state and head of government. Executive power is exercised by the government. The Sultan is assisted and advised by five councils, including the 16-member Council of Cabinet Ministers. The Sultan presides over the Cabinet as Prime Minister and also serves as Minister of Defence, Minister of Finance and Minister of Foreign Affairs and Trade. A Legislative Council with 29 appointed members was reactivated in September 2004, after a 20-year suspension, to play an advisory role for the Sultan. It was then dissolved on 1 September 2005 and reconstituted a day later after the new amendment of the 1959 Constitution was promulgated.[4] There are also a Religious Council and a Privy Council, whose members are all appointed by the Sultan, dealing with religious and constitutional matters respectively. All members of the advisory Councils are appointed by the Sultan. Since passage of the 1959 *Constitution*, Brunei has had one election, in 1962.

26. Brunei's legal system is based on common law, with an independent judiciary, a body of written common law judgements and statutes. There is a single national law, and no sub-national powers. The judiciary comprises the Magistrates' Courts, the High Court, the Intermediate Court and the Court of Appeals. For criminal cases the final appellate court is the Court of Appeal. Final appeal can, on agreement of both parties, be made to the Judicial Committee of the Privy Council in London in civil cases. When necessary, the common law of England and the doctrines of equity, together with statutes of general application, can be applied to fill in lacunae in Brunei's civil and commercial law (s. 2 Application of Laws Act). Brunei also has a separate system of Islamic courts that apply Shariah law in family and other matters involving Muslims.

27. Laws are generally passed by the Executive Branch as Orders pursuant to Art. 83(3) of the Constitution. Once approved by the Sultan, such

3. www.xe.com.
4. www.pmo.gov.bn/Pages/Prime-Minister.aspx.

orders are published on the Government Gazette and enter into force on the day the Sultan signs the Orders, unless there is a provision to state that the commencement date will be on a date to be appointed by the Minister with the approval of the Sultan. Each year, gazetted orders are converted into acts when the Attorney General publishes a revised edition of the new law to be included in the Laws of Brunei (s. 3 Law Revision Act). Pursuant to the Interpretation and General Clauses Act 2001, rules, regulations, orders, proclamations or other documents that have the force of law and are annexed to their relevant parent acts are considered subsidiary legislation (s. 3). The power to make subsidiary legislation is regulated under s. 13 and s. 15 of the Interpretation and General Clauses Act. Subsidiary legislation is published in the Government Gazette (s. 16).

28. Sector-specific statutes provide supervisory authorities with wide powers to issue enforceable notices on licensed institutions. The notices issued under statutory enabling powers have the status of subordinate/secondary legislation and are therefore legally binding.

29. Double taxation conventions (DTCs) are ratified upon issuance of an order by the Sultan declaring that they should have effect *notwithstanding anything in any written law* (s. 41 Income Tax Act; ITA). This means that agreements are ratified through subsidiary legislation issued under the ITA and have the force of law. As the ratification order is issued under the ITA, provisions in the ITA may prevail over provisions contained in a ratified agreement. The Sultan can declare that an arrangement should have effect only if such arrangement has been made with the government of any country outside Brunei "with a view to affording relief from double taxation and exchange of information in relation to tax under the Income Tax Act and any tax of a similar character imposed by the laws of that country". The DTC is ratified the day on which it is published in the Government Gazette as an attachment to the Sultan's order. The ratification order is made by the Sultan "in Council" (which means the Sultan acting after consultation with the Council of Ministers, but not necessarily in accordance with the advice of that Council, nor necessarily in that Council assembled). The draft ratification order is prepared by the Attorney General's Chambers (AGC). Brunei's authorities have indicated that taxation information exchange agreements (TIEAs) may also be concluded by the Government and ratified by the Sultan.

30. A complete list of all the relevant legislation and regulations is set out in Annex 3.

Tax system

31. The ITA is the main piece of legislation governing taxation in Brunei. Although the act provides for the taxation of all income derived in Brunei,

income derived by individuals, partnerships and other entities or bodies of persons is in practice exempted from tax (First Schedule (1)(a)). As a consequence, income tax is chargeable only to resident and non-resident companies. A company is resident in Brunei if the management and control of its business is exercised in Brunei. The place of incorporation is not relevant for the purpose of determining the company's tax residence. Income tax is charged on a territorial basis with a flat rate. The business income of non-resident companies is subject to tax if derived through a permanent establishment in Brunei. The rate is 22% as of the year of assessment 2011 (it was 23.5% in 2010). Capital gains are taxed as part of business income. Dividend income received by a company from the income which has already been taxed in Brunei in the hands of the distributing company is exempt. Interest payments to non-residents are subject to a withholding tax of 15%. Withholding taxes are levied at a 10% rate on royalties paid to non-residents, and at a 20% rate on payments for technical services, management or assistance fees and remunerations to non-resident directors. No withholding tax is levied on outbound dividends.

32. The ITA also provides for a number of tax incentives, including full tax exemption for companies carrying on specific types of business. Companies carrying on business in the international trade of qualifying manufactured goods, for example, benefit from a tax relief period that cannot exceed 8 years; the tax relief period cannot exceed 20 years for exporting qualifying services, 15 years for "expanding enterprises" and 11 years for companies which have been granted "pioneer", "pioneer service" or "post pioneer" status (as defined in the Investment Incentives Order 2001). Special rules apply to small and medium size enterprises as w ell as to newly incorporated companies. Companies established according to the legislation on Brunei International Financial Centre (BIFC) are not subject to tax. With the establishment of the AMBD in 2011, four divisions previously under the Ministry of Finance merged to form AMBD, namely: the Financial Institutions Division (FID), the Brunei Currency and Monetary Board (BCMB), the Brunei International Financial Center (BIFC) and part of the Research and International Division (RID).

33. Companies engaged in the exploration and production of oil and gas ("petroleum operations") are subject to the petroleum profits tax under the Income Tax (Petroleum) Act (Chapter 119). Petroleum tax is charged on income derived by resident and non-resident companies carrying on petroleum operations in Brunei and it is imposed at a rate of 55%. Income tax cannot be charged on income subject to petroleum tax (s. 45). Stamp duty is levied on a number of instruments, including mortgages, transfers of ownership and tenancy agreements.

34. The tax administration agency is the Revenue Division (RD) of Brunei's Ministry of Finance (MOF). The MOF has five departments and nine divisions and the Revenue Division is one of the nine divisions. Pursuant

to Brunei's agreements, the competent authority for exchange of information purposes is the Minister of Finance or the Minister's authorised representative. In practice, exchange of information (EOI) requests are handled by the Collector of Income Tax, who is the Minister's authorised representative. The Collector of Income Tax is also responsible for negotiating EOI agreements. He constitutes a team of negotiators before the initiation of negotiations. Negotiation teams are always headed by the Ministry of Finance, who may be assisted by representatives of the Attorney General's Chambers or the Ministry of Foreign Affairs and Trade.

35. Tax policy in Brunei is targeted at stimulating economic growth. The current corporate tax rate is 18.5%, in addition tax thresholds were introduced in 2008 to reduce tax burden of small and medium enterprises (SMEs). In 2015, there were three main tax reforms implemented – *(i)* tax exemption for companies[5] with gross sales or turnover that do not exceed BND 1 million (EUR 645 161); *(ii)* enhanced capital allowance on industrial building; and *(iii)* additional capital allowance for plant and machinery.

36. In the recent years, the RD introduced an online platform which enables the provision of e-services such as registration, filing, payment through internet banking, viewing penalties imposed, and refund status.

37. All companies registered under the Companies Act in Brunei are subject to tax. For these companies, their tax identification number is the same as their business registration number. International Business Companies (IBCs) are not registered under the Companies Act, but are regulated under the International Companies Business Order 2000. IBCs are not subject to tax. Companies incorporated in Brunei but having their control and management overseas will not be tax residents in Brunei.

Overview of the financial sector and relevant professions

Financial sector

38. The financial sector in Brunei Darussalam is dominated by the banking system which offers both Islamic and conventional banking services. Other financial service providers include insurance companies, finance companies, securities, mutual funds, money changing and remittance businesses. As of 1 January 2011, all banks and other financial institutions are licensed and supervised by the Autoriti Monetari Brunei Darussalam (s. 42 Autoriti Monetari Brunei Darussalam Order 2010; AMBDO). Prior to 2011, there was a system of multiple licensing and supervisory entities.

5. However, these companies are still required to file annual tax returns.

39. Ordinary banks in Brunei take deposits from the private sector and the Government and lend exclusively to the private sector. The Government maintains deposits in the system but does not borrow from it. Islamic banking significantly accounts for financial sector assets and is regulated under the Islamic Banking Order 2008. Banks wishing to carry on "international banking business" – i.e. banking business that does not involve any person resident in Brunei – need to be licensed under the International Banking Order 2000 (IBO) (s. 3).[6]

40. Licensed finance companies are subsidiaries of banks and may only provide hire purchase and savings account products.

41. The Mutual Funds Order 2001 (MFO) provides for the regulation of mutual funds in Brunei, the supervision and licensing of such funds and of persons promoting and providing services in connection with mutual funds. The MFO applies to domestic and international funds and their promoters, managers and custodians.

42. Rules applying to financial exchanges, dealers and other persons providing advice in respect of managing or dealing in securities and for certain offences relating to securities are contained in the Securities Order 2001 (SO) which is now repealed and replaced by the Securities Markets Order 2013 (SMO). As a general rule, a person cannot carry on the business of a dealer or hold himself out as carrying on such a business unless he holds a dealer's licence granted under Part VII of the SMO. Equally, a person cannot act as an investment adviser or hold himself out to be an investment adviser unless he is the holder of an investment adviser's licence granted under Part VII of the SMO. Persons carrying on money-changing and remittance business also need to obtain a licence pursuant to the Money-Changing and Remittance Business Act (Chapter 174) (ss.5 and 7).

43. The provision of insurance services to persons resident in Brunei is regulated under the Insurance Order 2006. In addition, the International Insurance and Takaful Order 2001 (IITO) prescribes the licensing requirements and regulation of persons carrying on an international insurance business and international insurance-related activities, the security and protection of long-term international insurance business and other incidental matters. The provision of insurance and takaful services to persons resident in Brunei are regulated under the Insurance Order, 2006 and the Takaful Order, 2008.

44. As of July 2016, in Brunei there were 7 banks (5 foreign branches and 2 local banks, one of which is an Islamic bank), 1 Islamic Trust Fund, 3

6. The IBO provides for four classes of licences, all issued by Brunei's Monetary Authority (s. 7).

finance companies (2 conventional and 1 Islamic), 12 insurance companies (9 non-life and 3 life), 20 money changers and 19 remittance companies. The licensed banks have an asset base of BND17.3 billion (11.3 billion EUR) at the end of Q2 2016.

Relevant professions

45. Professional service providers in Brunei include lawyers, accountants and trust and company service providers.

46. The legal profession in Brunei is regulated by the Legal Profession Act (Chapter 132). Lawyers are supervised by the Law Society, established by virtue of the Legal Profession (Law Society of Brunei Darussalam) Order 2003. Whilst access to the legal profession is regulated, lawyers are not subject to binding sectoral supervision. Under section 36 of the Legal Profession Order, the Law Society, with approval of the Chief Justice, may make non-binding rules regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors. As of July 2016 there are approximately 34 law firms in Brunei with approximately 104 counsels as members of the Brunei Law Society.

47. Public accountancy services are the accountancy services that are being regulated in Brunei Darussalam under the Accountants Order, 2010. Section 2 of the Accountants Order, 2010 provides the definition of public accountancy services as the audit and reporting on financial statements and the doing of such other acts that are required by any written law to be done by a public accountant. Hence, in order to be authorised to perform public accountancy services in Brunei Darussalam, all public accountants must be registered with the Public Accountants Oversight Committee (PAOC) who acts on behalf of the Ministry of Finance.

48. Professionals providing trust and company services are required to be registered in accordance with the Registered Agents and Trustees Licensing Order 2000 (RATLO). As of July 2016 there were 11 registered agents and licensed trust companies in Brunei, which offer trust and company services. As of 1 January 2011, the Monetary Authority is responsible for the regulation and supervision of all entities licensed under the RATLO (the supervisory entity was previously the Permanent Secretary of the Ministry of Finance).

The Brunei International Financial Centre (BIFC)

49. The Brunei International Financial Centre (BIFC) is a financial and business centre established by the government of Brunei in 2000 to stimulate and enhance the development of financial services sector in Brunei.

Legislation passed in 2000 introduced a number of corporate forms which are available to business operations in the BIFC, including international business companies, international limited partnerships, and international trusts. As of 2011, the supervision of the entities formed under the BIFC legislation as well as the functions and prerogatives previously attributed to the BIFC have been transferred to Brunei's Monetary Authority (AMBD). Companies operating in the BIFC are exempt from tax.

50. Only registered agents licensed under RATLO can incorporate international business companies under the IBCO, 2000. All establishment and compliance documents of entities operating in the BIFC are filed by these registered agents. Equally, trustees of international trusts may only be registered agents licensed under RATLO.

51. The Registrar of International Business Companies and International Limited Partnerships is in charge of a Registry, which, for confidentiality and administrative reasons, is a part of the AMBD.

Entities subject to AML/CFT legislation

52. Brunei introduced the Money Laundering Order (AMLO) in 2000 and the Anti-Terrorism (Financial and Other Measures) Act in 2002. The two acts, which have been recently amended, form the backbone of Brunei's legislation on Anti Money Laundering and Combating Terrorism Financing (AML/CFT). AML/CFT obligations apply to entities carrying on "relevant business", defined as the business of engaging in one or more of the following (s. 4(1) AMLO):

- the business of receiving money on deposit account transacted by a company licensed under the Banking Order, 2006 and the Finance Companies Act (Chapter 89) or of any other law relating to domestic banking;
- any activity carried on by a company in possession of a licence authorising it to do so under the International Banking Order 2000;
- long-term insurance business carried on by a person who has been authorised to carry on such insurance business by or in pursuance of any written-law; and
- any of the financial sector activities referred to in the AMLO's Schedule.[7]

7. Acceptance of deposits and other repayable funds from the public; lending; financial leasing; money transmission services; issuing and administering means of payment; guarantees and commitments; trading for own account or for account of customers in: *(a)* money market instruments; *(b)* foreign exchange;

53. In 2010, additional professionals were made subject to AML/CFT obligations under the AMLO, including:

- licensees under the RATLO;
- advocates and solicitors; and
- services provided by any person registered under any written law relating to accountants.

54. As of 2011, the implementation of AML/CFT legislation is entrusted to Brunei's Monetary Authority. The AMBDO empowers Brunei's Monetary Authority to issue such directions or make such regulations concerning any financial institutions[8] as the authority considers necessary for the prevention of money laundering or the financing of terrorism (s. 34). These directions and regulations are legally binding. They are necessary to give full effectiveness to the CDD obligations under the AMLO (see section on element A.1 for details).

(c) financial futures and options; *(d)* exchange and interest rate instruments; *(e)* transferable securities; participation in securities issues and provision of services related to such issues; advice on capital structures, industrial strategy and advice and services relating to mergers and purchase of undertakings; money broking; portfolio management and advice; safekeeping and administration of securities; safe custody services; international offshore financial services; bureau de change business; provision of cheque cash services; transmission or receipt of funds by wire or other electronic means.

8. Pursuant to the AMBDO, financial institution means: *(i)* any insurer registered under the Insurance Order 2006 or the Takaful Order 2008 or any person licensed under the International Insurance and Takaful Order 2002; *(ii)* any finance company licensed under the Finance Companies Act; *(iii)* any person licensed under the RATLO 2000, the Mutual Funds Order 2001, the Securities Order International Insurance and Takaful Order 2002; *(iv)* any person licensed to carry on any money-changing business or remittance business under the Money-Changing and Remittance Businesses Act; *(v)* such other person licensed, approved or regulated by the authority under any written law. For the purposes of the directions or guidelines that can be issued under the AMBDO, the term "financial institutions" also includes any bank and "any person who is exempted from being licensed, approved or regulated under any of the laws referred to in the definition of "financial institution" and "bank".

Recent developments

55. There were no legislative changes made in Brunei since the Post-Phase 1 Supplementary Review in September 2015. However, Brunei made several key legislative amendments below, which were covered in detail in the Post-Phase 1 Supplementary Review:

- The Companies Act and Income Tax Act were amended in 2015 and 2012 respectively, to ensure that foreign companies with a sufficient nexus to Brunei are obligated to submit all ownership and identity information when filing their annual returns.
- The International Business Order was amended to require foreign international companies to keep and submit updated identity information on its members and shareholders. This change came into effect on 23 November 2013.
- The Companies Act and Anti-Money Laundering Laws were amended in 2015 and 2012 respectively, 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 measures and obtain information of the persons they represent.
- The Companies Act was amended to expressly prohibit companies from issuing share warrants, with effect from 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.
- The Criminal Asset Recovery Order was issued in 2012 and came into effect on 16 June 2012, requiring identity information on the trustees, settlor and beneficiary of the express trust to be obtained and verified.
- The Record Keeping (Business) Order was introduced in June 2015 requiring all relevant entities and arrangements to keep reliable accounting information and underlying documentation for a minimum period of five years.
- The Income Tax Act was amended 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. This change came into effect on 20 December 2012.

56. Brunei is currently negotiating exchange of information instruments with Myanmar, Cambodia and India.

Compliance with the Standards

A. Availability of information

Overview

57. 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.

58. The *Companies Act* requires filing of all information on the ownership and identity of domestic companies with the Register of Companies and Business Names (ROCBN). Such information needs to be updated via annual returns. Foreign companies operating in Brunei also need to register with the ROCBN. Legislative amendments were made and came into effect on 1 January 2015 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. 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.

59. Companies formed under the International Business Companies Order – international business companies (IBCs), foreign international companies (FICs) and dedicated cell companies (DCCs) – are required to register with the Registry of International Business Companies through a licensed agent having an established office in Brunei. IBCs and DCCs are required to keep registers of members or shareholders. The International Business Companies (Amendment) Order 2013, which came into effect on 23 November 2013, required foreign international companies to keep and submit updated identity information on its members and shareholders. These amendments ensure the availability of ownership information of these entities.

60. Whilst the issuance of bearer shares is expressly forbidden for IBCs, companies formed under the Companies Act were previously permitted to issue 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. The deadline for existing share warrants to be surrendered has since elapsed and the ROCBN reported that there was no record of any share warrant being surrendered. The ROCBN in March 2016 did sample reviews of 150 annual returns of companies and 100 articles of associations, and none of these documents mentioned the existence of share warrants to bearer. Therefore, the issue of share warrants to bearer does not seem to be a material one.

61. The various registration requirements which apply to domestic partnerships, limited liability partnerships (LLPs) and international limited partnerships (ILPs) operating in Brunei ensure that identity information is either submitted to government authorities on all partners (for domestic partnerships and LLPs) or kept at the partnership's registered office (for ILPs).

62. Identity and ownership information is generally available in respect of settlors or beneficiaries of trusts administered by Brunei's trust corporations. Trustees of international trusts – including "special trusts" – are registered entities and are under an express obligation to keep documentary evidence of the trust's terms and to inform each beneficiary who has a vested interest in the trust. In addition, Brunei introduced new provisions in 2012 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.

63. 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.

64. Brunei did not receive any EOI requests over the review period, however, in practice various government agencies (such as the Ministry of

Defence, Anti-Corruption Bureau and Royal Brunei Police Force) within Brunei have accessed ownership, accounting and banking information during this time for domestic purposes, and information was generally found to be available. It is noted, however, that some of the regulatory authorities (such as the Registrar for International Business Companies) are still in the primary stages of implementing an effective system of monitoring and oversight of the entities which they regulate. It is recommended that Brunei ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information. Element A.1 is rated "Largely Compliant".

65. The Record Keeping (Business) Order was introduced in 2015 imposing an obligation for all relevant entities and arrangements to keep reliable accounting information and underlying documentation for a minimum period of five years 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 Order only came into effect toward the end of the review period. The Bruneian authorities have been focusing their efforts on outreach activities to communicate the requirements under the Order to industry practitioners and the oversight of the Order has not been developed sufficiently. It is recommended that Brunei monitors the enforcement of the Order to ensure that accounting records and underlying documentation are available in respect of all entities. Element A.2 is rated "Largely Compliant".

66. In respect of banks and other financial institutions, the combination of the anti-money laundering/counter-financing of terrorism regime and licensing requirements imposes obligations to ensure that all records pertaining to customers' accounts as well as related financial and transaction information are available. Anonymous accounts are expressly prohibited. The AMBD conducts regular audits on banks ensuring that banking information is available. Element A.3 is rated "Compliant".

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.

67. The forms of business available in Brunei are the following:

- limited company (public and private);
- sole proprietorship;
- partnership; and
- branches of foreign companies.

Companies *(ToR[9] A.1.1)*

Types of companies

68. The Companies Act (CA) is the central piece of legislation governing the establishment and management of corporations in Brunei. In addition, the 2000 International Business Companies Order provides for the setting up of international business companies.

69. As of 1 March 2016, there are 5 810 local companies and 213 foreign companies operating in Brunei. Brunei's authorities have reported that currently, out of the companies registered in Brunei, 90% are private companies limited by shares. The decline in the total number of local companies and foreign companies operating in Brunei is because the RIBC carried out an internal data update exercise in 2013/14 to remove inactive companies. The inactive companies were either wound up or struck off from the Companies Register. There are 5 520 companies registered under the IBC Order.

70. As a general rule, shareholders need not be Brunei citizens or residents and a subsidiary company may hold shares in its parent company. All domestic companies need to ensure one of the two directors or, where there are more than two directors, at least two of them are ordinarily resident in Brunei (s. 138 CA). Foreign companies may be incorporated as a branch in Brunei but is required to appoint at least two resident authorised persons (s. 299 CA). Companies need to have their registered office in Brunei. A company may be one of four types: limited by shares; limited by guarantee (with or without share capital); and, unlimited (s. 4(2)).

71. Private companies must have a minimum of two but no more than 50 shareholders. They enjoy some exemptions from filing their annual audited returns with the registrar but must restrict the right of members to transfer shares and disallow any invitation to the public to subscribe for shares or debentures (s. 29(1) CA). A private company that fails to comply with these requirements ceases to be entitled to the above mentioned privileges and exemptions (s. 30(3)). There is no minimum capital requirement for a private company, although a minimum of one share must be subscribed.

72. Companies other than private companies are public companies (s. 2(1) CA). Public companies must have a minimum of seven shareholders. There is no minimum capital requirement. Public companies may issue freely transferable shares to the public. Subject to certain requirements being met, such companies may issue preference redeemable shares and shares at discount (ss.49 and 50).

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

73. Foreign companies cannot carry on business or establish a place of business in Brunei unless they are first registered either as local companies or as branches of foreign companies (s. 299 CA). There is no minimum capital requirement for branches, but they must have a registered office in Brunei and must appoint at least two resident authorised persons. Once registered, the branch has the same powers and authority as a local company (s. 300).

International business companies

74. The types of companies incorporated under the International Business Companies Order (IBCO) are International Business Companies (IBCs), Foreign International Companies (FICs) and Dedicated Cell Companies (DCCs). They can be formed only by an agent registered under section 3 of the RATLO. Only companies may apply for a license under the RATLO (s. 7 RATLO). Licensed agents registered under the RATLO do not need to be resident in Brunei, but are required to maintain an established office therein (s. 12(2)c). In addition, licensees must ensure they have at all times not less than two individual directors ordinarily resident in Brunei responsible for the business conducted in Brunei (s. 12(2)d).

75. An IBC may take one of the following forms: company limited by shares; by guarantee; limited by life; and with unlimited liability (s. 5(3) IBCO). IBCs with a share capital may issue ordinary shares, preferred shares, limited shares or redeemable shares; they may also issue voting or non-voting shares, shares that have more or less than one vote per share, shares that may be voted only on certain matters or only upon the occurrence of certain events and shares that may be voted only when held by persons who meet specified requirements (s. 17(2)). Shares may also be issued in any one or more currencies other than that of Brunei (s. 17(2)(i)). IBCs may purchase their own shares (s. 54) and transfer their assets in trust to one or more trustees or to any company, association, partnership, foundation or similar entity (s. 17(3)).

76. An IBC may be formed for any legal object or purpose and is incorporated by registration at the Registry of International Business Companies. IBCs cannot carry on business with persons resident in Brunei or own an interest in land situated therein. They cannot carry on business of providing the registered office for companies either (s. 6 IBCO). IBCs wishing to carry on banking or insurance business or provide international business services need to be specifically licensed. An IBC is managed by a board of directors, who may be individuals or a body corporate. There are no restrictions as to the nationality of IBCs' directors.

77. IBCs need to have a registered office in Brunei. When the IBC does not have a physical presence in Brunei, the registered agent maintains its registered office therein (s. 60 IBCO). The names of the IBCs having their registered office

at a certain address in Brunei need to be visibly displayed. The IBCO expressly regulates the conversion of a foreign company into an IBC (s. 143 ff.).

78. Foreign or overseas companies may register branch operations as Foreign International Companies (FIC) pursuant to Part XI of the IBCO. If foreign companies want to register their branch operations as FICs, they need to comply with relevant provisions in the IBCO and must appoint a registered agent (s. 134 IBCO). An FIC cannot carry on in Brunei any business which an IBC is prohibited to carry on (s. 135(1)).

79. 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 their organisation such as changes of their shareholders or members. 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. According to Bruneian Authorities, this legislative amendment is expected to be finalised by the end of 2016. 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 64 516)[10] (s. 158(2), IBCO).

10. 1 Euro (EUR) is equivalent to 1.55 Bruneian Dollar (BND). Retrieved from XE.com, 27 May 2016.

80. Part XIIA of the IBO also provides for Dedicated Cell Companies (DCC). Subject to specific approval by the Authority, an IBC may be incorporated as a DCC to create one or more "cells" for the purposes of segregating and protecting dedicated assets (s. 147C IBCO). Irrespective of the number of cells it creates, a DCC always remains a single legal person (s. 147B).

81. Invitations to the public to lend money to or deposit money with an IBC of a FIC, as well as invitations to subscribe for their shares or debentures must obtain prior approval from the Registry (ss.22-23 IBCO). Shares need to be offered to the public through the company's registered agent (s. 32).

Information to be provided to government authorities

82. As a general rule, business operating in Brunei must be registered with the Registrar of Companies and Business Names (ROCBN). The ROCBN was established in 1959 under the Attorney General's Chamber Office. In April 2013, the Registry of Companies and Business Names was transferred to the Ministry of Finance. The main role and functions of the ROCBN are to *(i)* administer the Business Names Act (Chapter 92) and Companies Act (Chapter 39); *(ii)* facilitate the registration of business and the incorporation of companies; *(iii)* establish a register of documents and information and provide access to these documents; *(iv)* promote public awareness on any matter under the purview of the Registry; and *(v)* represent the Bruneian Government internationally in matters relating to the registration and regulations of business entities.

83. Under the CA, registration is compulsory for all companies consisting of more than 20 persons (members or shareholders) and formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company. Corporations, regardless of the number of members/shareholders, need to file with the ROCBN their business name and registered office in Brunei (s. 6(1)f Business Names Act).

84. Pursuant to the CA, upon registration companies are required to file their memorandum of association with the Registrar (s. 15). Memoranda need to be in accordance with the forms set out in the CA's Schedules. The subscribers of a memorandum are deemed to have agreed to become members of the company. When a company is limited by shares, its memorandum must state the amount of capital with which the company proposes to be registered, its division into shares of a fixed amount, the names of the subscribers and the number of shares each one takes (s. 5(4)). For companies limited by guarantee, the memorandum of association must contain the names of the subscribers (i.e. the initial members of the company) (s. 14 and Table C (first schedule) CA), and if the company limited by guarantee has share capital, it must also indicate the number of shares held by each member (s. 14 and Table D).

85. Companies also need to file with the Registrar: their articles of association (which include particulars of each subscriber); list of particulars of the directors, together with copies of their identification documents or passports; notice of registered office address; and consent to act as director form. These documents must be submitted together with the incorporation fees and a declaration by one of the company's directors or secretaries stating that all the requirements of the CA have been complied with (s. 19). The Registrar may accept such statutory declaration as sufficient evidence of compliance.

86. Changes in members or shareholders are required to be updated via annual returns. The returns contain "a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in case of the first return, of the incorporation of the company" (s. 107 CA). Brunei's authorities, however, indicate that share ownership changes are normally recorded whenever ownership changes, and not just once a year. The lists submitted to the Registrar include details of the shareholders' name, address and occupation, as well as the number of shares held by each of the existing member at the date of the return. Both companies with a share capital and companies without a share capital are required to file with the Registrar at least once a year the particulars of the directors of the company (ss.107(3)(m) and 108(1)(b)).

87. Prospectuses offering to the public for subscription or purchase any shares or debentures of a company must also be registered (s. 37(2) CA). Within eight weeks from the allotment of shares, companies need to submit to the Registrar a return of allotment "stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees and the amount, if any, paid or due and payable on each share" (s. 45(1)(a)).

88. The ROCBN does not require the disclosure of beneficial ownership information beyond the immediate shareholder. In the case where the shareholder is a legal person, there is no requirement to file the identity of the natural persons who ultimately control a legal person.

89. Foreign companies which establish a place of business in Brunei or carry on business in Brunei are required to register with the ROCBN under Part IX of the CA. Upon registration in Brunei, foreign companies are required to file with the Registrar copies of their incorporation documents and details of directors' identity (s. 299). Registered foreign companies are required to file their balance sheets within two months of their annual general meeting (s. 302(3)). Bruneian authorities have clarified that 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.

90. Data entered in the commercial register kept by ROCBN are public: any person may, on payment of a prescribed fee, inspect the documents kept by the Registrar or require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar (s. 290 CA).

91. As a general rule, all companies registered under the CA are required to file tax returns, even if exempt from payment of tax (s. 52(1) ITA). The Collector, however, may exempt a certain *class of persons* (s. 52(2)). Such exemptions may only be issued with respect to companies *not liable to pay tax*. As mentioned above, 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).

92. In practice, all companies incorporated under the Companies Act (i.e. limited public companies, limited private companies and branches of foreign companies) have to file an annual return to the ROCBN. The annual return, which is provided for under the fifth schedule of the Companies Act, will include updated ownership information. Penalties will be imposed if companies fail to submit the annual returns. In year 2015, out of a total of 24 limited public companies, 12 (50%) submitted their annual return on time. In the same year, out of a total of 5 786 limited private companies, 3 089 (53%) submitted their annual return on time, 1 511 (26%) filed their annual returns late and incurred late submission penalty fees, and of those

that did not submit their annual returns 4 are being wound up, 340 (6%) are in the process of being struck off, the remaining 838 companies (15%) did not submit their annual returns either because *(i)* they are newly incorporated and their annual returns are not due for submission (547 companies) or *(ii)* they are not due to file their annual returns during the period of assessment (291 companies). In 2015, out of a total of 213 foreign companies, 97 (45.5%) submitted their annual return on time and of those that did not submit their annual returns 46 are in the process of being struck off. The ROCBN also reported 1515 late annual returns submitted in 2015 which resulted in a total of BND 151 500 (EUR 97 700) in late submission penalties. For companies that persistently fail to submit their annual returns, the ROCBN will initiate the process of striking off the company under section 276(1) of the Companies Act.

93. Besides collecting ownership information via the annual returns submitted by companies, the ROCBN also receives notices of *(i)* transfer of shares/change in shareholders; or *(ii)* allotment of new shares, throughout the year whenever such a change is made. The Registrar would double check these interim notices with the information filed in the annual returns. Should there be any discrepancy in the information filed the Registrar would revert to the company to correct the error before accepting the annual return. ROCBN staff has an internal checklist to assist them in the items to be verified when cross-checking the interim notices with an annual return.

94. In January 2015, the ROCBN introduced and implemented a new online registration system. The new system simplifies new registration of companies, which comprise a two-step process (input basic information and upload required documents to the online system). Registration can be completed within one working day. The system also automatically tracks *(i)* the annual general meeting[11] dates of companies and *(ii)* the submission of annual returns. ROCBN staff will receive automatic alerts when a company is late in its submission of its annual returns and follow-up actions will be activated. The enforcement team at ROCBN currently comprise of one staff member, and there are plans to step up enforcement actions in the second half of 2016. The online system is also a depositary of updated information of shareholders in all companies, and this information is available to the public. Prior to the launch of this online registration system, the ROCBN operated a paper-based

11. Companies are required to have an annual general meeting (AGM) within 18 months of incorporation and after which they should hold an AGM within 15 months from the previous AGM. All companies incorporated using the new ROCBN online system will automatically receive reminders via e-mail with regards to when their AGM is due to be held. Email reminders will also be sent for submission of the annual returns (within 28 days after AGM was held).

system. Information of companies incorporated during the old paper-based system has been migrated to the new online system.

95. Over the review period, Brunei did not receive any EOI requests. However, the ROCBN did receive requests for company ownership information from other Bruneian government agencies. Members of the public can also purchase company ownership information against the payment of a small administrative fee of BND 30 (20 EUR) from the ROCBN website[12]. The table below provides statistics on the number of searches for company ownership information which ROCBN received in year 2015 and 2016.

	Number of requests	
Type of request	Year 2015	Year 2016 (January to March)
Over the counter*	3 310	650
Government agencies:		
(i) Ministry of Defence	1	4
(ii) Anti-Corruption Bureau	4	
(iii) Royal Brunei Police Force	13	
Foreign request **	171	39

* Requests to check physical files and documents of companies and purchase information

** Requests to purchase information from persons outside of Brunei

International business companies

96. IBCs are registered in the Registry of International Business Companies (RIBC) through a registered agent (s. 11 IBCO). As a general rule, documents filed with the RIBC always need to be lodged through a registered agent licensed under the RATLO (s. 4). Upon applying for the registration of an IBC, the registered agent is required to file with the RIBC: the Memorandum and Articles of the proposed IBC, notice about its registered office and a certificate that the registration requirements prescribed by the RIBC have been complied with (s. 11). The registered agent is also required to file a "certificate of due diligence" with respect to the proposed IBC (s. 10). Brunei's authorities have reported that this certificate includes beneficial ownership information on the proposed IBC; the IBCO, however, does not further specify the content of the certificate, nor does it include a definition of beneficial ownership. Brunei's authorities have also reported that a notice by the Monetary Authority providing guidance on the identification procedures of customers including beneficial owners and natural persons appointed to act on the customer's behalf will be issued soon. Whilst Brunei

12. The ROCBN website is www.roc.gov.bn.

should issue this notice as soon as possible, it is noted that the Monetary Authority has already issued binding AML/CFT notices for financial institutions (including banks, insurers and investment advisers: see below, paragraphs 124-125). This procedure has been in place since 2012 under section 6(1)(d) CARO. Beneficial ownership information is therefore available for all IBCs that are customers of a financial institution.

97. An IBC that amends its registered Memorandum or Articles is required to submit to the Registrar within twenty-one days a copy of the resolution containing the amendments (s. 15 IBCO). Such amendments have effect from the date they are registered. Changes to the registered office are notified to the Registrar within fourteen days (s. 60(2)). IBCs may be removed from the register for the purposes of becoming incorporated under the law of another jurisdiction ("migration": see s. 156). Notice of the migration is given in the Gazette, including details about the jurisdiction the former IBC has migrated to.

98. Equally, FICs are required to register with the RIBC through their registered agent. Documents filed upon registration of a FIC are the following: the charter, statutes, memorandum or articles of the foreign company; the company's directors; the address of the foreign company in its place of incorporation or origin; the name of the foreign company; the powers of the FIC's directors resident in Brunei; particulars of the FIC's registered agent and of the FIC's registered office in Brunei; a certificate of due diligence by the registered agent (s. 134 IBCO). Changes to these particulars need to be lodged with the Registrar within one month (s. 137). Notice of the cessation of business in Brunei by a FIC also needs to be served to the Registrar within one month after such cessation occurred (s. 139).

99. FICs are required to lodge annual returns to the Registrar (s. 142 IBCO). The Monetary Authority may, with the approval of the Sultan, make regulations *prescribing the registers and returns to be kept and made by a foreign international company and fixing the times within which the same must be kept and made* (s. 142(2)(a)). 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. 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 64 516) (s. 158(2), IBCO).

100. The incorporation of a DCC requires filing with the Registrar of the same documents required for the registration of an IBC, accompanied by a copy of the Authority's consent (s. 147I IBCO).

101. IBCs, FICs and DCCs are exempt from any kind of taxes or duties levied in Brunei (s. 20 IBCO). In addition, they are expressly exempted from filing return or financial information *in relation to any taxation, duty or other levy* in respect of which they are granted relief (s. 20(7)).

102. The RIBC is a section within the Autoriti Monetari Brunei Darussalam (AMBD). The key functions of the RIBC are *(i)* to maintain the registry of IBCs, FICs, DDCs and International Limited Partnerships (ILP); and *(ii)* to licence registered agents under the Registered Agents and Trustees Licensing Order 2000 (RATLO). The relevant legislation guiding the work of the RIBC is the IBCO 2000 (and amended in 2014), the International Limited Partnerships Order 2000, the International Trusts Order 2000, the RATLO and the Criminal Asset Recovery Order 2012. In practice, the RIBC explained that, with regard to the formation of an IBC, FIC or DDC, the registered agent acts as the representative of these entities in Brunei (as provided under Section 61(1) of the International Business Companies Order). Ownership information for these entities are kept with the entity's registered agent. Section 19(4) of the International Business Companies Order states that "an IBC shall make an annual return in the prescribed form, and shall lodge the return with the Registrar not later than 14 days following the anniversary of the date of its registration". The prescribed form is provided in Form 17 of the IBC Regulations 2000, which requires the registered agent to certify that the records and accounts of the IBC are properly kept. All IBCs, FICs and DDCs must file an annual return and pay a BND 400 (EUR 258) administrative fee. As at 1 March 2016, there are 5 513 IBCs, 6 FICs, 1 DCC and 11 registered agents (licensed under the RATLO) in Brunei.

103. Since 2014 the RIBC embarked on an exercise to clean up the existing stock of IBCs. First, the RIBC sent letters to all IBCs which had yet to submit an annual return or pay the annual fee. The letter also sought to confirm whether the IBC was still carrying on business. If no response is received within 30 days, the RIBC will proceed to strike off the IBC. If a response is received, the IBC is requested to submit their annual return and pay its annual fees. In year 2014, the RIBC struck off 5 703 IBCs for non-payment of annual fees and/or failure to comply with section 6 of IBCO[13]. The RIBC explained that there was a spike of cases in 2014 because it was the year which RIBC introduced a new online registry and was able to quickly identify IBCs which are non-compliant.

13. Section 6 of the IBCO lists the type of business activities an IBC is permitted to carry out.

104. During the first quarter of 2016, the RIBC started to conduct physical inspections of registered agents to check that required records of IBCs are being maintained. These on-site inspections were initially done randomly but going forward the RIBC has devised a systematic off-site and on-site audit plan – five staff have been deployed to the audit team with a target of auditing records of 100 IBCs a week (most cases are off-site inspections). An internal manual describes procedures for both off-site and on-site inspections.

105. The RIBC is mindful that part of the supervision of IBCs, FICs and DDCs is to ensure that the registered agent is maintaining all the required information under the IBCO and the RATLO. Registered agents are required to submit an annual return (including audited financial statements) to the RIBC and pay an annual fee. The registered agents are subject to offsite inspections each year (more details available in the section below).

106. Over the review period, although there was no EOI request sent to Brunei, the RIBC had in eight occasions requested ownership information from IBCs and was able obtain the information in all cases. All eight cases were either received from another Bruneian government agency or part of the off-site inspection audit work conducted by the RIBC.

Information to be held by companies

107. Pursuant to the CA, companies are required to keep a register of their members, detailing the name and address of each member, as well as the date at which each person was entered in the register as a member and the date at which any person ceased to be a member (s. 95). The subscribers of a company's memorandum are entered as members in the company's register of members as soon as the company is registered with the Registrar (s. 28(1)). New members also need to have their names entered in the company's register of members (s. 28(2)).

108. For companies having a share capital, the register of members will contain a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member (s. 95(1)(a) CA). When any of its shares are converted into stock, the company is required to give notice of the conversion to the Registrar so that the registrar is updated (s. 95(1)(c)). In addition, companies having more than 50 members are required to keep an index of the names of the members of a company. Companies also keep a register of the holders of debentures which is open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company (s. 75(1)).

109. For companies limited by guarantee, the memorandum of association must contain the names of the subscribers (i.e. the initial members of the company) (s. 14 and Table C CA), and if the company limited by guarantee

has share capital, it must also indicate the number of shares held by each member (s. 14 and Table D).

110. When shares or interest in a company are transferred, the registers are updated on the application of the transferor (s. 68 CA).

111. Companies formed under the CA are required to have a registered office in Brunei (s. 92(1)). Changes in a company's registered office are notified to the Registrar within 28 days. The register of members and the index of the names of members need to be kept at the registered office of the company (s. 98), unless the company has obtained a license from the Registrar to keep them in a place where a substantial part of its business is carried on (s. 103(1)). The license is annual. Companies may also keep local or branch registers, but these registers are deemed to be part of the registers kept at the company's registered office (s. 104(1)). Registers are open to the inspection of any member without charge and of any other person on payment of a small fee of BND 5 (EUR 3.23), or such less sum as the company may prescribe). Members and other persons may also require a copy of such registers.

112. Regarding companies incorporated outside Brunei which have their place of effective management in Brunei, Bruneian authorities have clarified by means of an Order issued in 2014 that such foreign companies are subjected to the same obligations as domestic companies to file annual returns to the Registrar of Companies (s. 107). Previously, there were no specific provisions requiring foreign companies to keep a register of their members of shareholders. The Companies Act (Amendment) Order 2014, which came into effect on 1 January 2015, mandated that foreign companies have to submit an annual return form including a list with identity information of their members and shareholders. In addition, with effect from year of assessment 2012, foreign companies had to submit as part of their tax return, identity information of all shareholders (Section B, Income Tax Return Form). The above ensures that identity information on all shareholders of foreign companies are to be made available and would have to be kept by foreign companies.

International business companies

113. IBCs are required to keep at their registered office share registers or registers of members (depending on whether they have a share capital), as well as a register of directors and secretaries (ss.46-47 and 67 IBCO). The share register must contain the following particulars:

- the names and addresses of the persons who hold registered shares in the IBC;
- the number of each class and series of registered shares held by each such person;

- the date on which any person became a holder of registered shares in the IBC;
- the date on which any person ceased to be a holder of registered shares;
- the identifying number of any certificate; and
- the date of issue of any certificate.

114. The register of members of an IBC limited by guarantee must contain the names and addresses of all persons who are, or have since the registration of the IBC been, members of the IBC; the amount which each such person has undertaken to contribute to the IBC's assets; the date upon which each person was registered as a member and, where applicable, the date on which he ceased to be a member.

115. The registers must be available for inspection during business hours upon written permission by a director, liquidator or the Authority. Officers, members, debenture holders, directors or liquidators of an IBC may also access the company's registers on payment of a fee and make copies thereof. The company is usually given advance notice of such inspections (s. 162(3) IBCO).

116. 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. Prior to the issuance of that Order, there were no specific requirements in Brunei for FICs to maintain registers of members and shareholders. 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.

Information held by directors and officers

117. Every Bruneian company must ensure that at least one of the two directors or, where there are more than two directors, at least two of them are ordinarily resident in Brunei Darussalam (s. 138 CA). While directors are not directly obliged to maintain information on the owners of their companies, they will necessarily have access to the company's register of members. The same holds true with respect to directors of foreign companies carrying on business within Brunei.

118. Directors of an IBC need to be registered under the RATLO and sign a written consent to act as a director (s. 63 IBCO). An IBC is required to keep

a register of directors and secretaries (s. 67). Pursuant to the IBCO, every director, officer, agent or liquidator of an IBC is entitled *to rely on the share register, register of members and the books of account and records and the minutes and copies of consents to resolutions kept under the order and any report made to the IBC by any other director, officer, agent or liquidator or by any person selected by the IBC to make the report* (s. 78). Therefore, they will necessarily have access to the company's register of members and to the other company documents.

119. The IBC Order further requires a director or resident director or secretary or resident secretary of an IBC not to disclose or use information he has obtained by reason of his office to any person or for any purpose *except in accordance with his duty as a director or secretary of the company and so far as he may be compelled by law so to do* (s. 65(5)). Information concerning possible infringements of AML obligations needs to be disclosed to the supervisory authority.

Information held by service providers

120. Pursuant to the AMLO, financial institutions and persons carrying on "relevant business" – including service providers licensed under the RATLO, advocates and solicitors under the *Legal Profession Act* and registered accountants – are required to take "reasonable measures" for the purpose of establishing the identity of any person on whose behalf their client acts (s. 9(2)). The determination of what constitutes "reasonable measures" for the purposes of determining the identity of a client is made on a case by case basis, having regard to *all the circumstances of the case and, in particular, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances* (s. 9(3)). The AMLO, which does not contain a reference to the concept of "beneficial ownership", further entrusts the Monetary Authority with the power to issue supplementary legislation to clarify the scope of the AML/CFT obligations on the different entities and service providers.

121. This means that the full effectiveness of the CDD obligations under the AMLO is conditional upon the issuance of sector-specific guidelines determining the "best practices" to be followed by each type of financial entity. Pursuant to the AMBDO (s. 34), notices[14] have been issued to financial service providers to banks, life insurer, international banks, international insurers and international Takaful insurers, Islamic banks, holders of money changer's licence and remittance licence, investments advisers, dealers and

14. See Notices No. AMBD/R/34/2011/1; AMBD/R/34/2011/3; AMBD/R/34/2011/6; AMBD/R/34/2011/7; AMBD/R/34/2011/2; AMBD/R/34/2011/5; AMBD/R/34/2011/8; AMBD/R/34/2011/4.

investment adviser representatives, dealer's representatives and exempted persons, family Takaful operators. These notices include requirements on identification of beneficial owners.

122. The notices require financial service providers indicated above to conduct customer due diligence (CDD) on all customers – including companies – that seek to establish business relations. Upon the establishment of business relationships, these entities are required to obtain, verify and record information on the customer transacting on behalf of the company; on all directors of the company; and all beneficial owners of the company – that being, the natural person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted, and includes the persons who exercise ultimate effective control over a body corporate. These entities are required to periodically review the adequacy of customer identification information obtained in respect of customers and beneficial owners and ensure the information is kept up to date.

123. All service providers (including lawyers, accountants and agents registered under the RATLO) are required to conduct identification and verification of their customers under sections 4 to 14 of the Criminal Asset Recovery Order 2012 (CARO). In addition, the Ministry of Finance through the Public Accountants Oversight Committee is responsible for the oversight and regulation of Public Accountants in Brunei Darussalam. Practising lawyers in Brunei have to be registered under the Legal Profession Act (CAP 132). Under the Legal Profession Act, the Law Society is formed as a body representative of the legal profession.

124. The AMBD explained that a new Registry and Licensing System (RALS) of the RIBC was fully operational in 2013. In the first two years since its full operation (i.e. 2013 and 2014), the focus was to strike off IBCs that were no longer active through RALS. In 2015, the RIBC started to conduct on-site examinations of the registered agents. There is an internal checklist and manual to guide RIBC staff on the supervision. The off-site supervision on five registered agents has been completed and no registered agents have been found to be non-compliant with regulations provided for under the RATLO, nor were there penalties imposed on the registered agents. The RIBC plans to complete on-site and off-site supervision on all eleven registered agents by next year.

Nominees

125. Prior to 1 January 2015, there were no express provisions under the Companies Act to require all nominees to disclose the identity of each person for whom the shares were held. Legislative amendments were made to the Companies Act under the Companies Act (Amendment) Order 2014 which came into effect on 1 January 2015, when 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 3 225) 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.

126. Previously, nominees who are lawyers, accountants, trustees or financial institutions are under a generic obligation to conduct CDD on their customers and thus to maintain full information on the persons on whose behalf they hold the interest in the company (s. 9(2) AMLO). The effectiveness of these obligations, however, was conditional upon the issuance of guidelines (by the AMBD) identifying the "best practices" to be followed by each category of service providers. A Criminal Asset Recovery Order (CARO) was issued in 2012, which came into effect on 16 June 2012, introduced requirements for identity information on all relevant entities and customers to be obtained and verified (s. 5, 6, 7 and 13 of CARO). This obligation also 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 of CARO). These provisions are sufficient to ensure the availability of all identity information of all relevant entities must be kept.

127. With CARO in force, the previous notices issued by AMBD (under AML legislation) which 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,[15] will be repealed.

128. Bruneian authorities also highlight that the above two areas of amendments complement existing provisions under the Business Names Act (effective from 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 in itself enable the Bruneian authorities to ensure the availability of identity information of all owners of the companies whom the nominees represent.

15. 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).

129. All companies must disclose nominee shareholding in their annual return to the ROCBN. Section 65 of the CA is the legislative provision on disclosure of nominee shareholding followed by the submission of annual returns containing list of persons holding shares in the company. Since the legislative amendments to the Companies Act came into effect on 1 January 2015 imposing an obligation on companies to require all nominees to disclose the identity of each person for whom the shares are held, the ROCBN and RIBC have jointly held several outreach events to inform company service providers of the change. According to the ROCBN, the participation rate for such outreach events was very positive and the stakeholders understand the policy rationale for the change and the required information to be maintained. Generally, the RIBC found that the financial institutions are familiar with the new requirements, although some designated non-financial businesses and professions (DNFBPs) may require greater attention and the RIBC have plans for another round of awareness programmes to be launched in the later part of 2016.

Bearer shares *(ToR A.1.2)*

130. Prior to January 2015, companies limited by shares formed under the CA were allowed to issue share warrants to bearer if so authorised under their articles of association (s. 73(1) CA). Such share warrants *entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant* (s. 73(3)). The bearer of a share warrant was entitled on surrendering the warrant for cancellation, unless the articles of the company otherwise provide, to have his name entered in the register of members.

131. Upon issuance of a share warrant, the company is required to note in the register of the members the fact of the issue of the warrant, a statement of the shares included in the warrant, distinguishing each share by its number and the date of the issue of the warrant (s. 97 CA). The law, however, did not expressly require the company to note information concerning the identity of the warrant bearer. Brunei authorities advised that, to the best of their knowledge, no share warrants to bearer had been issued in practice. No instances of such share warrants have been found in the course of the Phase 1 review.

132. Effective as of 1 January 2015, 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). 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)). Bruneian 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 low although there are no available statistics on the number of companies limited by shares that may be allowed to issue share warrants. 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.

133. The ROCBN explained that, as a result of the legal requirements for the surrender of share warrants, as explained in the paragraph above, the surrendered share warrants would be converted into (nominative) shares by 31 December 2015and the names of (new) shareholders entered into the share register, the records of such a change would be kept by both ROCBN and companies. After 31 December 2015, the share warrant would not be honoured by the companies. The 31 December 2015 deadline (for any existing share warrants to be surrendered) has since lapsed and the ROCBN reported that nobody came forward to surrender any share warrant.

134. The ROCBN reported having consulted the private sector regarding the legislation to phase out share warrants and the feedback from members of the private sector was that they did not encounter the circulation of such share warrants in their professional practice and did not raise any problem on the legislative amendment. The general impression was that share warrants do not exist in Brunei. To confirm this, the ROCBN did two sample reviews. In the first review, 150 annual returns of companies were randomly selected (50 from 2016, 50 from 2015, 20 from 2014, 15 from 2013 and 15 from 2012). The ROCBN found that none of the annual returns mentioned the existence of share warrants to bearer. In the second review, 100 articles of association of companies were randomly selected (50 from 2015, 20 from 2014, 15 from 2013 and 15 from 2012). The ROCBN found that none of the articles of association mentioned the existence of share warrants to bearer either. Therefore, the issue of share warrants to bearer does not seem to be a material one.

135. It was also identified in the 2011 Phase 1 report that while all shares in an IBC need to be registered (with or without par value); accordingly, *no shares in an IBC 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. This may present the same risks as bearer shares[16]. However, 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

16. This is also highlighted by APG (the Asia/Pacific Group on Money Laundering) at paragraph 980 of its latest Mutual Evaluation Report on Brunei Darussalam (14 July 2010): www.apgml.org/documents/default.aspx?s=title&c=7.

warrants "to bearer". These interpretations of the provisions provide greater assurance that the risk presented by share warrants to bearer in Brunei would be minimised.

136. 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.

137. In practice, the RIBC and AMBD clarified that, as stated under Section 5 (5) of the International Business Companies Order 2000, all shares in an IBC shall be registered shares and accordingly no shares in an IBC may be issued to bearer. Therefore, shares in an IBC may be either shares with par value or shares with no par value. The registered agents who provide the international companies management business for the IBCs must ensure that upon incorporation no share warrants are to be issued to bearer and must be in accordance to Section 5 (5) of the IBCO 2000. Share details are also required to be submitted to the RIBC during application for incorporation of the IBC.

Partnerships *(ToR A.1.3)*

Types of partnerships

138. Brunei's law provides for three types of partnerships:

- domestic partnership;
- limited liability partnership (LLP); and
- international limited partnership (ILP).

139. A domestic partnership or "firm" is defined by the Business Names Act (BNA) as an "unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who or which have entered into partnership with one another" (s. 2). Domestic partnerships are not separate entities in Brunei. The maximum number of members permitted is 20, and they can be both individuals and companies. If there are more than 20 partners, the partnership is converted in a limited company. As a general rule, at least one partner must be a Brunei citizen or a Brunei permanent resident. Individual businesses may also take the form of sole proprietorships.

140. Pursuant to the Limited Liability Partnership Order, 2000 (LLPO), any two or more persons associated for carrying on a lawful business with a view to profit may, by complying with the registration requirements, register

a limited liability partnership (s. 15). Unlike partnerships under the Business Names Act, LLP are separate legal entities with limited liability (s. 5). General partnership law does not apply to LLPs. Every partner of a LLP is the agent of the limited liability partnership (s. 10). Domestic partnerships (firms) and private companies may convert into an LLP. The LLPO envisages the possibility of registering foreign limited liability partnerships (s. 57(2)(a)). To date, however, regulations for the registration and regulation of such foreign LLPs have not been made.

141. International limited partnerships (ILPs) are governed by the IBCO. Under the IBCO, an ILP consists of one or more general partners (of which one partner must be an IBC, a trust corporation, or a wholly owned subsidiary thereof, or a partnership which is an ILP) and any number of limited partners. An ILP may be formed for any lawful purpose. It may not carry on business with any persons resident in Brunei. A partnership interest cannot be held by a person resident in Brunei.

Information to be provided to government authorities

142. Firms, individuals and corporations carrying on business under business names need to register under the Business Names Act, provided that they have not more than 20 members (in which case, they are required to register as companies).

143. Upon registration, firms are required to furnish to the Registrar a statement in writing containing, *inter alia*, particulars on the general nature of the business, the principal place of business and the full names, the usual residence and the other business occupation (if any) of every individual who is a partner (s. 6(1) BNA). Copies of identity cards, passports or other documents such as certificate of qualification or letters of consent may also be required (s. 15 BNA and s. 3 Business Names Regulation). Changes in any of the registered particulars need to be filed within 14 days (s. 10 BNA). When a foreign firm is registered through a Bruneian agent, the agent must register and furnish particulars regarding the foreign firm's partners (s. 5 BNA and s. 3 of the Business Names Regulation).

144. Any person may, on payment of a fee, search the Register of Business Names or may inspect or make extracts from or copies of the statements furnished in pursuance of the Business Names Act (s. 16).

145. Domestic partnerships are not legal entities and are not subject to profit tax. Therefore, they are not subject to tax reporting requirements.

146. LLPs are required to submit upon registration a statement by every partner containing the name of the proposed partnership, the general nature of its proposed business, the proposed registered office, the name,

identification (if any), nationality and usual place of residence of every person who is to be partner or manager of the partnership. When any of such persons is a body corporate, the corporate name, place of incorporation or registration, registration number and registered office need to be provided (s. 16 LLPO). Changes in any of the registered particulars need to be filed with the Registrar within 14 days of the change (s. 29).

147. The Registrar of International Limited Partnerships holds the identity of the general partner or, if there is more than one, of each of the general partners (s. 13(1)(e) ILPO). Records kept by the registrar can be inspected or made copies of on payment of the prescribed fee. (s. 13(6)). Brunei's authorities have reported that to date, no international limited partnerships have been registered. ILPs are not required to file tax returns (s. 20).

148. As of 1 March 2016, there are 106 333 domestic partnerships and no LLP registered in Brunei. The ROCBN confirmed that, although domestic partnerships do not have to submit annual returns (unlike companies), domestic partnerships are obligated to notify the ROCBN whenever there is a change in the identity of their partners. In addition, similar to companies, with payment of a small administrative fee, members of the public are able login to the ROCBN website to search for ownership information of domestic partnerships.

Information held by the partnership or partners

149. Every ILP must maintain a registered office in Brunei at the registered office of a trust corporation. ILPs must keep a register of the limited partners at their registered office and update it within twenty-one days of any change in the particulars required to be entered in it (s. 11 ILPO). The register of limited partners may be inspected, upon payment of a fee, by: *(i)* any partner, director or other officer or liquidator of an ILP or the supervisory Authority; and *(ii)* by any other person with the written permission of the Authority or the ILP Registrar, *in either case with a cogent reason for inspection having been supplied by such person* (s. 11(3)).

Information held by service providers

150. The CARO which was issued in 2012 and came into effect on 16 June 2012, introduced requirements for identity information on all relevant entities and customers to be obtained and verified (s. 5, 6, 7 and 13 of CARO[17]). This obligation applies to trust and company service providers, financial

17. Section 5 of CARO lists the situations when service providers are required to obtain customer information, section 6 of CARO lists the type of information on the customer to be obtained, section 7 of CARO list the verification procedures which the service providers should undertake to satisfy itself of the true identity

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 of CARO). These provisions are sufficient to ensure the availability of all identity information of all relevant entities must be kept.

151. International partnerships must be registered by a licensed trust corporation, which is required to provide a certificate of due diligence prior to registration (s. 13 ILPO). Where a new partner is admitted, appropriate reaffirmation of the certificate specifying the nature of the change must be submitted to Registrar (s. 14). Such reaffirmation of the due diligence certificate must be submitted within sixty days of the change made to or occurred in any of the matters specified in the original statement. When a person ceases to be a general partner or the partnership is dissolved, the statement needs to be filed with the ILP Registrar within twenty-one days. The trust corporations are also subject to CDD obligations pursuant to the AMBDO.

152. The RIBC confirmed that as at 1 March 2016, there is no international partnership registered in Brunei.

Conclusion

153. Overall, 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 ROCBN (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.

Trusts *(ToR A.1.4)*

Types of trusts

154. Trusts are recognised, and can be created under Bruneian law. In addition to the common law principles, there are specific statutes and statutory provisions regulating international trusts, namely the Registered Agents and Trustees Licensing Order, 2000 (RATLO) and International Trusts Order, 2000 (ITO).

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of its customer, and section 13 of CARO lists additional procedures for on-going customer due diligence.

155. Common law express trusts may be formed in Brunei with the assistance of a lawyer.

156. An international trust is created *in writing whether by deed, unilateral declaration will or other testamentary document or otherwise*. At least one of the trustees needs to be a trust corporation or wholly-owned subsidiary of a trust corporation authorised and licensed under section 3(3) of the RATLO (s. 3(2) ITO). The law expressly requires that no capital or income subject to an international trust be paid or applied in any way which might confer any direct or indirect benefit on any person who is residing in Brunei at the time of the payment or application (s. 3(4)).

157. International trusts may be: authorised purpose trusts; special trusts; or, ordinary trusts.

158. An ordinary trust is an international trust if at least one of the trustees is licensed under the RATLO and the trust instrument provides or implies the trust be an international trust for the purposes of the ITO (s. 3(2) (b) ITO). An authorised purpose trust is an international trust which: *(i)* is for some abstract or impersonal purpose or purposes (whether general or specific) other than an exclusive charitable purpose or exclusively charitable purposes; *(ii)* is not for the direct or indirect benefit of any particular ascertainable persons or class of persons (whether or not immediately ascertainable); and *(iii)* can be enforced only pursuant to the provisions contained in Part VIII of the ITO (s. 68). A special trust is an international trust created by a written instrument in exercise of a special power (s. 76(3)). In all cases, the settlor of an international trust cannot reside in Brunei at the creation of the trust or when it first becomes subject to the law of Brunei.

159. Pursuant to the RATLO, only companies (including domestic companies registered under the Companies Act, IBCs and foreign international companies) are eligible for licences, granted by the Monetary Authority, to carry out international business services, including international trust services (s. 7). International banks and international insurers cannot be granted a trust licence (s. 8).

160. Persons holding a mutual fund licence or a banking licence are exempted from obtaining a RATLO licence but only as regards the activities permitted by the licence they already hold (ss.2-3 of the RATLO, Third Schedule). Private trust companies are also exempted from obtaining an international trust business licence. Pursuant to the Third Schedule of the RATLO, a private trust company is an IBC or a FIC *which is intended to be a trustee of no more than three qualifying trusts of which one or more members of a family, corporate group or one or more charitable institutions or trusts are the principal beneficiaries for the time being, or which is intended to be a trustee of no more than three purpose trusts having common purposes, settlers and enforcers* (s. 4(2)).

Such exemption only applies where at least one of the directors of the private trust company is supplied by a licensee conducting international trust business, and a licensee is a co-trustee, or is the sole shareholder (whether beneficially or upon a trust) of the private trust company (s. 4(3)).

Information provided to government authorities

161. Brunei's law does not provide for a central registry for express trusts or for international trusts. However, all persons wishing to carry on international trust business need to be licensed by the Monetary Authority, which is also their supervisory entity. Registered trustees do not file tax returns or other information with the tax authorities as they are expressly exempted from tax and tax reporting obligations (s. 55 RATLO).

Information held by trustees and service providers

162. Trustees of all trusts in Brunei are under a fiduciary duty that arises under the common law to keep proper records and accounts of their trusteeship.

163. In addition to the fiduciary duties arising under common law, the trustees of special and ordinary international trusts are required to maintain specific documents within Brunei. In particular, the RATLO requires each licensed trustee to maintain within Brunei adequate systems of control of its own client's business and records (s. 12(2)g). Licensed trustees are subject to the Authority's general power to require information and documents (s. 28).

164. In relation to special trusts, the ITO requires trustees to keep at their registered office in Brunei documentary record of: the terms of the special trust; the identity of the trustee and the enforcers; all settlements of the property upon the special trust and the identity of the settlors; the property subject to the special trust at the end of each of its accounting years; and all distributions or applications of the trust property (s. 85). In addition, trustees of a special trust who accept a settlement of property must take steps to ensure that the settlor, or the person making the settlement on his behalf, understands who will have standing to enforce trust (s. 87).

165. There is also a legal obligation, subject to the terms of the trust instrument, on trustees of ordinary and special international trusts to take reasonable steps to inform each beneficiary who has, but may not be aware of having, a vested interest under the trust of the existence of the trusts and of the general nature of that interest, and when there are no beneficiaries the trustees must take reasonable steps to ensure that at least one person who is capable of enforcing the trusts is aware of the existence of the trusts and of the general nature of the interest entitling him to enforce them (s. 90).

166. The CARO 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), CARO). 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. Previously, licensed trustees (for international trusts) are required to take "reasonable measures" to identify their clients also under the AMLO (s. 9(2)). 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. With the introduction of CARO, the Notice will be repealed.

167. Common law express trusts can be formed in Brunei, and this usually occurs with the assistance of a lawyer. The Criminal Asset Recovery Order (CARO) which was issued in 2012 and 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), CARO). This obligation applies to financial institutions, designated non-financial business, and professions including "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 645 161) and imprisonment up to one year. Continuing offence would include a further fine of BND 100 000 (EUR 64 516) 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.

168. As at 1 March 2016, there are 15 trusts formed under the International Trust Order in Brunei and these arrangements are regulated by the FIU and RIBC within the AMBD. In practice, registered agents are required under the RATLO to submit annual returns to the RIBC. The annual returns will include information on the trusts the registered agents are administrators of, and confirmation that the registered agents have complied with the relevant CDD obligations. The RIBC has yet to embark on audits of the trusts formed under the International Trust Order because its priority is to concentrate on IBC compliance (see sections above for details). It is recommended that Brunei ensures that the obligation imposed on *(i)* trusts formed under the International Trust Order, and *(ii)* express trusts formed under common law, to maintain updated ownership information is sufficiently monitored in practice.

Conclusion

169. A combination of requirements under the ITO and the RATLO result in full identity and ownership information being available in respect of all international trusts formed under the ITO. For express trusts formed under common law, the introduction of CARO in 2012, mandated that identity information on the trustees, settlor and beneficiary of the express trust be obtained and verified.

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

170. There is no statute which permits the establishment of foundations under Bruneian law. Although there are two entities called "foundations" established under specific laws[18], both these entities have charitable purposes and are set up and founded by Brunei's royal family.

171. Brunei law also provides for a number of non-profit organisations (NPOs). NPOs generally take the form of co-operative societies, overseen by the Brunei Industrial Development Authority, or societies, are overseen by the Registry of Societies (ROS). The latter is part of the Royal Brunei Police Force. The Brunei not-for-profit-organisation sector consists entirely of domestic entities. It is relatively small with 443 registered societies and four registered not-for-profit companies limited by guarantee. All the four companies limited by guarantees (an international school, two community organisations and an aid/care organisation) qualify as companies operating for "charitable purposes" and may therefore be considered outside the scope of the TOR.

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

Compliance with company, partnership and trust laws

172. Brunei's laws provide for a system of penalties for non-compliance with key obligations to maintain ownership and identity information.

173. Companies face penalties for failure to lodge the prescribed documents or returns with the ROCBN or to keep any of the prescribed registers. In case of failure to lodge the return of allotment, offenders (i.e. every director, manager, secretary, or other officer of the company who is knowingly a party to the default) are liable to a fine of BND 250 (EUR 161) for every day during which the default continues (s. 45(3) CA). For failure to lodge the

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

annual return of members or shareholders, the company and every officer of the company who is in default is liable to a fine of BND 50 (EUR 32) for every day during which the default continues (s. 109(4)). The same default fine applies where a company not having a share capital has increased the number of its members beyond the registered number fails to give to the Registrar notice of the increase (s. 55). Failure to pay fines or penalties imposed by a Court or magistrate under the Companies Act may result in the company being struck off the ROCBN and dissolved (s. 316).

174. Foreign companies that operate in Brunei without registering or that fail to comply with any of the obligations under the Companies Act face a fine of BND 1 000 (EUR 645) and, in case of a continuing offence, BND 25 (EUR 16) for every day during which the default continues (s. 306 CA).

175. In year 2015, out of a total of 24 limited public companies, 12 (50%) submitted their annual return on time. In the same year, out of a total of 5 786 limited private companies, 3 089 (53%) submitted their annual return on time, 1511 (26%) filed their annual returns late and incurred late submission penalty fees, and of those that did not submit their annual returns 4 are being wound up, 340 are in the process of being struck off, the remaining 838 companies (15%) did not submit their annual returns either because *(i)* they are newly incorporated and their annual returns are not due for submission (547 companies) or *(ii)* they are not due to file their annual returns during the period of assessment (291 companies). In 2015, out of a total of 213 foreign companies, 97 (45.5%) submitted their annual return on time and of those that did not submit their annual returns 46 are in the process of being struck off. The ROCBN also reported 1515 late annual returns submitted in 2015 which resulted in a total of BND 151 500 (EUR 97 700) in late submission penalties. For companies that persistently fail to submit their annual returns, the ROCBN will initiate the process of striking off the company under section 276(1) of the Companies Act.

176. International Business Companies failing to keep a register of members or of shareholders are liable on conviction to a fine not exceeding BND 200 (EUR 129) and to a further fine not exceeding BND 50 (EUR 32) for every day on which the contravention continues after conviction (ss.46(5) and 47(6) IBCO). In addition, since 2011 a new enforcement provision was introduced for FICs, of which 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 64 516) (s. 158(2), IBCO).

177. Every partner in a firm or partnership failing to furnish a statement of particulars, or of any change in particulars within the prescribed time is guilty of an offence and liable to a fine of BND 25 (EUR 16) for every day

during which the default continues. Partners furnishing false statements or particulars face a fine of BND 2 000 (EUR 1 290) or imprisonment for 12 months (s. 14 BNA). Persons refusing to furnish to the Registrar such particulars as appear necessary to him for the purposes of ascertaining whether or not such person or the firm of which he is partner should be registered under the BNA or an alteration made in the registered particulars are subject to imprisonment for 3 months and to a fine of BND 800 (EUR 516). Limited partnerships and the responsible persons within them also face specific sanctions for failure to submit changes in the registered particular or to ensure that at least one of its managers is ordinarily resident in Brunei (s. 29(5) and s. 24(5) LLPO).

178. In the case of international limited partnerships, a wilful failure by a general partner to sign and file a statement concerning changes in the registered particulars triggers a fine not exceeding BND 1 000 (EUR 645) and a further fine not exceeding BND 1 000 (EUR 645) for each day after conviction on which the failure continues.

179. Trustees of a special trust failing to keep at their office in Brunei documentary evidence of the terms of such special trust or of the identity of the trustees and the enforcers are liable: in the first case, to imprisonment (for a term not exceeding two years) or a fine not exceeding BND 100 000 (EUR 64 516), or to both; in the second case, to a fine not exceeding BND 20 000 (EUR 12 903) (s. 85(3) and (4) ITO). In addition, 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 645 161) and imprisonment up to one year. Continuing offence would include a further fine of BND 100 000 (EUR 64 516) for every day during which the offence continues (s. 24, Criminal Asset Recovery Order and s. 34(2), AMBD Order).

Compliance with AML/CFT legislation

180. Compliance with CDD obligations is enforced through a system of fines. Section 24 of CARO states that any person who intentionally or negligently fails to conduct due diligence with respect to customers, accounts and transactions as required by sections 5, 6, 7 and 13 is guilty of an offence and liable to conviction to a fine not exceeding BND 1 000 000 (EUR 659 643), imprisonment for a term not exceeding 1 year or both, and, in the case of continuing offence, to a further fine of BND 100 000 (EUR 65 964) for every day during which the offense continues after conviction.

181. Over the review period, the AMBD reported that penalties have been imposed for the following: *(i)* on 427 cases for failure of IBCs to pay renewal

fees on time; *(ii)* on 232 cases for failure of IBCs to submit annual return on time; and *(iii)* on 18 cases for failure of IBCs to submit return of allotment on time.

Specific penalties for professional service providers

182. Registered trust service providers commit an offence punishable with imprisonment for a term not exceeding two years, a fine not exceeding BND 150 000 (EUR 96 774) or both when knowingly or recklessly provide the Monetary Authority or any other person entitled to information under the RATLO with information which is false or misleading in a material particular (s. 37). Non-compliance with licensing requirements for trust service providers is sanctioned with imprisonment for a term not exceeding two years a fine not exceeding BND 200 000 (EUR 129 032) or both (s. 13). Fines also apply for failure to notify the Authority of changes in the particulars set out in an application for a license (s. 16).

Compliance with tax law

183. Failure to comply with tax reporting obligations under the Income Tax Act triggers a fine of BND 10 000 (EUR 6 452) and in default of payment to imprisonment for 12 months (s. 78). Penalties for making incorrect returns or for giving incorrect information in relation to any matter affecting the taxpayer's own liability to tax or the liability of any other person or of a partnership, are equal to double the amount of tax which has been undercharged in consequence of such incorrect return or information, or which would have been so undercharged if the return or information had been accepted as correct. Offenders are also liable to a fine not exceeding BND 5 000 (EUR 3 225), imprisonment for a term not exceeding 12 months or both (s. 79).

184. All companies[19] registered under the Companies Act are automatically registered with Revenue Division. The tax identification number is the same as the ROCBN number. Currently, registration for tax is done manually[20] based on information gathered in the new online system implemented by the ROCBN. The system of automatic registration will be reactivated as soon as the process is consolidated at the ROCBN front. The Corporate Unit

19. Other entities such as partnerships and IBCs are exempted from income tax and are not required to be registered with the Revenue Division.

20. In the meantime, Corporate Unit of Revenue Division collects the list of newly registered companies from Registry of Companies and enrols them on the records of Revenue Division. Practically this time lag carries no adverse implication as the newly registered companies become mature for compliance like filing of Income Tax Return only after the close of its fiscal year.

of Revenue Division monitors the compliance of tax registration and filing of tax returns. Section B of the annual Income Tax Return Form requires companies to include shareholder information and this is one of the mandatory fields in the return. The table below provides details on the compliance rate for filing of annual tax returns.

Year of assessment	Number of returns filed	Compliance Rate
2013	3 153	46%
2014	2 854	51%
2015	2 143	63%

185. In practice, the Corporate Unit of Revenue Division would generate the list of non-filers from the Revenue Division's internal IT system (called STARS), and carry out default tax assessments. The list of non-filers is then forwarded to the Enforcement Unit of Revenue Division for follow-up enforcement actions. The Enforcement Unit has a parallel track of work by conducting risk assessment to identify non-filers and to send out reminder letters[21] to these taxpayers. The table below provides information on the number of reminders issued over the review period. Brunei advised that due to resource constraints in the Revenue Division, only a small number of non-filers received a reminder. It is recommended that the Revenue Division be adequately resourced to enforce tax filing obligations.

Year of assessment	Number of reminders issued	Number of returns submitted
2013	151	88
2014	163	82
2015	207	23

186. If the taxpayer fails to respond to the reminder notices, the Enforcement Unit would proceed to forward these errant cases to the Attorney General's Chambers (AGC) for legal action. The table below provides information on the number of tax cases prosecuted in court over the review period.

Year	Number of cases prosecuted in court
1 July 2012-30 June 2013	18
1 July 2013-30 June 2014	18
1 July 2014-30 June 2015	42

21. Each reminder letter may relate to multiple past years of assessment.

Conclusion

187. Brunei had in the recent years implemented legislative amendments to ensure that ownership and identity information is available for all entities. Even though Brunei did not receive any EOI request during the review period, it is positive that Brunei is able to provide ownership information for companies and partnerships when requested by other government agencies within Brunei. However, some of the Bruneian authorities (such as the RIBC) are still in the primary stages of implementing an effective system of monitoring and oversight of the entities (such as IBCs and trusts formed under the International Trust Order) which they regulate, therefore oversight programmes are new and not fully implemented. Brunei should ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Brunei had in the recent years implemented several key legislative amendments to ensure that ownership and identity information is available for all entities. Some of the Bruneian authorities (such as the Registry of International Business Companies) are still in the primary stages of implementing an effective system of monitoring and oversight of the entities which they regulate, therefore oversight programs are new and not fully implemented.	Brunei should ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases.

A.2. Accounting records

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

188. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The obligations to maintain reliable accounting records are found in most of the laws governing the various types of entities covered by this report, and in the tax legislation.

General requirements (ToR A.2.1)

Companies

189. Companies formed under the Companies Act (CA) are obliged to keep proper books of account with respect to *(i)* all sums of money received and expended by the company (and the matters in respect of which the receipt and expenditure takes place); *(ii)* all sales and purchases of goods by the company; and *(iii)* the assets and liabilities of the company (s. 121(1)). For this purpose, every company is required to keep:

- a cash book or other similar book and a book containing a daily summary of all the receipts and payments which are recorded in the cash book or books;
- a journal or other book or books in which are recorded all financial transactions of the company other than cash transactions and all transactions which in any way affect the accretions and diminutions on capital and revenue accounts of the company with full explanations of such transactions; and
- a ledger or other book(s) in which are entered each to its proper account the transactions recorded in the cash book and journal so as to show the financial relations of the company with every party with whom it has dealings and the financial position of the company itself.

190. These books need to be kept at the registered office of the company or *at such other place as the directors think fit* (s. 121(2) CA).

191. In addition, directors are required to prepare once a year a profit or loss account (or, in the case of a company not trading for profit, an income and expenditure account) and a balance sheet, containing a report by the directors and particulars as to subsidiary companies (s. 122-125 CA). Both

the profit and loss account and the balance sheet need to be laid before the company in general meeting. The balance sheet of a company is submitted to the ROCBN as an attachment to the annual return of members or shareholders made pursuant to sections 107 and 108 of the CA (s. 109(3)).

192. Foreign companies registered under the CA are required to prepare every year a balance sheet *in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the Registrar (*i.e. *ROCBN) for registration* (s. 302 CA). In addition, within two months of its annual general meeting, the foreign company has to lodge with the ROCBN a copy of its balance sheet prepared in accordance with the law of its place of incorporation or origin, together with a statutory declaration verifying that the copies are true copies of the documents so required (s. 302(3)). Finally, foreign companies are required to also lodge with the ROCBN a duly audited statement showing its assets used in and liabilities arising out of its operations in Brunei (s. 302(7)).

193. In practice, compliance with the obligation on (both domestic and foreign) companies to maintain accounting records is monitored by the ROCBN. These companies have to submit their audited balance sheet together with their annual returns to the ROCBN. In year 2015, out of a total of 24 limited public companies, 12 (50%) submitted their annual return on time. In the same year, out of a total of 5 786 limited private companies, 3 089 (53%) submitted their annual return on time, 1 511 (26%) filed their annual returns late and incurred late submission penalty fees, and of those that did not submit their annual returns 4 are being wound up, 340 are in the process of being struck off, and the remaining 838 companies (15%) did not submit their annual returns either because *(i)* they are newly incorporated and their annual returns are not due for submission (547 companies) or *(ii)* they are not due to file their annual returns during the period of assessment (291 companies). In 2015, out of a total of 213 foreign companies, 97 (45.5%) submitted their annual return on time and of those that did not submit their annual returns 46 are in the process of being struck off. The ROCBN also reported 1515 late annual returns submitted in 2015 which resulted in a total of BND 151 500 (EUR 97 700) in late submission penalties. For companies that persistently fail to submit their annual returns, the ROCBN will initiate the process of striking off the company under section 276(1) of the Companies Act.

194. Pursuant to the Income Tax Act, companies are required to keep and retain in safe custody sufficient records to enable their income and allowable deductions to be readily ascertained by the Collector (s. 56A) ITA). Such records include books of account recording receipts, payments, income and expenditure (s. 56A(6)).

195. In practice, for entities subject to income tax, the Revenue Division conducts tax audits, which consist amongst others in checking the availability and accuracy of accounting records. The Revenue Division stated that accounting records are generally available. The Revenue Division conducted 38 tax audits in 2012, 29 tax audits in 2013, 102 tax audits in 2014 and 164 tax audits in 2015. The amount of penalties[22] applied by the Revenue Division amounted to BND 29 000 (EUR 19 132) in 2012, BND 36 875 (EUR 24 327) in 2013and BND 33 375 (EUR 22 018) in 2014. The penalties were related to the failure of taxpayers to file tax returns by the tax filing due date. Furthermore, the Corporate Unit of Revenue Division monitors taxpayers' compliance in filing tax returns. The annual Income Tax Return Form requires companies to include accounting information and this is one of the mandatory fields in the return. The required accounting information to be filed along with the annual tax return, include Audited Financial Statement and Tax Computation. The Financial Statement needs to be audited by one of the authorised public accountants registered under the Accountants Order 2010. The table below provides details on the compliance rate for filing of annual tax returns.

Year of assessment	Number of returns filed	Compliance Rate
2013	3 153	46%
2014	2 854	51%
2015	2 143	63%

196. Pursuant to the International Business Companies Order, IBCs are required to prepare and keep at their registered office in Brunei *such accounts and records as the directors consider necessary or desirable to reflect the financial position of the company* (s. 93(1) IBCO). Directors of an IBC are also required to prepare every year and lay before the company in meeting financial statements (s. 93(3)). DCCs are required to maintain separate records for dedicated assets (s. 147D). The International Business Companies Order was amended in November 2013 to introduce specific obligations for all IBCs, FICs and DDCs to keep proper accounting records, please refer to the relevant section below for details.

22. Brunei did not provide the amount of penalties for 2015 because the review period ends on 30 June 2015, which is the deadline for filing of tax returns for the year.

Partnerships

197. Pursuant to the Partnership Act, 1890 of the United Kingdom (applicable in Brunei under s. 2 of the Application of Laws Act), partners of a general partnership are bound *to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives* (s. 28). Partners are also required to account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection (s. 29(1)).

198. Pursuant to the LPO, every limited liability partnership is required to keep *such accounting and other records as will sufficiently explain the transactions and financial position of partnership and enable profit and loss accounts and balance sheets to be prepared from time to time which give a true and fair view of the state of affairs of the partnerships* (s. 26).

199. Partners of Brunei's ILPs are subject to the general accounting requirement provided for by the Partnership Act, 1890 of the United Kingdom (see above), which is applicable to ILPs under s. 3 of the ILPO. In addition, an ILP is required to keep at its registered office in Brunei Darussalam such accounts and records as are sufficient to show and explain the ILP's transactions and to disclose with reasonable accuracy, at any time, the financial position of the ILP at that time (s. 5(4)).

Trust service providers

200. Trustees of all trusts in the jurisdiction are under a fiduciary duty that arises under the common law to keep records and accounts of their trusteeship. Such records and accounts must be "proper" in relation to the exercise of trusteeship. Licensed trustees may *in their absolute discretion from time to time cause the accounts of the trust to be examined or audited by an independent accountant and must produce such vouchers and give such information to such accountant as he may require* (s. 27 ITO). In addition, trustees of special trusts are required to maintain specific documents within the jurisdiction, including documentary record of all the settlements of the property upon the special trust and the identity of the settlors; the property subject to the special trust at the end of each of its accounting years; and all distributions or application of the trust property (s. 85(1)).

201. A licensed trust service provider is required to maintain a separate account in its records for each person for whom he is trustee or financial fiduciary and keep the property held for each such account separate from that held for other such accounts and from property that is not trust property or client property (s. 23(1)(a) RATLO).

Foundations and other relevant entities

202. All the accounting record keeping requirements provided in the CA, as detailed above in paragraphs 192-195, apply to non-profit companies limited by guarantee. Societies are required to keep accounts of the income and expenditure and make such accounts public to their members annually (Second Schedule of the Societies Order); they are also required to file with the Registrar the accounts of the last financial year and a balance sheet showing the financial position at the close of that year within 60 days of their annual meeting (s. 22(1)(d) Societies Act (Chapter 203)).

Requirements under the Record Keeping (Business) Order 2015

203. Prior to 23 June 2015, Brunei legislation did not ensure that reliable accounting records were kept for *(i)* companies formed pursuant to the International Business Companies Order, *(ii)* domestic partnerships, and *(iii)* trusts. In addition, obligations to keep underlying documentation only applied to entities subject to income tax and there were no express obligations for all other entities.

204. The Record Keeping (Business) Order 2015 which came into effect on 23 June 2015 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)). "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)).

205. Provisions in the Record Keeping (Business) Order are in line with the requirements under the standard. It is noted that the Record Keeping (Business) Order 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. 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 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 6 452) (s. 13).

206. The Bruneian authorities have clarified that the Record Keeping (Business) Order 2015 imposes the obligation on all relevant entities to maintain the required accounting records prospectively from 23 June 2015 onwards. Brunei's ability to effectively exchange accounting information in all circumstances under the new legislation has not been tested.

207. In practice, the implementation of the Record Keeping (Business) Order 2015 is under the purview of the Accounting Unit (AU) of the Revenue Division. The AU is acting as the secretariat to the Brunei Darussalam Accounting Standards Committee (BDASC) which has the responsibility to make or formulate accounting standards applicable to companies for the purpose of the Companies Act (Chapter 39). The Bruneian authorities acknowledge that monitoring of accounting records by this unit has not yet matured as the Order is only in force from 23 June 2015. However, the AU is gearing up to start the monitoring process in the future. Since September 2015 the AU has embarked on monthly awareness campaigns to educate industry practitioners on the requirements under the Record Keeping (Business) Order 2015. On average, around 150 participants attended each of the outreach events. The AU has also engaged the Brunei Institute of Public Accountants on the change.

208. The AU did however highlight that the Record Keeping (Business) Order is a record keeping obligation not a filing obligation. The AU did recently have a test case on a company to check whether records on a related party transaction was properly maintained and reported that the requested information was submitted to the AU in a timely manner.

Amendments to the International Business Companies Order

209. Effective as of 23 November 2013, amendments were made to the International Business Companies Order 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 standard.

210. In practice, monitoring of compliance with the requirements on IBCs, FICs and DDCs to maintain accounting records is under the supervision of the RIBC. During the first quarter of 2016, the RIBC started to conduct on-site inspections of the registered agents to verify that the legally required records of IBCs (including accounting information) are being maintained. These on-site inspections were initially done randomly but going forward the RIBC has devised a systematic off-site and on-site supervision plan – five staff have been deployed to the supervision team with a target of on-site inspection of records of 100 IBCs a week (most cases are off-site inspections). An internal manual describes procedures for both off-site and on-site inspections.

Underlying documentation *(ToR A.2.2)*

211. Companies formed under the Companies Act are required to keep a book where the daily totals receipts and payments are recorded in such a manner as to show clearly their respective sources and the accounts in respect of which they are made. They also need to give full particulars in respect of

all receipts and payments on account of capital and of all payments made to directors of the company (s. 121 CA).

212. Pursuant to the Income Tax Act, records that companies are required to keep include invoices, vouchers, receipts *and such other documents as in the opinion of the Collector are necessary to verify the entries in any book of account* as well as *any records relating to any trade, business, profession or vocation* (s. 56A(6) ITA). Companies are also required to issue a printed receipt serially numbered for every sum received in respect of goods sold or services performed in the course of or in connection with their business and retain a duplicate of every such receipt. These rules also apply to foreign companies registered under the CA.

213. As mentioned above, the Record Keeping (Business) Order 2015, which came into effect on 23 June 2015, 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)). The effectiveness of the new law remained untested during the review period.

The 5-year retention standard (ToR A.2.3)

214. For all records required to be kept under the Income Tax Act the minimum retention period is seven years (s. 56A(1)a).

215. The retention period is of five years for all the documents and records required to be retained under AML/CFT legislation. In particular, all information kept by the respective registered agents and licensed trustees in relation to IBCs, FICs, DCCs and to all types of international trusts is subject to a 5-year minimum retention period (s. 12(3) AMLO). The amendments under the International Business Companies Order which came into effect on 23 November 2013 introduced 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). The International Business Companies Order further provides for such records 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)), International Business Companies Order). Pursuant to LLPO, LLPs are expressly required to retain their records for a period of not less than 5 years from the end of the financial year in which the transactions to which those records relate are completed (s. 26(2)).

216. As mentioned above, the Record Keeping (Business) Order 2015, which came into effect on 23 June 2015, provides for records to be retained for at least five years from the date the transaction takes place on or after the commencement of the Order (s. 5(2)).

Conclusion

217. Over the review period, there was no EOI request received on accounting information. However, for entities (i.e. domestic and foreign companies) subject to income tax, the Revenue Division conducts tax audits, which consist amongst others in checking the availability and accuracy of accounting records. The Revenue Division stated that accounting records are generally available.

218. The Record Keeping (Business) Order 2015, which is the main legislation providing for the retention of accounting records and is applicable to all entities in Brunei only came into effect on 23 June 2015, which is toward the end of the review period. The oversight of this new law has not been developed sufficiently, and the Bruneian authorities have been focusing their efforts on outreach activities to educate industry practitioners on the requirements under the new law. Brunei should monitor the enforcement of the new law to ensure that accounting records and underlying documentation are available in respect of all entities.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
The new legislation, the Record Keeping (Business) Order 2015, which obliges all relevant entities to maintain accounting records and the underlying documentation for at least 5 years only came into effect on 23 June 2015 (seven days before the end of the review period). The Bruneian authorities have since been focusing their efforts on educational and outreach activities throughout the country to publicise the new record keeping obligations for all relevant entities.	Brunei should monitor the enforcement of the new law to ensure that accounting records and underlying documentation are available in respect of all entities.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

219. Banks, finance companies, international banks and Islamic banks are all "financial institutions" and therefore subject to Brunei's anti-money laundering regime. As of 1 January 2011, the supervisory authority for banks in respect of the AML obligations is Brunei's Monetary Authority (s. 2 AMBDO, s. 4(1)(c) AMLO and s. 9 Amendment of Schedule AMLO). In 2012, the CARO was introduced to improve customer due diligence guidelines used by financial institutions and service providers and to grant enforcement agencies extensive powers to seize businesses, freeze accounts and compel individuals to list their assets through "unexplained wealth declarations". The new rules under CARO aim to increase transparency as well as remove procedural complexities contained in previous laws. With the enactment of CARO, the Anti-Money Laundering Act, the Drug Trafficking (Recovery of Proceeds) Act and the Criminal Conduct (Recovery of Proceeds Act) Order have been repealed.

220. Pursuant to the CARO, financial institutions are required to maintain records relating to all transactions carried out by it (s. 14(1)(a)). Section 14(3) of CARO states that "records required to be maintained must contain particulars sufficient to identify (a) the name, address and occupation (or where appropriate business or principal activity of each person – (i) conducting the transaction or series of transactions; or (ii) if known, on whose behalf the transaction or series of transactions are being conducted; (b) the method used by the financial institution to verify the identity of each person identified; (c) the nature and date of the transaction; (d) the type and amount of currency involved; (e) the type and identifying number of any account with the financial institution involved in the transaction; (f) if the transaction involves a negotiable instrument other than cash, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument; (g) the name and address of the financial institution and of the officer, employee or agent who prepared the record". Section 23 of CARO states that "any person who intentionally or negligently fails to maintain books or records as required by section 14 is guilty of an offence and liable on conviction to a fine not exceeding BND 1 000,000 (EUR 655 802), imprisonment for a term not exceeding one year or both, or in the case of a continuing offense to a further fine of BND 100 000 (EUR 65 580) for every day during which the offense continues after conviction". In addition, section 26 of CARO allows the supervisory authority or competent authority to impose one or more of the following measures and sanctions – (a) written warnings; (b) order to

comply with specific instructions; (c) order reports on a regular basis from the financial institution or designated non-financial business and profession or other regulated business on the measures it is taking; (d) barring individuals from employment within the sector; (e) replacing or restricting the powers of managers, directors, principals, partners or controlling owners, including the appointing of ad hoc administrator; (f) a temporary administration of the financial institution or designated non-financial business and profession; or (g) suspending, restricting or withdrawing the licence of the financial institution or designated non-financial business and profession.

221. Section 14 (2) of CARO further specifies that the financial institution has to maintain the required records for a period of at least 7 years from the date the relevant transaction was completed or upon which action was last taken.

222. Section 14 (2) of CARO states that "*customer accounts of a financial institution shall be kept in the true name of the account holder"*.

223. In practice, the Banking Supervision Unit of AMBD monitors compliance by banks and finance companies with prudential reporting and disclosure requirements, while customer account information requirements are monitored by the Financial Intelligence Unit (FIU). AMBD through the FIU and the Banking Supervision Unit conducted AML/CFT onsite inspections of several banks in Brunei with the objective of assessing the banks' compliance towards Brunei's AML/CFT legal requirements under CARO, Anti-Terrorism Order, 2011 (ATO) and Anti-Terrorism (Terrorist Financing) Regulations, 2013 (TF Regulations) which covered the areas such as AML/CFT policies and procedures, implementation of "know your client"/customer due diligence procedures, identification of high risk customers and politically exposed persons, special monitoring of transactions, record keeping and ongoing due diligence, suspicious transaction reporting, AML/CFT compliance function, and AML/CFT training for staff. The thematic inspections began in 2012 with one of the international banks and the latest inspection was completed in 2015 on one of the local banks. No sanctions were imposed on the inspected banks. However, AMBD is actively following up with the banks on the implementation of necessary corrective action.

224. Brunei is a member of the Egmont group[23] since June 2014, and the Bruneian authorities shared that since being a member, there are more opportunities for exchange of information among FIUs in the group and Brunei

23. The Egmont Group is an informal group of Financial Intelligence Units (FIUs), which meet regularly to find ways to promote the development of FIUs and to co-operate, especially in the areas of information exchange, training and the sharing of expertise. The Egmont Group has evolved over the years and in 2015 comprised of 151 member FIUs. The goal of the Egmont Group is to provide a forum for FIUs around the world to improve co-operation in the fight against

benefitted from technical assistance from more advanced members. The Brunei FIU's online reporting system, the Integrated Financial Intelligence System (IFIS), was launched in June 2014.

225. The FIU reports directly to Managing Director of AMBD. It currently has 10 staff – three analysts, two IT specialists, and the remaining five analysts assisting in AML/CFT supervision (including the supervision of DNFBPs). The FIU is not an investigative unit. Hence, if a criminal act was found to have existed, the FIU would make a police report. Internal manuals used by FIU when conducting inspections are based on the World Bank guidelines.

226. As mentioned above, the FIU started inspections of banks in 2012, and out of a total of seven banks in Brunei, inspections were completed for five of the banks. On-site inspections may range from one week for small banks to two months for large banks. The FIU would examine a sample of the banks' CDD files during the inspections. The FIU has focused its audit efforts on banks first before DNFBPs because majority of transactions are channelled through the banks. The FIU shared that, generally, its audits found that the international banks and regional banks have good record keeping processes; while local banks need to improve their processes on monitoring and detecting suspicious transactions.

227. The FIU is in contact with the compliance officers of all seven banks almost on a daily basis. The FIU also meet with compliance officers once every three months. These quarterly meetings are an opportunity for the FIU and the banks to have open dialogue on AML/CFT trends, share upcoming regulations/notices to be issued by AMBD.

228. Over the review period, although there was no EOI request on banking information, the FIU has asked information on more than 7 000 account details (spread among the eight banks), and the FIU reported that it never had any issue with the quality of the information provided. The requested information was for the use of both FIU and other Bruneian government agencies. It was noted that the requesting agency needs to go through proper channels for banking information. The table below provides details on the number of requests for banking information over the review period.

Bruneian Government Agency	Year 2013	Year 2014	Year 2015 (January to November)
AMBD	961	1 353	1 961
Other Law Enforcement Agencies	718	976	1 926
Total	1 679	2 329	3 887

money laundering and the financing of terrorism and to foster the implementation of domestic programmes in this field.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B. Access to information

Overview

229. 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.

230. Since 2011 Brunei has taken measures to improve Bruneian authorities' access powers. The removal of the requirement to "prescribe" arrangements in 2012 ensures that the competent authority can exercise all access powers in respect of requests under all EOI agreements in force. Brunei has also clarified in its legislation 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".

231. As regards accessing information in respect of entities formed under the BIFC, including international trusts, the new legislation introduced in 2015 – the Record Keeping (Business) Order – provides access powers to obtain information from all entities, including those formed under the BIFC legislation. An exception exists as regards entities protected under statutory secrecy obligations, such as international trusts (also BIFC entities) since the Order did not override the existing secrecy provisions under the ITO and RATLO which therefore restrict the use of the new Order (section 9(2) of the Order). Section 9 of Record Keeping (Business) Order provides for the Bruneian Competent Authority to access information, however, the said section includes a subsection (i.e. section 9(2)), which states that "no person shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy".

232. The Phase 1 supplementary report stated that the 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. However, upon examination of relevant laws, AMBD further clarifies that such disclosure of information is subject to customer's consent. In addition, as in most other jurisdictions, the AMBD is bound by confidentiality provisions of the laws under its jurisdiction and will honour the letter of 16 September 2011 subject to the parameters of the law. As concluded in the Phase 1 supplementary report, ambiguities 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. It is, therefore, recommended that Brunei 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.

233. In practice, Brunei did not receive any EOI requests during the review period. The Revenue Division has used its access powers for domestic tax inquiries. However, the specific amendments made under the ITA to allow access to information for EOI purposes in accordance with the standard as well as the powers under Record Keeping (Business) Order to access information on entities that are not subject to tax remain untested. Brunei is recommended to monitor the application of its access powers provided under the 2012 amendments to the ITA and the 2015 Record Keeping (Business) Order and ensure they are effective to gather information for EOI purposes in accordance with the international standard. Element B.1 was rated as "Largely Compliant".

234. The application of rights and safeguards (e.g. notification, appeal rights) in Brunei do not restrict the scope of information that the tax authority can obtain. A prior notification right exists in the case of exchange of information protected by bank and trust secrecy; however, appropriate exceptions exist. Therefore, element B.2 was found to be in place and rated as "Compliant".

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).

Bank, ownership and identity information (ToR B.1.1) accounting records (ToR B.1.2) and use of information gathering measures absent domestic tax interest (ToR B.1.3)

Brunei's competent authority

235. Brunei's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by Brunei's Minister of Finance and effectively managed by the Collector of Income Taxes. The Minister of Finance is the competent authority of Brunei under Brunei's DTCs and TIEAs. The authorised representatives are Permanent Secretary (Performance) as the Collector of Income Tax, Director of Revenue Division, Assistant Director of Revenue Division and Senior Finance Officer of Revenue Division.

236. The management and administration of all EOI requests, received or sent, is centralised at the EOI Unit in the Revenue Division. The EOI Unit comprise of Director of Revenue Division, Senior Legal Counsel, Head of Unit/Senior Finance Officer, and EOI officer. Given that Brunei has yet to receive any EOI requests nor has it sent any EOI request to its treaty partners, it is not necessary to have personnel in the EOI unit working on EOI full time. Each of these persons have full time roles working on revenue matters, however where an EOI request were to be received, they would prioritise the EOI request. In addition, the Bruneian authorities shared that the EOI team have access to sufficient financial resource as part of budget allocation of Revenue Division.

Information gathering powers

237. Under the Income Tax Act, the Collector of Income Tax has broad powers to obtain all relevant information.

238. First, it can obtain full information in respect of any person's income and require any person to provide a statement containing particulars of all his bank accounts, loans, assets and all facts bearing upon his liability to income tax to which he is, or has been, liable (s. 55A).

239. In addition, the Collector of Income Tax or any officer authorised by him has, at all times, full and free access to all buildings, places, documents, computers or information for any of the purposes of the ITA. The Collector of Income Tax may also require any person to give orally or in writing, as may be required, all such information concerning his or any other person's income or assets or liabilities for any of the purposes of the ITA (s. 55B ITA).

240. Although Section 55B of the ITA does not in itself enable the Collector of Income Tax to override any existing secrecy provisions such as information held by any type of bank, insurer, mutual fund or trust, pursuant to the legislative amendment in 2010, the Collector of Income Tax can exercise all its access powers under sections 55 to 55C to obtain information regarding any person's "tax position" for purposes of a request for information made under a prescribed double taxation convention (DTC). For the purposes of an EOI request, the Collector of Income Tax may also obtain information protected by bank secrecy, after obtaining an order by the High Court (s. 86J ITA).

Issue of including "name and address of person believed to have possession or control of the information requested" in the EOI request

241. The Fourth Schedule of the ITA describes the list of information (as reproduced below) to be included in a request for information filed under a "prescribed arrangement". However, s. 86D (2) of the ITA provides that the Collector of Income Tax can waive any of these requirements. Information listed in the Fourth Schedule (as amended in 2012) is the following:

- the purpose of the request;
- the identity of the (requesting) competent authority;
- the identity of the person in relation to whom the information is requested[24];
- a statement of the information requested including its nature, the relevance of the information to the purpose of the request, and the form in which the competent authority wishes to receive the information from the Collector;
- the grounds for believing that the information requested for is held by the Collector, the Collector appointed for the purposes of the Stamp Act, or is in the possession or control of a person in Brunei Darussalam;

24. See Art. 5(5)(a) the OECD Model TIEA.

- to the extent known, the name and address of any person believed to have possession or control of the information requested for;
- a statement that the request is in conformity with the law and administrative practices of the country or territory of the (requesting) competent authority, and that the competent authority is authorised to obtain the information under the laws of that country or territory in the normal course of its administrative practice;
- a statement that the country or territory has pursued all means available in its own country or territory to obtain the information, including getting the information directly from the person to whom the information is requested;
- the details of the period within which that country wishes the request to be met;
- any other information required to be included with the request under the prescribed arrangement; and
- any other information that may assist in giving effect to the request.

242. Brunei has amended the Fourth Schedule of the Income Tax Act, in 2012, to add the phrase "to the extent known" to the specific requirement to have the "name and address of any person believed to have possession or control of the information requested" to bring it in line with the standard.

Issue of "prescribed arrangements"

243. The 2011 Phase 1 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 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.

244. Brunei has since addressed this 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. Although it is clear with the relevant amendments in the Income Tax Act that banking secrecy in Brunei will be lifted for EOI purposes, it is not clear whether the Income Tax Act expressly override other statutory secrecy obligations which are discussed in the later paragraphs.

Access to bank information

245. Bank secrecy is protected under s58 of the Banking Order, s58 of the Islamic Banking Order and s18 of the International Banking Order. However, these secrecy requirements are expressly overridden by s41 and s86 of the ITA where information is required to be produced in relation to an EOI request made pursuant to an arrangement. This allows the Collector to access and then to exchange information notwithstanding the secrecy provisions.

246. When access is sought in respect of bank information under s58 of the Banking Order, s58 of the Islamic Banking Order and s18 of the International Banking Order, the Revenue Division has to make an application to the High Court for an Order to access the requested information for complying with an EOI request made under an arrangement. The Court issues the Order as long as it is satisfied that: *(a)* the making of the Order is justified in the circumstances of the case; and *(b)* it is not contrary to the public interest for a copy of the document to be produced or that access to the information be given (s. 86J(3) ITA). The Bruneian authorities confirmed that the term "justified" in this context is to be interpreted in line with the Fourth Schedule. Public interest is not otherwise defined in the ITA but the Bruneian authorities indicate that it has the same meaning as the concept of public policy (ordre public) endorsed by Article 26(3) of the Model Tax Convention. Furthermore, no peer has indicated that Brunei interprets the concept of public interest differently from the concept of public policy in practice.

247. To ensure confidentiality, the High Court may, on the application of the Collector, make further orders as it may consider necessary to ensure the confidentiality of all materials relating to the EOI request. When granted, the Order will be served on the holder of the information, who is then required to produce the information within 21 calendar days from the date of order or

such other period as the Court considers appropriate (s. 86J(2) ITA). Failure to comply with the production of information by the stipulated date is an offence under section 86M of the ITA. All proceedings are heard in camera. No person may inspect or take a copy of any document relating to the court proceedings without the leave of the High Court. In addition, no information relating to these proceedings may be published without the leave of the High Court.

248. As Brunei did not receive any EOI request over the review period, the court procedure to obtain bank information for EOI purpose remains untested over the review period. The Bruneian authorities should monitor this procedure and ensure that the bank information can be accessed in a timely manner.

Information relating to entities formed under the BIFC legislation such as IBCs, international partnerships and international trusts

249. The 2011 Phase 1 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 entities formed under the BIFC legislation such as IBCs, international partnerships, international trusts because all these entities are expressly excluded from any kind of tax and tax reporting obligations.

250. To address the above gap, 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 in Brunei. The provision in this law is "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). Bruneian authorities have advised that the purpose of this Order is to provide clear access powers to the competent authority, who is designated to be the Collector of Income Tax, to obtain information from any persons, including from the entities formed under the BIFC legislation.

251. 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 645) and BND 50 (EUR 32) for every day during which the offence continues after conviction (s. 10(1)).

Secrecy provisions applied to registered agents and licensed trustees under the RATLO

252. Brunei's 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). The 2011 Phase 1 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)[25] and section 29 of the AMBDO.

253. To address the above gap where information protected by statutory secrecy obligation remains inaccessible, Brunei authorities advise that the

25. 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)).

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 are also subjected to statutory secrecy obligations.

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

255. Firstly, 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. Bruneian 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.

256. Secondly, 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 "exercise 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[26].

257. 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 are 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 Phase 1 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).

258. 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 12 903) (s. 54(4)).

259. In view of the above, the two gaps highlighted are 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.

260. First, 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

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

discretion to provide the competent authority with information when it "may consider appropriate" and "subject to restrictions to preserve confidentiality". Bruneian 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.

261. Second, 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.

262. Some uncertainties therefore remain, especially affecting international trusts which are key entities relevant for purposes of this review. It is recommended 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.

Section 41 of Income Tax Act

263. The Income Tax Act was amended in 2010 and 2012 to provide for effective exchange of information. The position of the Bruneian Authorities is that with the amendments, the Income Tax Act provides sufficient legal basis for the competent authority to access information from entities (other than BIFC entities[27]) for EOI purposes as follows:

- First, s41 of the Income Tax Act is the domestic legislation which provides legislative effect to EOI agreements and it contains the phrase – "the arrangements shall have effect in relation to tax and other related matters under this Act notwithstanding anything in any written law" – this in the Bruneian Authorities opinion will override statutory secrecy obligations in other domestic legislation in Brunei.

27. Companies and other entities formed under the BIFC legislation were expressly excluded from any kind of tax and tax reporting obligations, i.e. they did not have a domestic tax liability.

- Second, s55, 55A and 55B of the Income Tax Act provides the legal basis for the Collector to call for returns and documents, banking information, access and obtain information. S55C of the Income Tax Act states that it would be an offense not to comply with notices issued under s55, 55A and 55B.
- Third, Parts XIVA and XIVB of the Income Tax Act (i.e. s. 86A to 86M) were introduced in 2010 and further amended in 2012 to clarify the whole EOI process from the collection of information within the Revenue Division to the Collector obtaining the requested information from taxpayers and third parties. These sections also provide for the court procedure to obtain banking information.

264. It is thus in the Bruneian Authorities' opinion that the Bruneian competent authority has access powers to obtain information from international trusts or through their licensed trustees registered under the RATLO, regardless of the statutory secrecy obligations under the International Trusts Order (s. 90(3)(c)) and the RATLO (s. 35).

265. However, further analysis of section 55B(2), Parts XIVA and XIVB of the Income Tax Act appears to show that statutory secrecy obligations in Bruneian laws are only overridden for banking information. S86J of the Income Tax Act provides for the High Court to issue an order for banking information (termed "s86J order"), thus lifting secrecy obligations on information protected under three specific legislations – s58 of the Banking Order, s58 of the Islamic Banking Order and s18 of the International Banking Order. There are further supplementary provisions on s86J orders to reinforce the legal basis for relevant persons to provide the requested banking information:

- s86K(3) which states "A person is not excused from producing any document or giving access to any information by an order under section 86J(2) on the ground that doing so (a) might incriminate him or make him liable to a penalty; or (b) would be in breach of an obligation (imposed by law or otherwise) not to disclose the information."
- s86K(4)(b) which states "An order under section 86J(2) shall have effect notwithstanding any obligations as to confidentiality or other restrictions upon the disclosure of information imposed by law or otherwise."
- s86L(2) which states "Any person who complies with an order made under section 86J(2) or (7) shall not be treated as being in breach of any restriction upon the disclosure of information imposed by any other written law, contract or rules of professional conduct."

266. Based on the above analysis, it is still not clear that the Bruneian competent authority has access powers to obtain information 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).

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

267. The Collector's powers include the ability to obtain relevant tax information from all persons with possession or control of relevant information, the authority to enter premises and photograph or make copies of information. As noted previously, the Collector can require any person to attend personally before the Collector and to produce for examination any document which the Collector may consider necessary (s. 55 ITA).

268. These powers to compel production and access to information may be used for EOI matters, and to override statutory secrecy provisions for EOI requests. Pursuant to s. 86G, the Collector of Income Tax may also, for the purpose of complying with an exchange of information request, ask the Collector appointed for the purposes of the Stamp Act to transmit information in his possession to the Collector. The Collector of Stamp Tax may transmit to the Collector of Income Tax information requested by him under a EOI agreement notwithstanding any obligation as to confidentiality imposed under any written law or rule of law.

269. Any person who fails or neglects without reasonable excuse to comply with any of the notices issued by the Collector under sections 54, 55, 55A or 55B commits an offence and is liable on conviction to a fine BND 10 000 (EUR 6 452) and in default of payment to imprisonment for 12 months (s. 55C and s. 78 ITA). Where any person has been convicted of such an offence and the conviction is a second or subsequent conviction in respect of the same information required for the same period, he is liable to a further penalty of BND 50 (EUR 32) for every day during which the offence continues after such conviction. The same penalties apply regardless of whether the information is sought for domestic or foreign purposes.

270. Banks or other financial institutions that refuse to comply with a request for information pursuant to a Court Order made under Part XIVA of the ITA are guilty of an offence and liable on conviction to a fine not exceeding BND 10 000 (EUR 6 452) or to imprisonment for a term not exceeding two years or both (s. 86M ITA).

271. 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 645) and BND 50 (EUR 32) for every day during which the offence continues after conviction (s. 10(1)).

Secrecy provisions (ToR B.1.5)

272. The confidentiality of customer information for banks is protected under section 58 of the Banking Order 2006, section 58 of the Islamic Banking Order 2008 and section 18 of the International Banking Order.

273. The relevant section of each order requires that customer information shall not, in any way, be disclosed by a bank in Brunei or any of its officers to any person except as expressly provided in the Order. The purposes for which customer information may be disclosed, the persons or class of persons to whom it may be disclosed and the conditions under which disclosure may be subject in each circumstance are specified in the Third Schedule of the Banking Act. Disclosure is subject to court scrutiny. The Third Schedule does not mention international exchange of tax information as one of the purposes that may allow bank information to be disclosed. Brunei's authorities confirmed that exceptions under the Third Schedule do not include information sought by tax authorities.

274. Pursuant to Part XIVA of the ITA, however, the Controller may access protected bank information for the purposes of EOI under "an international arrangement". When access is sought in respect of protected bank information, the Collector has to make an application to the High Court for a Production Order to access the requested information, regardless of whether such information is for domestic tax administration purposes or for complying with an EOI request made under "an international arrangement". The Court issues the Order as long as it is satisfied that: *(a)* the making of the Order is justified in the circumstances of the case; and *(b)* it is not contrary to the public interest for a copy of the document to be produced or that access to the information be given (s. 86J(3) ITA). The information requested is to be provided "within 21 days from the date of the Order or such other period as the Court considers appropriate" (s. 86J(2)). All proceedings are heard in camera.

275. Brunei's authorities reported that the judicial system in Brunei is fairly efficient and the court procedure is expected to conclude promptly, though exact time frame may depend upon facts of each case, according to the level of complexity or otherwise. Over the review period, Brunei did not receive any EOI request and the court procedure is not tested in practice.

276. Public interest is not otherwise defined in the ITA but Brunei's authorities indicate that it has the same meaning as the concept of public policy (*ordre public*) endorsed by Article 26(3) of the Model Tax Convention. As mentioned above, Brunei did not receive any EOI request over the review period and the Bruneian authorities' interpretation of the concept of public policy is not tested in practice.

277. In terms of legal professional privilege, a production Order issued under section 86J of the ITA expressly overrides "any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law or otherwise", but does "not confer any right to the production of, or access to, information subject to legal privilege" (s. 86K(4)a and b ITA).

278. For the purposes of international exchange of information in tax matters, information subject to legal professional privilege is defined as (s. 86I ITA):

> communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client" and "communications between: (i) a professional legal adviser and his client or any person representing his client; or (ii) a professional legal adviser or his client or any such representative and any other person, made in connection with, or in contemplation of, judicial proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose.

279. This definition is in line with the standard in that it is strictly limited to communication made in connection with the giving of legal advice to the client or with judicial proceedings. However, the litigation privilege appears to include not only confidential information enclosed within communications between an attorney and client but also within communications between a client and another person who is not an attorney-at-law, which is beyond the exemption for attorney-client privilege under the international standards. In practice, the Bruneian Judiciary Department and representatives from the Law Society of Brunei Darussalam shared that attorney-client privilege (protection in the context of acting in a legal advice capacity) is provided for under s. 129 Evidence Act, with two distinct exceptions to the privilege which are *(i)* if it is for the furtherance for any criminal activity; or *(ii)* any crime or fraud has been committed. This is in line with the exception to attorney-client privilege provided in s. 86I Income Tax Act. In addition, when lawyers are acting as trustees or similar type of business (i.e. for commercial interest) the privilege should not be granted for communication. Lastly, it was confirmed that in a scenario of a client handing a document to a lawyer to prevent it from falling into the hands of the tax authorities, would certainly not attract a privilege.

280. It was concluded above that the restriction to obtaining information on international trusts was due to specific secrecy provisions in the ITO and the RATLO. 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 previous recommendation 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.

281. The specific amendments made under the ITA to allow access to information for EOI purposes in accordance with the standard as well as the powers under Record Keeping (Business) Order to access information on entities that are not subject to tax remain untested. Brunei is recommended to monitor the application of its access powers provided under the 2012 amendments to the ITA and the Record Keeping (Business) Order 2015 and ensure they are effective when gathering information for EOI purposes in accordance with the international standard.

Conclusion

282. Since 2011 Brunei has taken measures to improve Bruneian authorities' access powers. 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".

283. However, 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 is recommended to 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.

284. Lastly, a monitoring recommendation is included for Brunei to monitor the application of its access powers provided under the 2012 amendments

to the ITA and the Record Keeping (Business) Order 2015 and ensure they are effective when gathering information for EOI purposes in accordance with the international standard. This is because the specific amendments made under the ITA to allow access to information for EOI purposes in accordance with the standard as well as the powers under Record Keeping (Business) Order to access information on entities that are not subject to tax remain untested.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The 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.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
The specific amendments made under the Income Tax Act to allow access to information for EOI purposes in accordance with the standard as well as the powers under the Record Keeping (Business) Order to access information on entities that are not subject to tax remain untested.	Brunei is recommended to monitor the application of its access powers provided under the 2012 amendments to the Income Tax Act and the Record Keeping (Business) Order 2015 and ensure they are effective when gathering information for EOI purposes in accordance with the international standard.

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.

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

286. Brunei's ITA provides for notifying the subject of the request in limited circumstances, i.e. when the information requested is protected under bank or trust confidentiality provisions. In such cases, the Collector must notify the taxpayer and the bank or trust company of a valid request for information (s. 86E ITA).

287. Notice need not be served on any person, however, in a few instances, including when the Collector (s. 86E(4) ITA):

- does not have any information on the person concerned;
- is of the opinion that serving the notice is likely to prevent or unduly delay the effective exchange of information under the prescribed arrangement; or
- is of the opinion that this is likely to prejudice any investigations into any alleged breach of any law relating to tax of the jurisdiction with whose government the prescribed arrangement in question was made.

288. The existence of such exceptions ensures that the notification procedure is consistent with the principle of respect for taxpayers' rights under the internationally agreed standard for exchange of information for tax purposes.

289. When a Court Order has been sought for the purposes of exchanging protected information, both or either the persons against whom the Order is made and the person in relation to whom information is sought may, *within 7 days from the date the Order is served on the person against whom it is made, apply to the High Court to have the Order discharged or varied* (s. 86J(4) ITA). An application for the discharge or variation of an Order under section 86J of the ITA must be filed and served to the Collector and any other person entitled to make such an application at least seven clear days before the date fixed for the hearing of the application. All proceedings are heard in camera.

290. In practice, when the information requested is protected under bank confidentiality, the Revenue Division will send a notification to the person

identified in the EOI request as the person in relation to whom the information is sought. Brunei's EOI Manual contains a template for the notification letter. The notification letter will include references to *(i)* the relevant EOI instrument; *(ii)* the requesting jurisdiction; *(iii)* the information holder (e.g. bank or third party). Brunei's EOI Manual states that on no account should the letter of request from the foreign competent authority be provided. The notification letter will be sent prior to the exchange of the information with the requesting jurisdiction, unless the exceptions provided under section 86E(4) of the ITA, described above apply.

291. With regard to the notice for production of information sent to the information holder, Bruneian authorities confirmed that it does not reveal that the requested information is for EOI purposes. The letter simply states that it is for the use of the tax authorities, and makes reference to the relevant section (i.e. s41) of the ITA which provides the Revenue Division with the legislative powers to request for the information. A sample template of this letter is also included in Brunei's EOI Manual.

292. If the requesting competent authority had stated that the taxpayer was not to be notified, and the taxpayer was the only available source of information, Revenue Division would advise the requesting competent authority before contacting the taxpayer.

293. Bruneian taxpayers do not have the right to access their taxpayer file. In any case, all EOI files are kept separately from individual taxpayer files.

294. Taxpayer's appeal rights are limited to an appeal of a determination of tax liability or enforcement action by the Collector of Income Tax. An exchange of information is not interpreted by Revenue Division to fall within the meaning of determination of tax liability and thus it is not expected that a taxpayer would have any legal standing to appeal against an EOI request. Under the Bruneian Constitution, judicial review is not applicable in Brunei.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging information

Overview

295. 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.

296. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. The legal authority to exchange information may be derived from bilateral or multilateral mechanisms (e.g. double tax conventions, tax information exchange agreements, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters) or arise from domestic law. Within particular regional groupings information exchange may take place pursuant to exchange instruments applicable to that grouping (e.g. within the EU, the directives and regulations on mutual assistance).

297. Regarding element C.1, the 2015 Phase 1 supplementary report has recommended Brunei to ensure the swift ratification of all agreements signed due to the long average period between the date when the agreement is signed and the date the agreement enters into force. In addition, 9 out of Brunei's total 28 EOI signed agreements had not entered into force, and had been pending for up to three years. As at 15 September 2016, Brunei has updated that it has completed its ratification processes and is awaiting confirmation of ratification by its partners on four of the nine agreements. The remaining five of the nine agreements have been ratified and are in force. Brunei shared that the Revenue Division has taken steps to identify contact persons in the Attorney-General's Chambers and Ministry of Foreign Affairs and are confident that going forward, the process to complete internal procedures to ratify tax agreements would be smoother, and time taken to complete the process will be shortened. Given Brunei's marked improvement in expediting the ratification of its tax treaties, the recommendation in the box to ratify agreements expeditiously is removed and element C.1 is "Compliant".

298. Brunei's network of exchange agreements covers all its main trading partners. Comments were sought from Global Forum members in the course of the preparation of this report and one jurisdiction indicated that it has conveyed its intent to negotiate an *Agreement for Exchange of Information and Assistance in Collection with respect to Taxes* with Brunei in 2012, but Brunei had yet to respond to its request. Brunei has recently commenced TIEA negotiations with this jurisdiction and has forwarded Brunei's draft TIEA model to the jurisdiction for comments. Brunei is recommended to respond to all requests for entering into EOI agreements in a timely manner. In practice, there was no case where Brunei refused to enter into an EOI agreement and element C.2 is rated "Largely Compliant".

299. The EOI agreements entered into by Brunei contain confidentiality provisions that meet the international standard. The 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, elements C.3 and C.4 are determined to be "in place" and "Compliant".

300. There are no specific legal or regulatory requirements in place which would prevent Brunei from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

301. Brunei did not receive any EOI requests during the review period. However, it has put in place the necessary processes and organisational structure to respond to EOI requests when received. Brunei is recommended to continue to monitor the organisational processes of the competent authority in responding to EOI requests and element C.5 is rated as "Largely Compliant".

C.1. Exchange of information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

302. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD Model

Tax Convention and Article 1 of the OECD Model TIEA. Article 26(1) of the OECD Model Tax Convention reads as follows:

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

303. Brunei has 28 bilateral tax treaties providing for international exchange of information (EOI), of which 9 were not yet in force. The 2011 Phase 1 Report concluded that the text in all of Brunei's EOI mechanisms were not in line with the standard because 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 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 its post-Phase 1 supplementary report. As at the publication of the 2011 Phase 1 Report, Brunei had 15 EOI agreements. Since then, 13 new agreements have been concluded, and all of the agreements contain text akin to either Article 26 of the OECD Model Tax Convention or the OECD Model TIEA.

304. Most of Brunei's DTCs that are in force provide for the exchange of information that is "necessary" for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States. The remaining treaties – the DTCs with Hong Kong, Japan, Malaysia and Singapore – use the term "foreseeably relevant" in place of "necessary". The term "foreseeably relevant" is used also in one of the DTCs that are not yet in force (namely, in the DTC with Tajikistan) and in the TIEA with France. Brunei's authorities indicate they interpret these terms pursuant to the Commentary to Article 26 of the OECD Model Tax Convention, where the term "as is necessary" is recognised to allow for the same scope of exchange as does the term "foreseeably relevant".[28] Brunei has sent letters to its treaty partners to clarify their interpretation of the term "necessary" in their DTCs and to seek confirmation of the possibility of full exchange of information

28. The word "necessary" in Article 26(1) of the 2003 OECD Model Tax Convention was replaced by the phrase "foreseeably relevant" in the 2005 version. The commentary to Article 26 recognises that the term "necessary" allows for the same scope of exchange as does the term "foreseeably relevant".

along these lines. As a result, negotiations are currently undergoing with a number of Brunei's treaty partners to update the EOI provisions in the existing DTCs as per the latest standards.

305. Brunei's 1950 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 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.

306. 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. In practice, there are no reported issues that the details in the said Protocol prevents effective information exchange between Brunei and Korea. It is noted also that Brunei has received no EOI requests during the review period.

307. The EOI provision in the agreements with Bahrain, China, Indonesia, Laos, Oman, Pakistan and Vietnam is different to that of Article 26 (Exchange of Information) of the OECD Model Tax Convention in that there is also specific reference to exchange of information for the prevention of evasion of taxes. This wording does not go beyond the international standard.

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

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

309. Most of Brunei's treaties contain the sentence indicating that the exchange of information is not restricted by Article 1 (Persons Covered article). The DTCs with Indonesia, Kuwait and Vietnam do not contain this language. The EOI provision of these treaties nonetheless applies to carrying out the provisions of the agreement or of the domestic laws of the

contracting States concerning taxes covered by the agreement insofar as the taxation thereunder is "not contrary to" or "in accordance with" the agreement. In principle, these treaties would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 2 (e.g. domestic laws also apply taxes to the source of income of non-residents).

Exchange information held by financial institutions, nominees, agents and ownership and identity information (ToR C.1.3)

310. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the OECD Model TIEA, which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

311. The agreements with Hong Kong, Japan and Singapore include the provision contained in Article 26(5) of the OECD Model Tax Convention, which states that a contracting State may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. The same provision is also included in the new DTC with Tajikistan and in the TIEA with France, which are not yet in force. Brunei's other bilateral agreements do not contain such a provision.

312. The absence of wording akin to Article 26(5) of the OECD Model Tax Convention does not automatically create restrictions on exchange of bank information. The Commentary on Article 26(5) indicates that whilst paragraph 5 (added to the Model Tax Convention in 2005) represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. Brunei's authorities confirmed they interpret the EOI provisions of their agreements in accordance with the Commentary.

Absence of domestic tax interest (ToR C.1.4)

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

314. The agreements with Hong Kong, Japan, Malaysia and Singapore contain Article 26(4) of the OECD Model Tax Convention, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. The remaining DTCs do not contain such a provision. The Commentary to Article 26(4) indicates that paragraph 4 was introduced in the 2005 Model Tax Convention to express an implicit obligation contained in this Article to exchange information in situations where the requested information is not needed by the requested State for domestic tax purposes.

Absence of dual criminality principles (ToR C.1.5)

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

316. None of the EOI agreements concluded by Brunei applies the dual criminality principle to restrict the exchange of information.

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

317. All of the EOI agreements concluded by Brunei provide for the exchange of information in both civil and criminal tax matters.

318. The first paragraph of the exchange of information article in the DTC with Bahrain, China, Indonesia, Laos, Oman, Pakistan and Vietnam mentions that the information exchange will occur *in particular for the prevention of fiscal evasion*. The use of the term *in particular* ensures that EOI can take place also in the cases where no tax evasion is involved, i.e. in civil tax matters.

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

319. There are no restrictions in the exchange of information provisions in Brunei's exchange of information agreements that would prevent Brunei from providing information in a specific form, as long as this is consistent with its own administrative practices.

In force *(ToR C.1.8)*

320. For effective exchange of information a jurisdiction must have exchange of information arrangements in force. Where exchanges of information agreements have been signed the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

321. The ratification process in Brunei involves a publication in the *Gazette* of an order made by the Sultan in Council and the publication of the same in the *Gazette*.

322. Since the 2011 Phase 1 Report, Brunei signed a further 13 bilateral agreements. Of the total 28 bilateral tax agreements which Brunei has signed, 9 were not yet in force. As at 15 September 2016, Brunei has updated that it has completed its ratification processes and is awaiting confirmation of ratification by its partners on four[29] of the nine agreements. The remaining five of the nine agreements are all in force. The TIEA with Finland was ratified and entered into force on 1 May 2015, the TIEA with Sweden was ratified and entered into force on 20 December 2015, the TIEA with Australia was ratified and entered into force on 25 February 2016, the TIEA with Faroe Islands ratified and entered into force on 26 March 2016, the TIEA with Qatar ratified and entered into force on 26 August 2016. Brunei shared that the Revenue Division has taken steps to identify contact persons in the Attorney-General's Chambers and Ministry of Foreign Affairs and are confident that going forward, the process to complete internal procedures to ratify tax agreements would be smoother, and time taken to complete the process will be shortened. While it is recognised that Brunei has taken sufficient measures in recent times to reduce the time duration between signature and ratification of its EOI agreements, it is recommended that Brunei monitor the ratification process to ensure that its EOI agreements continue to be ratified and brought into force expeditiously.

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

323. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

324. Prior to December 2012, Brunei's competent authority could not access information on entities formed under the BIFC legislation. In addition, it could only access bank information to respond to requests for information made under prescribed arrangements, and none of the agreements signed by Brunei was declared a "prescribed arrangement". As discussed in Part B of this report, Brunei has addressed the deficiencies regarding its access powers and the requirement to prescribe agreements has been removed.

Conclusion

325. Brunei has substantially addressed the deficiencies regarding its access powers which thus consequently removed the recommendation in the 2011 Phase 1 Report under element C.1. Since the 2011 Report, Brunei

29. The four agreements are with France, Korea, Luxembourg and Tajikistan.

has entered into 13 further EOI agreements bringing the total of EOI agreements to 28 of which 9 are not yet in force. As at 15 September 2016, Brunei updated that it has completed its ratification processes and is awaiting confirmation of ratification by its partners on four of the nine agreements. The remaining five of the nine agreements have all been ratified and are in force. Given Brunei's marked improvement in expediting the ratification of its tax treaties, the monitoring recommendation in the box is removed and element C.1 is compliant. While it is recognised that Brunei has taken sufficient measures in recent times to reduce the time duration between signature and ratification of its EOI agreements, it is recommended that Brunei monitor the ratification process to ensure that its EOI agreements continue to be ratified and brought into force expeditiously.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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

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

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

327. Brunei's network of EOI relationships comprises 18 bilateral DTCs and 10 TIEAs, of which 24 agreements are in force. These bilateral agreements create EOI relationships with 28 jurisdictions which include:

- all of its major trading partners (Malaysia, Singapore, Japan, China, Indonesia and Korea);
- 22 Global Forum member jurisdictions; and
- 11 OECD Member economies.

328. Brunei's treaty network mainly covers jurisdictions situated in Asia, which are, in respect of Brunei's economic relationships, clearly relevant. Brunei notably shares agreements with most of its main trading partners and neighbouring countries, namely with Japan, Indonesia, Malaysia and Singapore. At the on-site visit, Bruneian authorities confirmed that Brunei's tax treaty priorities are with ASEAN countries and those that have trade activities with Brunei. Brunei continues to engage in treaty negotiations with new partners, and had recently started negotiations with Myanmar and Cambodia. Given Brunei's aim of establishing an international finance centre, effective exchange of information should be available for all jurisdictions from which investment flows originate and to which capital is destined to be invested.

329. When peer input was sought for the 2015 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.

330. When peer input was sought in the course of the preparation of this report, one jurisdiction indicated that it has conveyed its intent to negotiate an *Agreement for Exchange of Information and Assistance in Collection with respect to Taxes* with Brunei in 2012, but Brunei had yet to respond to its request. Brunei explained that due to the absence of enabling provisions under its domestic laws relating to conservancy measures such as freezing of assets, Brunei would unfortunately not be able to assist its treaty partners in the collection of taxes. It is noted that assisting peers in tax collection is not a requirement under the standard. Brunei did not offer to commence TIEA negotiations without assistance in tax collection with the peer. Instead, Brunei re-submitted their proposal for DTA negotiations to the peer, including a fresh draft agreement on avoidance of double taxation based on the latest standard on exchange of information as per the 2012 OECD model. This was despite the peer's communication that it was not interested in the DTC negotiations but would rather prefer a TIEA. Brunei, however, has in April 2016 commenced TIEA negotiations with this jurisdiction and has forwarded Brunei's draft TIEA model to the jurisdiction for comments, which is being examined by the jurisdiction. Brunei is recommended to respond to all requests to negotiate EOI agreements in a timely manner. It is noted that Brunei had signed TIEAs with 10[30] out of the 28 jurisdictions it has an EOI

30. Australia, Canada, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Norway and Sweden.

relationship, of which 9 of the 10 TIEAs are in force, demonstrating that it has no general policy against the conclusion of TIEAs.

331. Brunei has 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.

332. The 2011 Phase 1 Report noted 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 report, as recognised in its 2015 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 Phase 1 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. Element C.2 is rated Largely Compliant.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Brunei should continue to develop its EOI network with all relevant partners.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Brunei did not respond to one request for negotiations to conclude EOI agreement in a timely manner.	Brunei should respond to all requests to negotiate EOI agreements (regardless of their form) in a timely manner.

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)

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

334. All but one[31] of the exchange of information articles in Brunei's double tax agreements have confidentiality provisions modelled on Article 26(2) of the OECD Model Tax Convention. Pursuant to these provisions, information provided by foreign tax authorities can only be used for the purpose for which they are required and can be disclosed only in judicial proceedings.

335. The confidentiality requirement for information relating to a request is also given effect in domestic legislation by section 4 and 86J of the ITA. Section 4 provides for a general obligation for every person having any official duty or being employed in the administration of the act to *regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income or items of the income of any person, as secret and confidential*. Employees breaking the duty of confidentiality under the ITA are guilty of an offence.

336. It is concluded that there are 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

31. Brunei's DTC with UK is an old treaty from 1950. Under the exchange of information article of that treaty, it is stated that "any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Arrangement".

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 12 903) 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.

337. In practice, Brunei's EOI Manual includes a specific section on confidentiality with the following procedures to guide officers handling EOI matters:

- All information received in the EOI Section is confidential and should be stored securely. EOI Unit files containing taxpayer information must be stored in secure storage units and only retrieved by the Head of EOI Section (HEOI) or the EOI Officer assigned to them (or a nominated replacement officer) when they are being worked on.
- Access to passwords, combinations and keys is restricted to officers working in the EOI Unit.
- Only EOI Unit staff should have access, by individual login and password, to the EOI Database.
- Hard copies of incoming information should only be made by the EOI Section, if strictly necessary, for example, when documents must be forwarded to other areas of the tax administration. The same security level should apply to the hard copies as to the original documents. Any hard copies should be disposed of in a secure manner (e.g. by using a shredder) when no longer needed.
- Under no circumstances, should members of the public be allowed entry to the EOI Unit's office area. Other tax office staff should not enter the EOI Unit's office area without Head of EOI Unit's permission.

338. Brunei's EOI manual also includes sample templates to guide EOI officers when sending *(i)* letters to internal tax units within Revenue Division for gathering information, *(ii)* letters to taxpayer/third party for gathering the requested information, and *(iii)* notification letters to taxpayer where information protected by bank secrecy is requested. The templates for items (i) and (iii) will include references to the relevant EOI instrument and the requesting jurisdiction. The template for item (ii) only indicates the domestic legal basis on which the notice is served and due date for reply.

339. In relation to the access of banking information, since 2010, a specific court procedure has been established. The Bruneian competent authority must apply to the High Court for an order to obtain the requested banking information (s86J ITA).

340. Brunei's EOI manual contains some guidance concerning the procedures for outgoing EOI requests and that includes steps to ensure confidentiality of received information by the Bruneian authorities. First, all outgoing EOI requests must be made by the Bruneian competent authority and channelled through the EOI unit at the Revenue Division. Second, all information regarding the case will be stored in a secure filing cabinet at the office of the EOI unit. Third, the outgoing EOI request and any attachments will be sent by secure traceable mail, e.g. registered letter for tracking and tracing purposes. Fourth, once the information is received by Brunei (from its treaty partner), the documents will bear confidentiality stamp to make all offers handling the case aware of the confidential nature of the information. Finally, once the case is closed, it will be archived and stored in the secure filing cabinet at the office of the EOI unit. Further analysis of how EOI requests are made by Brunei will be analysed in the next round of EOIR review.

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

341. 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.

Phase 2 rating
Compliant

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

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

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

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

344. The limits on information exchanged under all but one of Brunei's arrangements mirror those provided for in the international standard. That is, information which is subject to legal privilege; would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged.

345. All agreements signed by Brunei contain wording consistent with Article 26 and Article 7 of the OECD Model Tax Convention, Model TIEA and their commentaries.

346. In practice, as referenced in part B.1 of this report, attorney-client privilege is provided for under section 129 of the Evidence Act in Brunei. The act provides exceptions to the protection in the context of acting in a legal advice capacity in two situations: *(i)* if it is for the furtherance for any criminal activity; *(ii)* any crime or fraud has been committed by the client. Furthermore, members of the Brunei Law Society (BLS) and Judiciary Department shared that when lawyers are acting as trustee, nominee, registered agent or similar type of business (i.e. for commercial interest), the privilege would not be granted for such communication between the lawyer and his client. In addition, it was affirmed that should a client put a document in the hands of the lawyer just to prevent it from falling into the hands of the tax authorities it would not be protected under attorney-client privilege. There is no case law in Brunei on this issue to date.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days *(ToR C.5.1)*

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

348. There are no specific legal or regulatory requirements in place which would prevent Brunei responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

349. In practice, Brunei has neither received nor sent requests during the review period. Nonetheless, an internal EOI manual has been developed to ensure requests are replied in a timely manner. The EOI manual was finalised in January 2016 and has been available for use since January 2016. The EOI manual governing the practices of the EOI unit in the Revenue Division states that where the information requested is already held by the Revenue Division (or another government agency), the information should be sent to the requesting State's competent authority within 90 days of the receipt of a request. In addition, no significant time should pass since an action was last taken on any case, if replies (to treaty partners/requesting jurisdiction) are outstanding, a status update should be provided within 90 days of receipt of the information request.

350. In respect of information that must be obtained from a third party, the EOI manual provides that information should be provided within six months of receipt of a request. The Head of the EOI unit advises that the target is to provide the answer within 90 days, and the six month timeframe is intended to allow for situations where the request was unclear, the information provided by the third party was incomplete and required additional follow up, or

where it was necessary to use compulsory powers to obtain the information. Brunei is recommended to ensure that requests are replied in a timely manner and that the manual be amended for this purposes to avoid ambiguity.

Organisational process and resources (ToR C.5.2)

351. Brunei's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by Brunei's Minister of Finance and effectively managed by the Collector of Income Taxes. The Minister of Finance is the competent authority of Brunei under Brunei's DTCs and TIEAs. The authorised representatives are Permanent Secretary (Performance) as the Collector of Income Tax, Director of Revenue Division, Assistant Director of Revenue Division and Senior Finance Officer of Revenue Division.

352. The Collector of Income Tax is also responsible for negotiating EOI agreements. He constitutes a team of negotiators before the initiation of negotiations. These negotiation teams are always headed by the Ministry of Finance, who may be assisted by representatives of the Attorney General's Chambers or the Ministry of Foreign Affairs and Trade. The signing authority is designated by the government based also on the counterpart's signing authority.

353. In practice, during the review period there were four people working in the EOI unit, all of whom work in the Revenue Division and are trained in EOI matters. The EOI unit comprise of Director of Revenue Division, Senior Legal Counsel, Head of Unit/Senior Finance Officer, and EOI officer. Given that Brunei has yet to receive any EOI requests nor has it send any EOI request to its treaty partners, it is not necessary to have personnel in the EOI unit working on EOI full time. Each of these persons have full time roles working on revenue matters, however where an EOI request were to be received, they would prioritise the EOI request. In addition, the Bruneian authorities shared that the EOI team have access to sufficient financial resource as part of budget allocation of Revenue Division.

354. Procedures for handling EOI requests are set out in a step-by-step guide developed by the Revenue Division, based on the Global Forum EOI Manual. The EOI Manual divides the procedure that applies for responding to a request for exchange of information into four steps: (1) logging the request; (2) validating the request; (3) working the request; (4) responding to the request.

355. An EOI database had been created and is available for use by officers in the EOI unit. The database is developed on a Microsoft excel platform. The EOI database is a case-tracking system for managing requests and assists the EOI Unit to keep track of progress on information requested. The system captures data in relation to both outgoing and incoming requests. Information is input to the database when *(i)* a new request is issued or received; or *(ii)* when actions are taken; and *(iii)* when the case has been closed. The database provides a

template for entering the details of the case. The database allows the EOI Officer to input an alert for follow-up tasks to be carried out, e.g. to issue a reminder to a bank when a reply has not been received to a request for information within the deadlines given. Whenever an action is taken, the EOI Officer should enter details and also indicate a follow-up action in the "Action Due" field and a date for "Next Action Due". The database reminds the EOI Officer and the Head of EOI Unit (HEOI) when a task is due so as to avoid missing any deadlines. Furthermore, the system is able to generate a range of management reports, such as *(i)* volume of cases opened or closed within a specified period by category (e.g. individual, company, etc.); *(ii)* response time, i.e. length of time before a reply (acknowledgement, interim or final) was issued or received in each case and on average ; *(iii)* volume of open cases and age of cases, e.g. cases that are under 90 days, between 90 days and 180 days, between 180 days and 360 days, and cases that are over 360 days old; *(iv)* how long since an action was last performed on a case which has not been closed, i.e. cases where no action has been taken for > 30 days, > 60 days, > 90 days, > 180 days; and *(v)* history of the actions taken within a specified period including type of update, who made it and when it was updated. The database contains the following:

- Reference numbers of both countries for the exchange;
- Status of the case (open/closed/reopened);
- Due date for response;
- Identity details for each person or entity including name, address, date of birth, and taxpayer identity number;
- Dates request was sent and received;
- Name of requesting jurisdiction;
- Details of contact in other jurisdiction (name, phone number and e-mail address);
- EOI officer assigned to the exchange;
- Summary of the information requested;
- Actions taken;
- Last action date;
- Actions due;
- Reminder for next action due;
- Summary of information provided;
- Date in which final response issued/received.

356. Contact details of Brunei's competent authority are communicated during treaty negotiations, international meetings held by the Global Forum and are available on the Global Forum's Competent Authority database.

357. Mail received from a foreign competent authority would be addressed to the competent authority and forwarded to the EOI Unit. Upon receipt, all requests and other documents related to an EOI case would be stamped with a clearly visible confidentiality notice. The HEOI would create a new record of the request in the EOI database and insert the details of the case (i.e. date the case was received, foreign reference number, requesting State and include details of the information requested, etc.). After opening a new file, the request is assigned a number which can be tracked. Once the new case record has been created, an acknowledgement letter would be issued by the competent authority. According to Brunei, the service standard is for an acknowledgement letter to be sent to the requesting jurisdiction within 7 working days of receipt of the request. In the acknowledgement letter, Brunei would inform the requesting State whether it would contact the taxpayer concerned directly for the information (if the requested information is not available within Revenue Division/Ministry of Finance or other government agencies), unless the requesting State has already indicated in its request letter that it wished to avoid notifying the taxpayer under examination or investigation. If the request is not written in English or Malay, the officer in charge will send a letter to the foreign competent authority within seven working days requesting it to provide the request in one of the above-mentioned languages.

358. The HEOI would assess the legal and factual grounds of the request such as the existence of an EOI instrument in force with the requesting jurisdiction, the scope of the instruments and the periods covered, the confirmation that the request was sent by the competent authority. The HEOI would also verify the compliance of the request with the foreseeable relevance standard and Bruneian legislation.

359. Once the case is assigned to an EOI Case Officer, a hard copy file for the request will be opened, and placed in the "open case in" folder in the secure filing cabinet in the office of the EOI Unit. The EOI unit office is locked and only staff in the EOI unit can access the office premise. The EOI Case Officer would then proceed to gather the requested information. Every time an action is taken on the file, the EOI Case Officer would update the EOI database and insert an alert for a new review date. With the tracking system available in the EOI database, no significant time should pass since an action was last taken on any outstanding case, email alerts would be automatically generated and sent to the HEOI and EOI Case Officer.

360. Where it has not been possible, despite best efforts, to obtain the information requested, a response would be prepared by the EOI Case Officer to inform the requesting jurisdiction, as soon as possible, that the information cannot be provided and the reasons it cannot be provided. Within 90 days of receipt of the request, the EOI Case Officer has to issue an update (if no information is available), an interim reply (if some information is available) or a final reply (if all information is available). The EOI Case Officer is in charge of issuing update/interim replies every 90 days until a final reply is issued.

361. Once the information needed to respond to a request has been gathered, the EOI Case Officer would draft a response to the request, for review by the HEOI and for signature by the competent authority. The EOI Case Officer should ensure that the name and address of the requesting State's competent authority are correct before submitting the letter to the HEOI. A template and checklist has been included in the EOI manual.

362. The final EOI reply with the requested information/documents would be sent by courier. A signed copy of the reply is kept in file. Once the case is closed the EOI Case Officer will put the file in the "closed case" folder in the secure filing cabinet.

363. Brunei has committed resources and has in place organisational processes for exchange of information that appear to be well structured and organised for dealing with incoming EOI requests. It is noted that Brunei did not receive any requests during the review period. Brunei should continue to monitor the practical implementation of the organisational processes of the EOI unit to ensure that they are sufficient for effective EOI in practice.

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

364. There were no aspects of Brunei's laws and practices that appear to impose restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination had been made.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Brunei has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Brunei did not receive any requests during the review period.	Brunei should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking into account any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Summary of determinations and factors underlying recommendations

Overall Rating
LARGELY COMPLIANT

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. *(ToR A.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	Brunei had in the recent years implemented several key legislative amendments to ensure that ownership and identity information is available for all entities. Some of the Bruneian authorities (such as the Registry of International Business Companies) are still in the primary stages of implementing an effective system of monitoring and oversight of the entities which they regulate, therefore oversight programs are new and not fully implemented.	Brunei should ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant	The new legislation, the Record Keeping (Business) Order 2015, which obliges all relevant entities to maintain accounting records and the underlying documentation for at least 5 years only came into effect on 23 June 2015 (seven days before the end of the review period). The Bruneian authorities have since been focusing their efforts on educational and outreach activities throughout the country to publicise the new record keeping obligations for all relevant entities.	Brunei should monitor the enforcement of the new law to ensure that accounting records and underlying documentation are available in respect of all entities.
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
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). *(ToR B.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	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
Phase 2 rating: Largely Compliant	The specific amendments made under the Income Tax Act to allow access to information for EOI purposes in accordance with the standard as well as the powers under the Record Keeping (Business) Order to access information on entities that are not subject to tax remain untested.	Brunei is recommended to monitor the application of its access powers provided under the 2012 amendments to the Income Tax Act and the Record Keeping (Business) Order 2015 and ensure they are effective when gathering information for EOI purposes in accordance with the international standard.
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. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		Brunei should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Largely Compliant	Brunei did not respond to one request for negotiations to conclude EOI agreement in a timely manner.	Brunei should respond to all requests to negotiate EOI agreements (regardless of their form) in a timely manner.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
Phase 1 determination: The element is not assessed.	This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination had been made.	
Phase 2 rating: Largely Compliant	Brunei has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Brunei did not receive any requests during the review period.	Brunei should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking into account any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Annex 1: Jurisdiction's response to the reviews[32]

Brunei Darussalam would like to express its sincere appreciation to the assessment team and Global Forum Secretariat for its excellent work on preparing this report.

Brunei Darussalam acknowledges the outcome of the report and will work on addressing the recommendations swiftly.

In addition, Brunei Darussalam remains fully committed to implementing the international standards of transparency and effective exchange of information in tax matters.

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

Annex 2: List of all exchange-of-information mechanisms in force

	Partner	Type of EOI arrangement	Date signed	Date in force
1	Australia	TIEA (Tax Information Exchange Agreement)	06 Aug 2013	25 Feb 2016
2	Bahrain	DTC (Double Tax Convention)	14 Jan 2008	18 July 2009
		Protocol	18 Dec 2012	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 Mar 2015
6	Faroe Islands	TIEA	27 Jun 2012	26 Mar 2016
7	Finland	TIEA	27 Jun 2012	1 May 2015
8	France	TIEA	30 Dec 2010	Not yet in force in France
9	Greenland	TIEA	27 Jun 2012	07 Aug 2015
10	Hong Kong, China	DTC	20 Mar 2010	19 Dec 2010
11	Iceland	TIEA	27 Jun 2012	19 Apr 2015
12	Indonesia	DTC	27 Feb 2000	03 Apr 2002
13	Japan	DTC	20 Jan 2009	19 Dec 2009
14	Korea	DTC	9 Dec 2014	Not yet in force in Korea
		Protocol	9 Dec 2014	Not yet in force in Korea
15	Kuwait	DTC	13 Apr 2009	02 Jun 2011
16	Lao People's Democratic Republic	DTC	22 Apr 2006	20 Oct 2006

	Partner	Type of EOI arrangement	Date signed	Date in force
17	Luxembourg	DTC	14 Jul 2015	Not yet in force in Luxembourg
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
22	Qatar	DTC	17 Jan 2012	26 Aug 2016
		Protocol	17 Jan 2012	26 Aug 2016
23	Singapore	DTC	19 Aug 2005	14 Dec 2006
		Protocol	13 Nov 2009	29 Aug 2010
24	Sweden	TIEA	27 Jun 2012	20 Dec 2015
25	Tajikistan	DTC	03 Apr 2010	Not yet in force in Tajikistan
26	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

Constitution (1959)

Acts and Orders

Anti-terrorism Anti-Terrorism Order, 2011
Autoriti Monetary Brunei Darussalam Order, 2010
Anti-Money Laundering Order, 2000
Application of Laws Act (Chapter 2)
Banking Order, 2006
Business Names Act (Chapter 92)
Companies Act (Chapter 39)
*Companies Act (Amendment) Order, 2010
Finance Companies Act (Chapter 89)
Income Tax Act (Chapter 35)
Income tax (Petroleum) Act (Chapter 119)
International Banking Order, 2000
International Business Companies Order, 2000
International Limited Partnership order, 2000
International Trusts Order, 2000
Interpretation and General Clauses Act (Chapter 4)
Investment Incentives Order 2001,
Islamic Banking Order, 2008
Legal Profession Act (Chapter 132)

Limited Liability Partnerships Order, 2010

Money Changing and Remittance Business Act (Chapter 174)

Mutual Funds Order, 2001

Powers of Attorney Act (Chapter 13)

Preservation of Books Act (Chapter 125)

Prevention of Corruption Act (Chapter 131)

Registered Agents and Trustees Licensing Order, 2000

Securities Order, 2001

Notices

Notice to Banks. Prevention of Money Laundering and Combating the Financing of Terrorism 2011 (Notice no. AMBD/R/34/2011/1)

Notices to Life Insurers. Prevention of Money Laundering and Combating the Financing of Terrorism 2011 (Notice no. AMBD/R/34/2011/3)

Notices to International Banks. Prevention of Money Laundering and Combating the Financing of Terrorism (Notice no. AMBD/R/34/2011/6)

Notices to International Insurers and International Takaful Insurers. Prevention of Money Laundering and Combating the Financing of Terrorism (Notice no. AMBD/R/34/2011/7)

Notices to Islamic Banks. Prevention of Money Laundering and Combating the Financing of Terrorism (Notice no. AMBD/R/34/2011/2)

Notices to Holders of Money Changer's Licence and Remittance Licence. Prevention of Money Laundering and Combating the Financing of Terrorism (Notice no. AMBD/R/34/2011/5)

Notice to Family Takaful Operators. Prevention of Money Laundering and Combating the Financing of Terrorism (Notice no. AMBD/R/34/2011/4)

New or updates to Acts, Orders, Regulations and other material (included in 2015 Supplementary Phase 1 Report)

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

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: BRUNEI DARUSSALAM

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

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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