

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information  
on Request

# THE BAHAMAS

2018 (Second Round)





# **Global Forum on Transparency and Exchange of Information for Tax Purposes: The Bahamas 2018 (Second Round)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

March 2018  
(reflecting the legal and regulatory framework  
as at January 2018)

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## Reader's guide

**The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum)** is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 145 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic). Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

### **Sources of the Exchange of Information on Request standards and Methodology for the peer reviews**

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

## **Consideration of the Financial Action Task Force Evaluations and Ratings**

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.



The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

## **More information**

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and <http://dx.doi.org/10.1787/2219469x>.



## Abbreviations and acronyms

### General terms

|                                      |                                                                                                                  |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <b>2010 Terms of Reference</b>       | Terms of Reference related to EOIR, as approved by the Global Forum in 2009.                                     |
| <b>2016 Assessment Criteria Note</b> | Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.                                 |
| <b>2016 Methodology</b>              | 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015. |
| <b>2016 Terms of Reference</b>       | Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.                       |
| <b>AML</b>                           | Anti-Money Laundering                                                                                            |
| <b>AML/CFT</b>                       | Anti-Money Laundering/Countering the Financing of Terrorism                                                      |
| <b>EOIR</b>                          | Exchange of information on request                                                                               |
| <b>FATF</b>                          | Financial Action Task Force                                                                                      |
| <b>Global Forum</b>                  | Global Forum on Transparency and Exchange of Information for Tax Purposes                                        |
| <b>Multilateral Convention</b>       | Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010                                |
| <b>PRG</b>                           | Peer Review Group of the Global Forum                                                                            |
| <b>TIEA</b>                          | Tax Information Exchange Agreement                                                                               |
| <b>VAT</b>                           | Value Added Tax                                                                                                  |

## Terms specific to The Bahamas

|                    |                                                                                                            |
|--------------------|------------------------------------------------------------------------------------------------------------|
| <b>2013 Report</b> | EOIR peer review report on The Bahamas as adopted by the Global Forum in November 2013 (including ratings) |
| <b>FCSP</b>        | Financial and Corporate Service Provider                                                                   |
| <b>FITRR</b>       | Financial Intelligence (Transactions Reporting) Regulations                                                |
| <b>FTRA</b>        | Financial Transactions Reporting Act                                                                       |
| <b>IBC</b>         | International Business Company                                                                             |
| <b>ICON</b>        | Investment Condominium                                                                                     |
| <b>ITC Act</b>     | International Tax Cooperation Act                                                                          |
| <b>PTC</b>         | Private Trust Company                                                                                      |
| <b>RGD</b>         | Registrar General's Department                                                                             |

## Executive summary

1. This report analyses the implementation of the EOIR standard by The Bahamas against the 2016 Terms of Reference. For purposes of assessing The Bahamas’ practical implementation of the standard, the report reviews The Bahamas’ practices in respect of EOI requests processed during the three year period from 1 October 2013 to 30 September 2016. This report concludes that The Bahamas is rated overall as Largely Compliant.

2. During the first round of reviews, the Global Forum evaluated The Bahamas against the 2010 Terms of Reference through two assessments: the 2011 Phase 1 Report and the 2013 Phase 2 Report (the 2013 Report). The 2013 Report also assigned an overall rating of Largely Compliant to The Bahamas. The following table shows the comparison with the results from The Bahamas’ most recent peer review report:

**Comparison of ratings for the Phase 2 Review (2013) and Current EOIR Review (2018)**

| Element                                                | Phase 2 Report (2013) | EOIR Report (2018) |
|--------------------------------------------------------|-----------------------|--------------------|
| A.1 Availability of ownership and identity information | LC                    | PC                 |
| A.2 Availability of accounting information             | LC                    | LC                 |
| A.3 Availability of banking information                | C                     | C                  |
| B.1 Access to information                              | C                     | LC                 |
| B.2 Rights and Safeguards                              | C                     | C                  |
| C.1 EOIR Mechanisms                                    | C                     | C                  |
| C.2 Network of EOIR Mechanisms                         | C                     | LC                 |
| C.3 Confidentiality                                    | C                     | LC                 |
| C.4 Rights and Safeguards                              | C                     | C                  |
| C.5 Quality and timeliness of requests and responses   | C                     | LC                 |
| <b>OVERALL RATING</b>                                  | <b>LC</b>             | <b>LC</b>          |

**C** = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

## Progress made since previous review

3. The 2013 Report contained recommendations in respect of the availability of ownership and accounting information (elements A.1 and A.2). In both cases, an absence of monitoring of legal requirements to have information available was noted. In element A.1 this was related to the availability of legal ownership information for relevant entities and arrangements in general and in particular where no monitoring took place in the context of requirements under AML legislation and no progress was made. In element A.2, it was noted that no monitoring and enforcement experience existed because the legal obligation to keep reliable accounting records was only introduced recently in respect of most relevant entities and arrangements.

4. The Bahamas has made efforts to address the recommendation related to element A.2. It introduced compliance rules in respect of certain entities and arrangements and included checking of compliance with accounting record keeping obligations in some of its monitoring programmes. However, not all entities and arrangements are comprehensively covered and some of the measures have only been introduced recently.

## Key recommendations

5. The key issues where improvement is needed relate to the availability of information. In respect of legal ownership information, it is recommended that The Bahamas monitors the legal obligations that exist in this respect to ensure availability in practice. This recommendation is similar to the one in the 2013 Report on this issue.

6. Regarding the availability of beneficial ownership information, a requirement introduced in the 2016 ToR, the monitoring of the legal obligations is mostly adequate but some of the relevant entities and arrangements are not covered by these legal obligations. It is recommended that The Bahamas ensures that a requirement to have beneficial ownership information available is in place in respect of all companies incorporated under the Companies Act and all general partnerships. In addition, a recommendation has been made because The Bahamas' legal and regulatory framework contains some deficiencies with respect to the identification of beneficial owner(s) of companies. This may result in the service providers subject to supervision by the Securities Commission or the Compliance Commission not always collecting information on all relevant beneficial owners in accordance with the 2016 ToR.

7. The availability of reliable accounting information is also not consistently monitored in The Bahamas in respect of all entities and arrangements, and part of the monitoring framework has only been recently introduced. It is therefore recommended that The Bahamas monitors the implementation of

the accounting record keeping obligations in respect of all relevant entities and arrangements, including for entities that are dissolved or struck off the register, and ensures that its enforcement powers are sufficiently exercised in practice.

8. The performance of The Bahamas in respect of obtaining and exchanging information has dropped since the 2013 Report, with longer response times to EOI requests from its partners and not taking adequate measures expeditiously in a number of cases where information was not produced. This has led to recommendations under elements B.1 and C.5 as well.

## Overall rating

9. As shown in the table below, The Bahamas has been assigned the following ratings: Compliant for elements A.3, B.2, C.1 and C.4, Largely Compliant for elements A.2, B.1, C.2, C.3 and C.5 and Partially Compliant for elements A.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for The Bahamas is Largely Compliant.

10. The overall rating has remained the same as in the 2013 Report, although the rating of some of the elements has dropped. This is explained by deficiencies identified in relation to the availability of beneficial ownership, a requirement introduced in the 2016 ToR, as well as a drop in performance in respect of obtaining and exchanging information. It is noted that the amount of EOI requests received by The Bahamas in the current peer review period has almost doubled compared to the peer review period of the 2013 Report but remains small (increase from 48 to 88).

11. The report was approved at the PRG meeting taking place from 26 February to 1 March 2018 and was adopted by the Global Forum on 30 March 2018. A follow up report on the steps undertaken by The Bahamas to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

### Summary of determinations, ratings and recommendations

| Determination                                                                                                                                                                                                                        | Factors underlying recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Recommendations                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> ) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                   |
| <p><b>The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement.</b></p>                                                                                       | <p>The Bahamas' legal and regulatory framework contains some deficiencies with respect to the identification of beneficial owner(s) of companies, which may result in the service providers subject to supervision by the Securities Commission or the Compliance Commission not always collecting information on all relevant beneficial owners in accordance with the 2016 ToR.</p>                                                                                                                                                                                                                                                                                                                 | <p>The Bahamas should ensure that its legal and regulatory framework requires all beneficial owners of companies to be identified in accordance with the 2016 ToR in all circumstances.</p>                       |
|                                                                                                                                                                                                                                      | <p>Companies incorporated under the Companies Act and general partnerships are not required to keep beneficial ownership information or to engage a Bahamian service provider which would be required to keep beneficial ownership information under AML legislation. Although it is likely that the 10% of the 40 319 registered companies incorporated under the Companies Act that have been issued a business licence have engaged a Bahamian service provider, it remains unclear to what extent the other 90% of these companies have done so. It is noted that the number of these companies that have a substantial percentage (40% or more) of foreign beneficial ownership, is limited.</p> | <p>The Bahamas should ensure that a requirement to have beneficial ownership information available is in place in respect of all companies incorporated under the Companies Act and all general partnerships.</p> |



| Determination                           | Factors underlying recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Recommendations                                                                                                                                                                                                                   |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EOIR rating: Partially Compliant</b> | The monitoring of compliance with requirements to keep legal ownership and identity information in respect of companies and partnerships is not comprehensive. The RGD (Registrar General's Department) performs limited monitoring on companies incorporated under the Companies Act and no monitoring on IBCs and partnerships. Whilst under the AML framework indirect monitoring is taking place which ensures availability of legal ownership information on IBCs and exempted limited partnerships in most cases, it is unclear to what extent other companies and partnerships have engaged a service provider subject to AML obligations and are therefore indirectly monitored. | The Bahamas should ensure that its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements for the availability of legal ownership information on companies and partnerships. |
|                                         | Where companies incorporated under the Companies Act and general partnerships only engage a Bahamian service provider which is supervised by the Compliance Commission, the availability of reliable beneficial ownership information is not ensured, as its supervision of compliance with AML obligations is not robust.                                                                                                                                                                                                                                                                                                                                                               | The Bahamas should ensure that an adequate mechanism to monitor the availability of beneficial ownership information is in place in respect of all service providers it may rely on.                                              |

| Determination                                                                                                                            | Factors underlying recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Recommendations                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>EOIR rating: Partially Compliant</b><br/><i>(continued)</i></p>                                                                    | <p>In 11 of the pending EOI requests received in the peer review period, the information was required to be available with one specific Bahamian service provider. However, this service provider stated that it was not in possession or control of the information because it was denied access by its foreign head office. The Bahamian authorities took more than one year to revoke the licence of this service provider, even though there were also other external factors (relevant information available in the public domain) giving rise to concern.</p> | <p>The Bahamas should enhance its monitoring and enforcement practice and be more proactive in the case of external events affecting one or more Bahamian service providers.</p> |
| <p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                  |
| <p><b>The legal and regulatory framework is in place.</b></p>                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                  |

| Determination                                                                                                                                                                                                                                                                                                                                                                             | Factors underlying recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Recommendations                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EOIR rating: Largely Compliant</b>                                                                                                                                                                                                                                                                                                                                                     | During the peer review period, the availability of accounting records was only effectively monitored in respect of trusts with a professional trustee licensed by the Central Bank and in respect of entities or arrangements with a business licence. Less than 10% of the entities and arrangements registered in The Bahamas had a business licence. In 2017 a monitoring mechanism was established in respect of IBCs and exempted limited partnerships, but its effectiveness cannot yet be assessed. It is also noted that there has been one case during the peer review period where accounting information was unavailable because the company had been struck off the register and the information was not kept in accordance with the standard. | The Bahamas should monitor the implementation of the accounting record keeping obligations in respect of all relevant entities and arrangements, including for entities that are struck off the register, and should ensure that its enforcement powers are sufficiently exercised in practice. |
| Banking information and beneficial ownership information should be available for all account-holders ( <i>ToR A.3</i> )                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> ) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |

| Determination                                                                                                                                                                                   | Factors underlying recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Recommendations                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EOIR rating: Largely Compliant</b>                                                                                                                                                           | The Bahamas has not used its compulsory powers during the peer review period, even though in a relatively high amount of cases (11 out of 88) non-compliance occurred and only one service provider was involved in all of those cases.                                                                                                                                                                                                                                                   | The Bahamas should apply its compulsory powers where appropriate in cases where information is not produced.                                                        |
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> ) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
| Exchange of information mechanisms should provide for effective exchange of information ( <i>ToR C.1</i> )                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
| <b>The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement.</b>                                                         | A peer indicated that it experienced a delay of more than two years in negotiating a TIEA with The Bahamas, including for the reason that The Bahamas asked for the inclusion of provisions in the TIEA which are not part of the standard. It may be noted that this jurisdiction will be covered by the Multilateral Convention once ratified by The Bahamas but this does not mitigate the fact that the peer has so far not been able to send EOI requests to The Bahamas as desired. | The Bahamas should, expeditiously, enter into exchange of information agreements with all relevant partners, meaning those partners who are interested in doing so. |

| Determination                                                                                                                                                      | Factors underlying recommendations                                                                                                                                                                                                                                                                 | Recommendations                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EOIR rating: Largely Compliant</b>                                                                                                                              |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> ) |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| <b>The legal and regulatory framework is in place.</b>                                                                                                             |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| <b>EOIR rating: Largely Compliant</b>                                                                                                                              | The Bahamas has included information in its Notices to Produce Information which was not necessary for the information holder to produce the requested information. In more than half of the EOI requests received this happened without explicit agreement of the requesting competent authority. | The Bahamas should only disclose information from the EOI request as is necessary for the information holder to produce the requested information. |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )                                  |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| <b>Legal and regulatory framework determination: The element is in place.</b>                                                                                      |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| <b>EOIR rating: Compliant</b>                                                                                                                                      |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| The jurisdiction should request and provide information under its network of agreements in an effective manner ( <i>ToR C.5</i> )                                  |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| <b>Legal and regulatory framework:</b>                                                                                                                             | <b>This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.</b>                                                                                                                                                                 |                                                                                                                                                    |

| Determination                         | Factors underlying recommendations                                                                                                                                               | Recommendations                                                                                                                                                                         |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EOIR rating: Largely Compliant</b> | The Bahamas has not consistently sent status update within 90 days of receipt of an EOI request where it was unable to provide a response within that timeframe.                 | The Bahamas should send a status update within 90 days of receipt of an EOI request in all cases where it is unable to provide a response within that timeframe.                        |
|                                       | The Bahamas experienced delays in responding to EOI requests received, which are largely attributable to a temporary reduction in human resources during the peer review period. | The Bahamas should ensure that it sends timely responses to EOI requests received by its competent authority, and monitor that it maintains at all times sufficient resources to do so. |

## Overview of The Bahamas

1. This overview provides some basic information about The Bahamas that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of The Bahamas' legal, commercial or regulatory systems.
2. The Bahamas' economy is based on tourism and financial services. Its GDP was just over USD 11.26 billion in 2016<sup>1</sup> on a population of approximately 391 000. The currency is the Bahamian dollar (BSD), which is pegged to the US dollar at parity.

### Governance and legal system

3. The Bahamas is a self-governing, sovereign member of the Commonwealth of Nations. Queen Elizabeth II is the titular head of state in The Bahamas, represented by a Governor-General. Legislative power is vested in a bicameral parliament which consists of a 38-member House of Assembly (the lower house) and a 16-member Senate. The House of Assembly carries out all major legislative functions.
4. The Bahamas has a written constitution that was published when it gained its independence in 1973 and which is the supreme law. All other laws must be consistent with the Constitution to be enforceable. The Constitution empowers parliament to make laws by the passing of bills, which must be passed by the House of Assembly and Senate, and be agreed by the Governor-General before becoming law.
5. Historically, the basis of the Bahamian law and legal system is the Westminster model (English common law). The judiciary is independent of the executive and the legislature. Judicial authority is vested in the Judicature, which comprises Magistrate Courts, the Supreme Court, the Court of Appeal and the United Kingdom's Judicial Committee of the Privy Council as the final court of appeal.

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1. Gross Domestic Product at Current Market Prices as published in the National Accounts Report issued by the Department of Statistics of The Bahamas.

## Tax system

6. The Bahamas' tax system is mainly based on indirect taxation. No personal or corporate income tax is imposed, but economic activities are subject to VAT, import, export and excise duties, stamp duties and a business licence tax. In addition, tourism-related taxes on gaming and accommodation are imposed. A tax is also levied on the value of real property, land and any improvements.

7. The VAT was introduced in 2015 and has two rates: 7.5% and 0%. Its introduction prompted a reorganisation of some of the government departments, leading to the establishment of the Department of Inland Revenue (DIR). The DIR administers the VAT, business licence tax, real property tax and stamp duties.

## Financial services sector

8. The Bahamian financial system is exceptionally large, with total gross assets equivalent to approximately 62 times the Bahamian GDP at the end of 2016. As a percentage of total GDP, financial services represent roughly 15% and employs over 6 500 persons approximately 4% of the employed labour force).

9. The Bahamian financial sector comprises both domestic and international operations, however, Exchange Control regulations maintain a separation between the two sectors to safeguard financial stability. Risks in the offshore sector are further mitigated by the fact that the vast majority of assets are held by branches of foreign institutions for which solvency risk do not apply at the level of the jurisdiction.

10. The Central Bank of The Bahamas reported<sup>2</sup> that at the end of 2016 the banking industry recorded approximately USD 194.5 billion in assets, of which USD 175.7 billion (90.3%) was held by international banks, while domestic banks held the remaining USD 18.8 billion (9.7%). Fiduciary assets under the care of trust companies are estimated at USD 361.8 billion, almost exclusively offshore. Among the non-banks, investment administrators reported assets under management of USD 136.8 billion within 890 investment funds, while the total assets of insurance companies and credit unions stood at an estimated USD 2.3 billion and USD 395.5 million, respectively.

11. Regulatory bodies in the financial sector include the Central Bank of The Bahamas (Central Bank), the Securities Commission and the Insurance

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2. Financial Stability Report published by the Central Bank of The Bahamas in December 2016.



Commission. The Central Bank regulates service providers licensed under the Banks and Trust Companies Regulation Act, which include banks, trust service providers, money transmission service providers, registered representatives (agents for Private Trust Companies), and credit unions. The Securities Commission regulates the securities industry, investment funds and service providers licensed under the Financial and Corporate Service Providers Act (which include registered agents of International Business Companies). The Insurance Commission regulates the insurance business.

12. For purposes of AML supervision, the supervisory responsibilities are allocated in the same manner as the regulatory responsibilities. In addition to the three authorities mentioned in the previous paragraph, the Gaming Board regulates and supervises casinos and gaming houses, while the Compliance Commission supervises all other persons that are covered by the AML legislation, such as lawyers and accountants to the extent that they provide services related to managing, investing or administering funds.

13. The Bahamas' compliance with the AML/CFT Measures standard was assessed by the Caribbean Financial Action Task Force and its report was adopted by the FATF in July 2017. The report provides a summary of the AML/CFT measures in place in The Bahamas as at the date of the on-site visit in November-December 2015. Conclusions on issues related to the 2016 ToR are that the effectiveness of measures ensuring the availability of beneficial ownership on legal persons and arrangements to the Bahamian authorities and measures targeted at the prevention of misuse of these persons and arrangements for money laundering or terrorist financing, is considered moderate.

14. With respect to technical compliance with FATF Recommendations 10 (Customer due diligence), 22 (DNFBPs: Customer due diligence), 24 (Transparency and beneficial ownership of legal persons) and 25 (Transparency and beneficial ownership of legal arrangements), the report concludes that The Bahamas is Partially Compliant. The complete assessment report has been published and is available at [www.fatf-gafi.org/media/fatf/documents/reports/mer4/cfatf-4meval-bahamas.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/cfatf-4meval-bahamas.pdf).

## Recent developments

15. On 15 December 2017, The Bahamas signed the Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention). This complements its existing network of more than 30 TIEAs and will allow The Bahamas to exchange information with more than 100 jurisdictions once the Convention enters into force.

16. The Bahamas expects to strengthen its AML legislation in the course of 2018. A Financial Transactions Reporting Bill, containing a definition of the term beneficial ownership as well as other relevant changes, is currently in the parliamentary process.

## Part A: Availability of information

17. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

### A.1. Legal and beneficial ownership and identity information

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

18. In the 2013 Report element A.1 was determined to be “in place” and rated Largely Compliant. A recommendation was made for The Bahamas to ensure that its monitoring powers to ensure the availability of legal ownership information for entities and arrangements are sufficiently exercised. No changes to the monitoring practice were made by The Bahamas in this regard, and the recommendation therefore remains, albeit more targeted to companies and exempted limited partnerships.

19. Overall, the 2013 Report concluded that the legal and regulatory framework of The Bahamas ensured that legal ownership and identity information must be available. This is still the case.

20. The legal requirements to ensure the availability of beneficial ownership information are contained in the AML legislation. Although these requirements are adequate in respect of service providers supervised by the Central Bank, some deficiencies exist with respect to the identification of beneficial owner(s) of companies where they engage service providers subject to supervision by the Securities Commission or the Compliance Commission. This may result in them not always collecting information on all relevant beneficial owners in accordance with the 2016 ToR.

21. In addition, not all relevant entities and arrangements are covered. Companies incorporated under the Companies Act and general partnerships are not required to engage a service provider subject to AML legislation. The lack of clarity about the activities of the companies incorporated under the Companies Act and the extent to which they have foreign ownership add to

the uncertainty of these entities having engaged a relevant service provider. It is recommended that The Bahamas ensures that a requirement to have beneficial ownership information available is in place in respect of these entities. Element A.1 is determined to be “in place, but needing improvement”.

22. In respect of the practical implementation of the requirements to have beneficial ownership information available, the monitoring of compliance with the requirements by the Central Bank and the Securities Commission is considered adequate. Improvements need to be made in the supervision by the Compliance Commission, covering other AML-obligated service providers. This will again impact the companies incorporated under the Companies Act and general partnerships, which may only have engaged a Bahamian service provider supervised by the Compliance Commission. It is recommended that The Bahamas ensures that an adequate mechanism to monitor the availability of beneficial ownership information is in place in respect of all service providers it may rely on.

23. During the current peer review period, the EOI requests received by The Bahamas contained a request for ownership or identity information in 53 cases. Peers were generally satisfied or very satisfied with the information received. However, in 11 of the pending EOI requests received in the peer review period, the information was required to be available with one specific Bahamian service provider, which stated that it was not in possession or control of the information because it was denied access by its foreign head office.

24. The supervision on the availability of legal ownership information needs improvement to ensure it covers all companies and existing powers are exercised in practice. A similar finding was included in the 2013 Report without improvement having been made in the meantime. With respect to the availability of beneficial ownership information, a gap was identified in the legal requirements to have such information available in respect of companies incorporated under the Companies Act and general partnerships. Peers have not raised any issues and were generally satisfied with the information received during the peer review period. However, in 11 of the pending EOI requests availability was not ensured, although it is noted that it only related to one specific service provider. In conclusion, element A.1 is rated Partially Compliant.

25. The updated table of determinations and ratings is as follows:

| <b>Legal and regulatory framework</b>                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                 | <b>Underlying factor</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>Recommendation</b>                                                                                                                                                                                      |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b>                                      | The Bahamas' legal and regulatory framework contains some deficiencies with respect to the identification of beneficial owner(s) of companies, which may result in the service providers subject to supervision by the Securities Commission or the Compliance Commission not always collecting information on all relevant beneficial owners in accordance with the 2016 ToR.                                                                                                                                                                                                                                                                                                                 | The Bahamas should ensure that its legal and regulatory framework requires all beneficial owners of companies to be identified in accordance with the 2016 ToR in all circumstances.                       |
|                                                                                                                                 | Companies incorporated under the Companies Act and general partnerships are not required to keep beneficial ownership information or to engage a Bahamian service provider which would be required to keep beneficial ownership information under AML legislation. Although it is likely that the 10% of the 40 319 registered companies incorporated under the Companies Act that have been issued a business licence have engaged a Bahamian service provider, it remains unclear to what extent the other 90% of these companies have done so. It is noted that the number of these companies that have a substantial percentage (40% or more) of foreign beneficial ownership, is limited. | The Bahamas should ensure that a requirement to have beneficial ownership information available is in place in respect of all companies incorporated under the Companies Act and all general partnerships. |
| <b>Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                            |

| Practical implementation of the standard                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                          | Underlying factor                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Recommendation                                                                                                                                                                                                                    |
| <b>Deficiencies identified in the implementation of EOIR in practice</b> | The monitoring of compliance with requirements to keep legal ownership and identity information in respect of companies and partnerships is not comprehensive. The RGD (Registrar General's Department) performs limited monitoring on companies incorporated under the Companies Act and no monitoring on IBCs and partnerships. Whilst under the AML framework indirect monitoring is taking place which ensures availability of legal ownership information on IBCs and exempted limited partnerships in most cases, it is unclear to what extent other companies and partnerships have engaged a service provider subject to AML obligations and are therefore indirectly monitored. | The Bahamas should ensure that its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements for the availability of legal ownership information on companies and partnerships. |
|                                                                          | Where companies incorporated under the Companies Act and general partnerships only engage a Bahamian service provider which is supervised by the Compliance Commission, the availability of reliable beneficial ownership information is not ensured, as its supervision of compliance with AML obligations is not robust.                                                                                                                                                                                                                                                                                                                                                               | The Bahamas should ensure that an adequate mechanism to monitor the availability of beneficial ownership information is in place in respect of all service providers it may rely on.                                              |

| Practical implementation of the standard                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                | Underlying factor                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Recommendation                                                                                                                                                            |
| <b>Deficiencies identified in the implementation of EOIR in practice</b><br><i>(continued)</i> | In 11 of the pending EOI requests received in the peer review period, the information was required to be available with one specific Bahamian service provider. However, this service provider stated that it was not in possession or control of the information because it was denied access by its foreign head office. The Bahamian authorities took more than one year to revoke the licence of this service provider, even though there were also other external factors (relevant information available in the public domain) giving rise to concern. | The Bahamas should enhance its monitoring and enforcement practice and be more proactive in the case of external events affecting one or more Bahamian service providers. |
| <b>Rating: Partially Compliant</b>                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                           |

### *A.1.1. Availability of legal and beneficial ownership information for companies*

26. The following types of companies can be formed in The Bahamas:

- Bahamian companies: companies incorporated under the Companies Act. These companies are considered Bahamian-owned if the beneficial ownership is 60% or more Bahamian; otherwise they are considered foreign-owned. As at 30 September 2016, there were 40 319 Bahamian companies registered, of which 1 578 were foreign-owned (less than 60% of beneficial ownership was Bahamian).
- Non-profit organisation: companies incorporated under the Companies Act which primarily engage in raising or disbursing funds for purposes such as religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic purposes not for profit. As at 30 September 2016, there were 1 131 non-profit organisations registered.
- International Business Companies (IBCs): companies incorporated under the International Business Companies Act (IBC Act), which must have a Bahamian licensed service provider as registered agent.

IBCs generally only conduct business outside of The Bahamas and must obtain approval from the Exchange Control Division of the Central Bank if they desire to do business with persons within The Bahamas (s. 187(6) IBC Act). As at 30 September 2016, there were 30 716 IBCs registered.

- Segregated Account Companies (SACs): companies incorporated under the Companies Act or the IBC Act which operate separate accounts and are licensed as an investment fund, securities business, insurance business or other regulated business. As at 30 September 2016, there were 143 SACs registered.

27. The 2013 Report did not identify any deficiencies with The Bahamas' legal requirements to ensure the availability of legal ownership information for companies as such, although a recommendation with respect to investment funds was made which could have impacted investment funds which are organised as companies (see below under *Availability of beneficial ownership information – practical implementation* [Securities Commission]). In addition, the 2013 Report contained a recommendation for The Bahamas to ensure that its monitoring powers to ensure the availability of legal ownership information for entities and arrangements are sufficiently exercised.

#### *Availability of legal ownership information – legal framework*

28. No relevant changes have been made in the legal framework of The Bahamas with respect to the availability of legal ownership information for companies since the 2013 Report. All companies must be registered with the Registrar General's Department (RGD) and are required to keep a register of members.

29. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:<sup>3</sup>

|                                                                                                         | <b>Company law:<br/>companies</b> | <b>Company<br/>law: RGD</b> | <b>Exchange Control<br/>legislation:<br/>Central Bank</b> | <b>Business Licence Act:<br/>Business Licence<br/>Authority</b> |
|---------------------------------------------------------------------------------------------------------|-----------------------------------|-----------------------------|-----------------------------------------------------------|-----------------------------------------------------------------|
| Companies incorporated under the Companies Act and foreign companies registered under the Companies Act | All                               | All                         | Some (if and to the extent of foreign ownership)          | Some (if carrying on business in The Bahamas)                   |

3. Non-profit organisations and Segregated Account Companies are not separately mentioned in this table because they will take the form of one of the two categories that are covered.



|                                            | <b>Company law:<br/>companies</b> | <b>Company<br/>law: RGD</b> | <b>Exchange Control<br/>legislation:<br/>Central Bank</b> | <b>Business Licence Act:<br/>Business Licence<br/>Authority</b> |
|--------------------------------------------|-----------------------------------|-----------------------------|-----------------------------------------------------------|-----------------------------------------------------------------|
| International Business<br>Companies (IBCs) | All                               | None                        | Some (if carrying<br>on business in The<br>Bahamas)       | Some (if carrying on business<br>in The Bahamas)                |

30. Companies incorporated under the Companies Act, which include non-profit organisations, must register their memorandum with the RGD, which in most cases will contain the names of the initial members. Furthermore, they are required to file an annual return containing the up-to-date register of members including a list of persons that ceased to be members since the submission of the previous list (s. 58 Companies Act). These companies must keep a comprehensive register of members at their registered office at all times (s. 56 Companies Act). Failing to comply with these obligations may lead to a civil penalty of USD 20 for each day or part thereof during which the failure continues (s. 286 Companies Act). In addition, making a false return or document or omitting a material fact in such return or document may lead to a fine of USD 10 000 or imprisonment for a term of two years (s. 292 Companies Act).

31. IBCs and SACs must also register with the RGD but the ownership information to be filed is limited to the initial subscribers to the Memorandum in the case of an IBC. Both types of companies are, however, required to provide details of a licensed service provider in The Bahamas that acts as their representative. SACs must also submit the approval of the relevant regulator to conduct regulated business to the RGD. IBCs and SACs must keep a comprehensive register of members at all times, which in the case of an SAC includes a separate register for each segregated account (s. 29 IBC Act and s. 27 Segregated Accounts Companies Act). Failure to keep a register of members by an IBC is punishable with a fine of USD 10 000 or imprisonment for a term of two years (s. 180 IBC Act). SACs must conduct a regulated business and are subject to strict ownership rules and approvals by the relevant regulators with accompanying penalties for failing to comply.

32. Where a company incorporated under the Companies Act has non-Bahamian persons as members, either directly or through a nominee, approval from the Exchange Controller at the Central Bank is required (ss. 8 and 9 of the Exchange Control Regulations). In that case, the Exchange Controller will also have legal (and possibly beneficial) ownership information to the extent it is relevant to grant the approval. IBCs which conduct business outside The Bahamas are exempt from the Exchange Control Regulations Act. However, an IBC is only allowed to do business in The Bahamas with the approval of the Exchange Controller. Such approval has been granted in a limited number of cases.

33. All IBCs must have a licensed service provider in The Bahamas as their registered agent (s. 38 IBC Act). This service provider is subject to the AML legislation in force in The Bahamas and may, in conducting customer due diligence, obtain and keep full information on the legal owners of the IBC. Although there is no clear requirement to obtain this information, a certain level of understanding of the ownership structure of the IBC would be required to be able to identify the beneficial owners; this is likely to prompt the registered agent to keep a list of members of the IBC. In practice, this list will almost always be kept at the office of the IBC's registered agent, because this is then also the IBC's registered office where the register must be kept under section 29 of the IBC Act.

34. A foreign company may only maintain a place of business or carry on an undertaking in The Bahamas if it is registered under the Companies Act (s. 172(1) Companies Act) and has approval from the Exchange Control Department to do so. All foreign companies with a substantial nexus to The Bahamas, such as having their headquarters there, will be caught by this rule. Once registered, the provisions of the Companies Act, except those relating to incorporation, shall apply to the foreign company (s. 176 Companies Act). This means that the registered foreign company must keep an up-to-date register of members and provide this annually to the RGD.

35. More generally, all companies that wish to do business within The Bahamas must obtain a business licence from the Business Licence Department (s. 3(1) Business Licence Act), housed in the Department of Inland Revenue. The term "business" is defined as including "a profession, calling, vocation, occupation, trade, manufacture or undertaking of any kind, an adventure or concern in the nature of trade, for the purpose of creating a turnover". The business licence must be renewed on an annual basis (s. 3(3) Business Licence Act), and a list of all legal owners of the business must be provided upon application for the licence as well as with the application for renewal (s. 3(5) Business Licence Act and First Schedule to the Business Licence Regulations).

36. The Bahamas company law allows principals to hold shares via nominees. Where the nominee is a regulated service provider, it is required under AML legislation to keep identity information of its client and the beneficial owners (see below under *Availability of beneficial ownership information – legal framework*). Anyone providing nominee shareholders for profit of an IBC is considered a financial and corporate service provider (s. 2 Financial and Corporate Service Providers Act) and is therefore always subject to the AML legislation. With respect to companies incorporated under the Companies Act, it is important to note that all foreign ownership must be approved by the Exchange Controller, as already indicated. Section 14 of the Exchange Control Regulations explicitly covers all situations where

foreign ownership may be established through a nominee shareholder and only allows this to occur with the permission of the Exchange Controller. Where such permission is granted, the Central Bank will have records with the identity of the nominee's principal.

37. As mentioned in the 2013 Report, there may be situations where shares in a company are held by a nominee and which are not covered by one of the circumstances described in the previous paragraph, but these were regarded as exceptional according to The Bahamas' authorities – this remains unchanged. No peers have indicated any issues related to nominee shareholders with respect to the peer review period.

38. Where a company is being dissolved, the liquidator must take possession or control of all the company's books and records (Order 26.3(1) of the Companies Liquidation Rules). They may then be disposed in such manner as the company by resolution directs and after five years all responsibility for keeping the books and records is waived (s. 252(b) Companies Act and s. 89 IBC Act). Where the company has been wound up by or subject to the supervision of the court, the court should decide on the retention of the records (s. 252(a) Companies Act and s. 89 IBC Act). No information is available with respect to the general timeframe provided in the company resolution or court order while there seems to be discretion in this respect.

39. In respect of companies incorporated under the Companies Act, the RGD has legal ownership information and no records have yet been destroyed for the last 100 years. This also ensures the availability of this information where a company incorporated under the Companies Act is struck off the register. If an IBC is struck off the register without having been liquidated, its registered agent is informed. As mentioned above, the registered agent is likely to have legal ownership information (in addition to beneficial ownership information), and would have to keep this information for five years after the striking off, which would effectively be considered the termination of the business relationship between the registered agent and the IBC. With respect to IBCs, it is recommended that The Bahamas monitors that legal ownership information of liquidated IBCs is effectively kept for a minimum period of five years in all cases considering the implied discretion on what can be included in the company resolution or court order.

#### *Availability of legal ownership information – practical implementation*

40. The RGD is responsible for ensuring compliance with registration and record keeping obligations of all companies. It has more than 80 staff which mainly focus on correct registration, the filing of annual returns (for companies incorporated under the Companies Act) and payment of the annual fees.

41. Upon registration, companies must provide the RGD with the information set out in the relevant legislation. As mentioned above, this includes a list of the initial members with respect to most companies incorporated under the Companies Act. In respect of IBCs, the Memorandum must be filed which should be subscribed by at least two initial subscribers. The RGD checks that all required information is submitted and then issues a certificate of incorporation. With respect to IBCs, the RGD also checks whether the registered agent is a Bahamian licensed service provider against the list provided by the relevant regulator.

42. All companies must pay an annual registration fee. With respect to IBCs, penalties for late payment of the fee are applied automatically when they are not paid by 30 April (10% penalty) and 31 October (50% penalty). When fees are not paid by 31 December (one year late), the RGD starts the procedure for striking off the IBC. No automated system of monitoring and application of penalties is in place for companies incorporated under the Companies Act. During the peer review period, the RGD struck off 158 companies incorporated under the Companies Act and 5 901 IBCs. Most of the IBC strike-offs are related to the non-payment of fees, while reasons for striking off companies incorporated under the Companies Act include the failure to file required documents (changes to registered details and annual statements).

43. The RGD has not performed systematic monitoring of compliance with filing obligations (such as the obligation for companies incorporated under the Companies Act to file an annual return including a list of the current members of the company) during the peer review period, as it was going through a restructuring and a move towards electronic registration and keeping of information. In addition, no monitoring of record keeping obligations, such as the obligation for all companies to keep a register of members, was conducted. As a result, no direct penalties have been imposed during the peer review period for failing to keep a register of members or for not filing an annual statement (the latter only applies to companies incorporated under the Companies Act). The only time the RGD would actively check whether filing requirements are met, is when a company requests a Certificate of Good Standing, which will not be issued without up-to-date documentation having been filed with the RGD. There is, however, no requirement for companies to have a (recent) Certificate of Good Standing in their possession.

44. The availability of legal ownership information is, directly or indirectly, also monitored in other ways. As mentioned above, all companies that wish to do business within The Bahamas must obtain a business licence from the Business Licence Department, and a list of all legal owners of the business must be provided upon application for the licence as well as with the annual application for renewal.

45. The Business Licence Department has 20 staff reviewing the licence applications. According to the authorities, all applications are reviewed strictly for completion and are put on hold until all required information is furnished. In addition, the list of members may be reviewed by the on-site inspection teams which check compliance with the business licence requirements as well as compliance related to the property tax and VAT. Further details in respect of the compliance activities in this respect can be found under element A.2 (Accounting records).

46. The strict policy of the Business Licence Department not to issue or renew licences without complete information being furnished ensures the availability of legal ownership information with respect to those companies that carry on business in The Bahamas. In 2016, only 4 145 companies were issued a business licence, while more than 70 000 companies were registered with the RGD. While the approximately 30 000 IBCs are not expected to carry on business in The Bahamas, only about 10% of the companies incorporated under the Companies Act have been issued a business licence. The Bahamas' authorities indicate that this can partly be explained by companies used solely for holding assets, estate planning, family management and other non-revenue generating matters, for which a business licence is not required. It may also be that some of these companies carry on business outside The Bahamas.

47. Another way in which the availability of legal ownership information is monitored, is through the inspections on service providers by the AML supervisors. As mentioned, all IBCs must have a licensed service provider as registered agent. In the vast majority of cases, the registered agent also provides the registered office for that IBC where the IBC must keep its list of members (s. 29 IBC Act). Although it is not a mandatory requirement, this means in practice that the registered agent often has a copy of the list of the IBC's members which it (also) keeps as part of its customer due diligence documentation.

48. The list of members of an IBC is not a document of which the presence is specifically checked during on-site inspections of registered agents, as it is not a document which is required to be kept by the registered agent. Nevertheless, in practice the list of members is almost always part of the customer due diligence information for AML purposes since the Securities Commission, which monitors the bulk of the registered agents, expects all layers of an ownership structure to be identified. The same may be true with respect to companies incorporated under the Companies Act which engage a Bahamian service provider, for example to open a bank account. However, it is not mandatory for companies incorporated under the Companies Act to engage a service provider and it is unclear how many of these companies have done so.

### *Conclusion*

49. Monitoring by the authorities of the requirements to keep legal ownership information for companies does not consistently take place. The RGD is the primary responsible authority for monitoring compliance with these requirements, and its focus has been on the payment of registration fees by IBCs. Some monitoring is also taking place with respect to companies incorporated under the Companies Act because they must file annual returns with an up-to-date list of members, but the RGD has not been able to produce any compliance and enforcement statistics in this regard. No monitoring by the RGD has taken place on the obligation for IBCs to keep a register of members.

50. With respect to companies carrying on business within The Bahamas, the Business Licence Department has legal ownership information, but this only covers a small proportion of all companies registered with the RGD (mainly companies incorporated under the Companies Act, and not IBCs).

51. Indirect monitoring in respect of IBCs takes place through on-site inspections on their registered agents for AML purposes. Although the list of members is not a mandatory document to be kept by the registered agent, it will in practice almost always be kept (both because the registered agent also provides the registered office for the IBC and because the registered agent obtains the list of members as part of the due diligence documentation) and the supervisory authority (Securities Commission) indicated it generally expects all layers of a corporate structure to be identified. It is not mandatory for companies incorporated under the Companies Act to engage a service provider.

52. In conclusion, it seems that the situation with respect to the monitoring of compliance with the requirement to keep legal ownership information for companies has not changed since the 2013 Report and is not comprehensive. No direct penalties have been imposed during the peer review period for not keeping an up-to-date register of members. Although in respect of IBCs the lack of specific monitoring on the availability of legal ownership information is mitigated by the AML framework, this is not the case for companies incorporated under the Companies Act which are not engaging a Bahamian service provider. It is unclear what proportion of companies incorporated under the Companies Act has not (recently) engaged a Bahamian service provider but given the low number of business licences issued to this group it may be a significant proportion. It is recommended that The Bahamas ensures that its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which require legal ownership information on companies to be available.

*Availability of beneficial ownership information – legal framework*

53. Under the 2016 ToR, beneficial ownership information on companies should be available. The Bahamas’ AML legislation contains comprehensive requirements for beneficial ownership information to be available. In addition, beneficial ownership information may be available with the Exchange Controller.

54. The following table shows a summary of the legal requirements to maintain beneficial ownership information in respect of companies<sup>4</sup>:

|                                                                                                         | <b>Company law:<br/>companies or<br/>RGD</b> | <b>Exchange Control<br/>legislation:<br/>Central Bank</b>               | <b>AML legislation:<br/>service providers</b>  |
|---------------------------------------------------------------------------------------------------------|----------------------------------------------|-------------------------------------------------------------------------|------------------------------------------------|
| Companies incorporated under the Companies Act and foreign companies registered under the Companies Act | None                                         | Some (in some cases of foreign ownership – only for domestic companies) | Some (if engaging a Bahamian service provider) |
| International Business Companies (IBCs)                                                                 | None                                         | Some (if carrying on business in The Bahamas)                           | All                                            |

55. As mentioned above, all IBCs must have a Bahamian licensed service provider as registered agent. This service provider is subject to the AML legislation (see below for a comprehensive analysis).

56. Companies incorporated under the Companies Act are not required to engage a service provider subject to AML legislation but they are likely do so to conduct their business in The Bahamas or purchase and manage real estate in The Bahamas, which would mean that certain beneficial ownership information is available (see below for a comprehensive analysis of the AML legislation). However, only about 10% of the 40 319 registered companies incorporated under the Companies Act have been issued a business licence. It remains unclear to what extent the other 90% of these companies have engaged a Bahamian service provider which would keep beneficial ownership information. The Bahamas indicated that such companies are often used as vehicles for Bahamian residents to hold assets, estate planning, family management and other non-revenue generating matters.

57. As mentioned above, where a company incorporated under the Companies Act has non-Bahamian persons as members, either directly or through a nominee, approval from the Exchange Controller at the Central

4. Non-profit organisations and Segregated Account Companies are not separately mentioned in this table because they will take the form of one of the two categories that are covered.

Bank is required. Such approval is also required where an IBC wishes to carry on business with persons in The Bahamas. In those cases, the Exchange Controller may maintain beneficial ownership information to the extent of the foreign ownership. It is, however, unclear in which circumstances the Exchange Controller collects beneficial ownership information under the Exchange Control Regulations in practice, and the number of approvals granted by the Exchange Controller is unavailable.

58. The exact number of companies incorporated under the Companies Act wholly or partially beneficially owned by foreign individuals is unknown, but 1 578 of the 40 319 companies registered on 31 December 2016 were for 40% or more beneficially owned by foreign persons. This is based on annual declarations of beneficial ownership to the RGD which must state whether the company is more than 60% beneficially owned by Bahamians. This declaration does not indicate further details and there is no explicit requirement that companies must keep details on its beneficial owners, nor is there any further guidance on what constitutes beneficial ownership for this purpose. The extent of foreign beneficial ownership of companies incorporated under the Companies Act is therefore unknown. It is recommended that The Bahamas ensures that a legal requirement to have beneficial ownership information available is in place in respect of all companies incorporated under the Companies Act.

### AML legislation

59. The main obligations to ensure the availability of beneficial ownership information in The Bahamas are found in the Financial Transactions Reporting Act (FTRA), the Financial Transactions Reporting Regulations (FTRR) and the Financial Intelligence Transactions Reporting Regulations (FITRR). In addition, the Central Bank's AML/CFT Guidelines contain further details of these obligations. These Guidelines are binding on the service providers covered (s. 8 FITRR), which includes banks, trust company service providers, money transmission service providers and agents, registered representatives that act as agents for PTCs, Credit Unions, investment funds and investment funds administrators. Further details of the obligations for financial and corporate service providers and other AML-obligated service providers are included in the Handbook on Anti-Money Laundering and Anti-Terrorism Financing for Financial and Corporate Service Providers (the "Handbook" or "Securities Commission's Handbook") and the Compliance Commission's Codes of Practice, which are also binding under section 8 of the FITRR.

60. Service providers must verify the identity of all their customers upon establishing a business relationship with the customer (in which case they are referred to as "facility holders") or when they conduct an occasional transaction for the customer (ss. 6 and 7 FTRA). Any obligation to verify the identity



of a customer includes an obligation to verify the identities of the beneficial owners of this customer (s. 7A FTRR).

61. Where the customer is a company, the obligation to verify the identity of beneficial owners is required for those beneficial owners having a controlling interest in the company (s. 7A FTRR). There is no single definition of the term beneficial owner in respect of corporate entities in the Bahamian legal framework. Depending on the type of service provider, the Central Bank's AML/CFT Guidelines, the Securities Commission's Handbook or the Compliance Commissions Codes of Practice apply.

### Central Bank's Guidelines

62. In the Central Bank's AML/CFT Guidelines (paragraph 77), beneficial owners having a controlling interest in a company are the natural person(s):

- a. "with a controlling interest in the corporate entity (other than a publicly traded company), being any person holding an interest of 10% or more or with principal control over the company's assets;
- b. who otherwise exercises control over the management of the corporate entity; and
- c. where no natural persons are identified under subparagraph (a) or (b), the identity of the natural person(s) who holds the position of senior managing official(s)."

63. This definition takes into account control through ownership as well as other means and requires identification of all persons ultimately owning or controlling the company, and is in line with the 2016 ToR. However, not all service providers are subject to these Guidelines.

### Securities Commission's Handbook and Compliance Commission's Codes of Practice

64. To the extent that lawyers and accountants provide services related to managing, investing or administering funds, they are subject to the Codes of Practice issued by the Compliance Commission, while financial and corporate service providers (FCSPs) are subject to the Securities Commission's Handbook. The Handbook and the Codes of Practice contain mostly identical requirements, but they are in some instances different from the Central Bank's AML/CFT Guidelines.

65. Firstly, they require service providers to verify the identity of beneficial owners with a 10% controlling interest in the corporate entity. What a controlling interest is, is not further defined. While the 2016 ToR allow a

threshold to be applied in these cases, this threshold should apply to the interest as such, without further qualifying it as a “controlling” interest, which implies an additional test to be applied to the 10% threshold which should not be there.

66. The Handbook and Codes of Practice also require service providers to take reasonable measures to determine the natural persons who control the management of the corporate entity. This seems to try to capture the beneficial owners (if any) exercising control of the company through means other than ownership. The 2016 ToR require all persons owning or controlling the company to be identified as beneficial owners and taking reasonable measures does not ensure this will be the case as it is not an unconditional obligation for identification.

67. In the event that natural persons cannot be identified as owning or controlling a company (including the persons who exercise ultimate effective control over the company), the Handbook and Codes of Practice do not specify that the natural person(s) who holds the position of senior managing official(s) are to be treated as the beneficial owner(s). The 2016 ToR requires, however, that beneficial owners be identified in all cases.

68. Finally, there is a reference that the beneficial owners may not be identified in those cases where reduced or simplified due diligence might apply (paragraph 13.3.4-1 in the Handbook, paragraph 14.3.4-1 in the Codes of Practice). Although paragraphs 12.4.4-2 of the Handbook and 13.3.4-4(b) of the Codes of Practice seem to suggest that even in low risk cases where simplified due diligence is allowed, the beneficial owners must still be identified, the reference in paragraph 13.3.4-1 or 14.3.4-1 may cause uneven application in practice.

69. As described in the previous paragraphs, the Handbook and Codes of Practice contain some deficiencies with respect to the identification of beneficial owner(s) of companies. This may result in the service providers not always collecting information on all relevant beneficial owners in accordance with the 2016 ToR. Since most registered agents of IBCs are subject to the rules in the Handbook, it is recommended that The Bahamas ensures that their legal and regulatory framework requires all beneficial owners of companies to be identified in accordance with the 2016 ToR.

### Other issues related to the AML legal framework

70. All service providers are allowed to accept a business relationship with a customer without verifying its identity where the customer is introduced by eligible introducers. Foreign financial institutions can be eligible introducers if they are from a listed jurisdiction which has equivalent or higher AML/CFT standards. In these cases, the Bahamian service provider

must still upon establishing the business relationship obtain all relevant information in respect of the customer's identity as well as written confirmation from the eligible introducer that it verified the customer's identity. The Bahamian service provider remains ultimately responsible for ensuring that adequate due diligence procedures are followed and that the documentary evidence of the eligible introducer that is being relied upon, is satisfactory for these purposes.

71. All records related to the verification of customers, which include the identity and verification documentation with respect to beneficial owners, must be kept for a period of at least five years after the end of the business relationship with the customer (s. 24(4) FTRA).

72. Failing to carry out customer due diligence before establishing a business relationship as well as failing to retain records are an offence, which can lead to fines of up to USD 20 000 in the case of an individual and up to USD 100 000 in the case of a body corporate (ss. 12(2) and 30(2) FTRA).

73. Requirements for ongoing customer due diligence are mostly event-based. Circumstances where further verification is mandatory are:

- a. where, during the course of a business relationship, a service provider has reason to doubt the identity of an existing customer (s. 6(4) FTRA);
- b. where there is a material change in the way the business relationship or account is operated (s. 9(1) FTRR); and
- c. where the service provider knows, suspects or has reasonable grounds to suspect that a transaction or proposed transaction involves proceeds of criminal conduct as defined in the Proceeds of Crime Act or any offence under the Proceeds of Crime Act or an attempt to avoid the enforcement of any provisions of the Proceeds of Crime Act (s. 10A(1) FTRA).

74. Furthermore, the Central Bank's AML/CFT Guidelines, the Securities Commission's Handbook and the Codes Practice require all service providers to keep their due diligence information up-to-date and relevant.

#### *Availability of beneficial ownership information – practical implementation*

75. The Bahamas' AML legislation requires financial institutions and other AML-obligated service providers to collect and keep beneficial ownership information. There are four main supervisory authorities which monitor compliance with these obligations:

- The Securities Commission regulates the securities industry, investment funds and service providers licensed under the Financial and Corporate Service Providers Act (which include registered agents of IBCs).
- The Central Bank regulates service providers licensed under the Banks and Trust Companies Regulation Act, which include banks, trust service providers, money transmission service providers, registered representatives (agents for PTCs), and credit unions.
- The Insurance Commission regulates the insurance business.
- The Compliance Commission supervises all other persons that are covered by the AML legislation, such as lawyers and accountants to the extent that they provide services related to managing, investing or administering funds.

76. For the purpose of the 2016 ToR, it is unlikely that a relevant entity or arrangement would engage a service provider which is regulated by the Insurance Commission without also engaging a service provider which is regulated by one of the other supervisory authorities. The supervision by the Insurance Commission is therefore not further analysed in this report. It may be noted that the 2013 Report contained a description of the supervision practice by the Insurance Commission, which was broadly the same as for the other supervisory authorities – this remains unchanged.

### Securities Commission

77. With respect to companies, the supervision by the Securities Commission on service providers licensed under the Financial and Corporate Service Providers Act is the most relevant for this part of the report, since all IBCs must have a licensed service provider as a registered agent. In most cases, this will be a licensee under the Financial and Corporate Service Providers Act, although it can also be a licensee under the Banks and Trust Companies Regulation Act supervised by the Central Bank.

78. The Securities Commission takes a risk-based approach to the supervision of FCSPs. All FCSPs are subject to ongoing off-site monitoring based on the different filing requirements, although these are not directly related to beneficial ownership information of the FCSP's customers. In 2014, a risk rating exercise was carried out whereby all FCSPs were rated based on different parameters, including the customer base. FCSPs rated as high risk have since been subject to annual on-site inspections, FCSPs rated as medium or low risk are subject to an on-site inspection at least every three or five years respectively. The risk rating is updated upon each on-site inspection.

79. The on-site inspections are conducted either by staff of the Securities Commission (as at July 2017 there were 15 on-site inspectors) or by approved agents. An approved agent must be licensed by the Bahamas Institute of Chartered Accountants, in good standing and follow annual training for conducting on-site inspections. The conclusions from the on-site inspection are always reviewed by the Securities Commission and any follow-up actions are taken by the Securities Commission.

80. The on-site inspections follow a well-documented programme to ensure consistency. Checking for the availability of customer due diligence information, including beneficial ownership information, is one of the objectives. Document retention is a separate objective. Sample files are taken to check whether beneficial ownership information is present for IBCs, with the size of the sample depending on the number and type of customers. The Securities Commission stated that it in practice expects that FCSPs keep records on all beneficial owners without applying the 10% threshold and for that reason also expects the FCSPs to identify all ownership layers.

81. Licensees under the Securities Industry Act are subject to the same supervision regime as FCSPs. In total, there were 325 FCSPs, 160 securities firms, one clearing facility and one market place licensed as at 31 December 2016. The number of inspections and results are reflected in the following table:

| Year | Inspections completed | Deficiency letters issued | Deficiencies on beneficial ownership | Deficiencies on record retention |
|------|-----------------------|---------------------------|--------------------------------------|----------------------------------|
| 2014 | 197                   | 76                        | 0                                    | 2                                |
| 2015 | 71                    | 50                        | 0                                    | 0                                |
| 2016 | 80                    | 53                        | 0                                    | 3                                |

82. The high number of inspections in 2014 can be explained by the risk rating exercise that took place with respect to FCSPs in that year. Although deficiencies were found during the inspections, none of them related to the availability of beneficial ownership information and only a few related to record retention.

83. The Securities Commission also supervises the investment fund industry. As at 31 December 2016, there were 859 investment funds registered, which were administered by 62 fund administrators. Investment funds can take different legal forms but 89% of them are companies, mostly IBCs (out of the 859 investment funds, 722 (84%) are IBCs).

84. The 2013 report contained a recommendation for The Bahamas to ensure that in cases where simplified due diligence is applied in respect of investment funds, full ownership information is maintained. Firstly, it should be noted that this recommendation does not apply to the availability of legal ownership information, as this is not ensured through AML legislation.

Second, the possibility to apply simplified due diligence in respect of investment funds means in this case that documentary evidence does not need to be obtained; it is not an exemption from identifying the beneficial owners altogether.

85. Simplified due diligence may be applied in respect of investment funds as a general rule on the basis of section 5A(e) FTRR, although the Securities Commission AML/CFT Guidelines require the service provider to “identify clearly in its internal policies and procedures those circumstances in which the requirement for documentary evidence has been waived, and the basis for the waiver within the context of its risk management procedures”. The Securities Commission indicated that in practice the simplified due diligence is only applied in respect of a small number of investment funds.

86. It is clear that where simplified due diligence is applied, the reliability of the beneficial ownership information is reduced. Simplified due diligence may be permissible where there is a lower risk for money laundering or terrorist financing, but the permission given under the FTRR may be considered as too general since no guidance has been provided as to the circumstances under which it may be applied. Nevertheless, the beneficial owners of investment funds must in all cases be identified. In order to increase the reliability of this information, it is recommended that The Bahamas clarifies that simplified due diligence should only be applied in respect of investment funds where appropriate.

87. The inspection programme for the investment funds and their administrators during the peer review period was based on the policy to conduct an on-site inspection of every fund administrator, and with those the funds they administer, at least every five years. The Securities Commission is currently conducting a risk profiling exercise which should lead to the adoption of a risk-based approach. All the on-site inspections take place solely by staff of the Securities Commission and follow a well-documented approach similar to the one for FCSPs. The number of inspections and the results are reflected in the following table:

| Year | Inspections completed | Deficiency letters issued | Deficiencies on beneficial ownership | Deficiencies on record retention |
|------|-----------------------|---------------------------|--------------------------------------|----------------------------------|
| 2014 | 6                     | 1                         | 0                                    | 0                                |
| 2015 | 7                     | 6                         | 0                                    | 0                                |
| 2016 | 10                    | 5                         | 0                                    | 0                                |

88. Although deficiencies were found during the inspections, none of them related to the availability of beneficial ownership information or record retention.

## Central Bank

89. Although most IBCs have a registered agent which is an FCSP, it may also be a service provider licensed under the Banks and Trust Companies Regulation Act. In addition, companies incorporated under the Companies Act may engage a service provider licensed under that act, for example if they maintain an account with a bank to facilitate payments to be made for their business or fees payable to the RGD. A summary of the supervision practice of the Central Bank is therefore included in this section of the report. Further details can be found under sections A.1.4 (Trusts) and A.3 (Banking information).

90. The Central Bank has two main supervision mechanisms. The off-site units perform ongoing monitoring, which most importantly includes conducting risk assessments of the service providers. On the basis of the level of risk determined in these assessments, an on-site inspection programme is established on an annual basis. These on-site inspections generally have a focus area, of which compliance with AML legislation is one. During on-site inspections which do not have compliance with AML legislation as a focus area, some documentation related to beneficial ownership information of the service provider's clients may nevertheless be checked.

91. During the peer review period, the Central Bank conducted 65 on-site inspections where compliance with AML legislation was the focus area. According to the Central Bank, compliance has generally been high, in particular after the service provider has been given the opportunity to take remedial action, which is standard practice in respect of less serious deficiencies. More precise statistics on compliance with AML legislation are not available.

## Compliance Commission

92. Companies may engage other service providers such as lawyers, accountants and real estate agencies. To the extent they provide services related to managing, investing or administering funds these service providers are also subject to AML legislation. Supervision of this group is the responsibility of the Compliance Commission.

93. According to the Compliance Commission, the bulk of these service providers does not hold funds for clients and customer due diligence obligations exist mostly in respect of one-off transactions related to real estate. As at July 2017, there were 178 law firms, 35 real estate agencies and seven accounting firms registered with the Compliance Commission and performing activities making them subject to AML legislation. This may not be the entire community of relevant service providers and the Compliance Commission has started a project to detect potential registrants. Nevertheless, the Compliance Commission indicated that the ten law firms conducting approximately 80% of the relevant business are registered.

94. Supervision by the Compliance Commission of compliance with AML legislation requirements is conducted through self-assessments, routine examinations, follow-up examinations and specific examinations. The most common method used are the routine examinations, most of which are carried out by licensed public accountants which must follow mandatory annual on-site examination training.

95. The routine examinations include taking a sample of records weighted towards factors of higher risk for money laundering or terrorist financing, and checking them for completeness and reliability. The Compliance Commission reviews all examination reports and issues notices for the service provider to take remedial action where necessary. It was reported that compliance with respect to the availability of beneficial ownership information was high, but that a lack of documented policies and procedures as well as staff training and awareness was regularly found.

96. During the peer review period, approximately 40 examinations were conducted annually. The Compliance Commission has issued notices for service providers to take remedial action but has not imposed any penalties.

## Conclusion

97. With respect to IBCs, FCSPs are the main source of beneficial ownership information as there is a legal requirement for IBCs to engage a licensed service provider as registered agent. The supervision of the FCSPs by the Securities Commission includes thorough on-site inspections and is adequate and well-documented. However, the requirements to identify beneficial owners under the Securities Commission's Handbook (binding for FCSPs) do not ensure that information on all beneficial owners is available. The deficiencies identified in respect of the Handbook are also present in the Codes of Practice applying to other AML-obligated service providers, which are supervised by the Compliance Commission. The Central Bank's AML/CFT Guidelines, applicable to a minority of registered agents, are in line with the 2016 ToR in respect of the availability of beneficial ownership on companies.

98. IBCs which are investment funds (2% of IBCs) may only be subject to simplified due diligence which reduces the reliability of the information, although the Securities Commission reports that in practice simplified due diligence is only applied in respect of a small number of investment funds.

99. Companies incorporated under the Companies Act are not required to engage a service provider but they may do so to conduct their business in The Bahamas or purchase and manage real estate in The Bahamas. Where these companies do engage a Bahamian service provider, the availability of reliable beneficial ownership information may not be ensured where this service provider is supervised by the Compliance Commission, as the



supervision may not cover all relevant service providers and non-compliance with AML legislation (albeit not with the availability of beneficial ownership information) has not yet led to the imposition of penalties.

100. It is recommended that The Bahamas ensures that beneficial ownership information is available in practice in respect of all companies, and that an adequate mechanism to monitor the availability is in place in all cases.

*Availability of ownership information for companies in practice (peer experience)*

101. During the peer review period, the EOI requests received by The Bahamas included a request for ownership information (legal and/or beneficial ownership information) for 47 companies. This information was usually obtained from the RGD and/or the relevant service provider. Peers indicated they regularly asked for legal and beneficial ownership information and were generally satisfied with the information received. One peer raised an issue related to bearer shares, which will be covered in the next section of this report.

102. A number of EOI requests are still pending. In 11 of these requests, ownership information needs to be obtained from the same service provider, which is an FCSP in the form of a company licensed by the Securities Commission. The information relates to several IBCs and has so far been unavailable. The FCSP indicated that its head office, located in another jurisdiction, removed the access rights to the (electronic) information which is kept by the head office.

103. Under the 2016 ToR, the information should be available to the competent authority (and the competent authority should have powers to obtain the information, see also under B.1.4 where this case is also discussed). This means that the obligated information holder must have physical possession or control over the information in practice. It seems likely that in this case the customers may have been introduced to the Bahamian FCSP by its foreign head office. However, even in that case the Securities Commission's Handbook requires the Bahamian FCSP to have all relevant documentation in its possession.

104. Whether the customers were introduced by the foreign head office or not, it is clear that the Bahamian FCSP should have the ownership information on its customers in its possession or control. In practice, this was not the case. The Bahamas' authorities indicated that they have revoked the licence of the Bahamian FCSP in the second half of 2017 and are now in contact with the liquidator to try to obtain the information. Nevertheless, more than one year had passed since the potential unavailability of the information was discovered. In addition, there were other external factors (relevant information available in the public domain) that should have given rise to the supervisory

authorities taking action in an earlier stage. In such circumstances, it is recommended that The Bahamas enhances its monitoring and enforcement practice and be more pro-active in the case of external events affecting one or more Bahamian service providers.

### ***A.1.2. Bearer shares***

105. IBCs are prohibited from issuing bearer shares (s. 10(a) IBC Act). Companies incorporated under the Companies Act are not explicitly prohibited from doing so but pursuant to Regulation 10 of the Exchange Control Regulations issuing bearer securities is only allowed with the permission of the Exchange Controller. At the time of the 2013 Report, The Bahamas had indicated that there is no record of any such permission having been granted. This situation has not changed, as the Exchange Control Department confirmed it would not grant such permission under any circumstance.

106. With respect to the peer review period, one peer indicated that it had not received ownership information because the company had issued bearer shares. The Bahamas reported that in this case the IBC had issued bearer shares in violation of the law in 2005 but redeemed them in 2007. The partial information that was sent to the peer was not up-to-date (since the EOI request covered the years 2010-13) and complete, but The Bahamas Competent Authority reported that the case is still open. It may be noted that this is one of the cases related to the issue described under section B.1.4, affecting a total of 11 EOI requests.

107. No other issues related to bearer shares have arisen in the peer review period or the review period of the 2013 Report. The case described in the previous paragraph may therefore be considered an isolated incident and in any case is only indirectly related to bearer shares.

### ***A.1.3. Partnerships***

108. The Bahamas' legislative framework provides for three types of partnerships:

- General partnership: arises where two or more persons form a relationship with a view to carrying on a business in common for profit. General partnerships are governed by common law except to the extent of any specific provision of the Partnership Act (s. 47 Partnership Act).
- Exempted limited partnership: may be formed for any lawful purpose provided that it shall not undertake business with the public in The Bahamas other than so far as may be necessary for the carrying on of the business of the exempted limited partnership outside The Bahamas (s. 4(1) Exempted Limited Partnership Act).

- Limited liability partnership: may be formed for the transaction of any mercantile, mechanical or manufacturing business within The Bahamas, except banking or insurance (s. 2 Partnership Limited Liability Act).

109. The 2013 Report did not raise any issues with respect to the availability of legal ownership information for partnerships. However, The Bahamas’ authorities have indicated that the statistics provided in the 2013 Report about the number of general partnerships and limited liability partnerships were incorrect.

110. Limited liability partnerships must be registered with the RGD. The RGD has indicated that it has never had any registration of a limited liability partnership and that The Bahamas is therefore considering repealing the Partnership Limited Liability Act. It is unclear why the 2013 Report mentioned that there were 212 limited liability partnerships registered. Limited liability partnerships are only formed upon registration with the RGD (s. 7 Partnership Limited Liability Act), and The Bahamas’ legal framework ensures the availability of legal ownership information (see paragraphs 130, 131 and 135 of the 2013 Report).

111. The 2013 Report stated that as of March/April 2013 there were 54 953 general partnerships licensed in The Bahamas of which 36 895 were active. The Business Licence Department has indicated that as of 30 June 2017 there were only 966 general partnerships registered as having an active business licence. The Bahamas explained that the number of general partnerships reflected in the 2013 Report was incorrect and must have been inadvertently included.

112. It is noted that general partnerships only arise where two or more persons form a relationship with a view to carrying on a business in common for profit. The term “business” is defined as including “every trade, occupation or profession” (s. 46 Partnership Act), and according to The Bahamas investment income does not constitute business income which means that the mere holding of assets does not constitute a business. As with companies, if a general partnership wishes to do business in The Bahamas it must obtain a business licence from the Business Licence Department (s. 3(1) Business Licence Act), which must be renewed on an annual basis (s. 3(3) Business Licence Act). A list of all legal owners of the business must be provided upon application for the licence as well as with the application for renewal (s. 3(5) Business Licence Act and First Schedule to the Business Licence Regulations). The statement in the 2013 Report by The Bahamas that in practice almost all general partnerships are formed for domestic purposes with the intention of carrying on business in The Bahamas is still valid.

113. Any partnership formed outside The Bahamas must also obtain a business licence to do business within The Bahamas and is then subject to the requirements of the Business Licence Act and the Business Licence

Regulations as described in the previous paragraph. This ensures the availability of legal ownership information.

114. With respect to exempted limited partnerships, no discrepancies were found between the situation described in the 2013 Report and the current situation. The RGD reported that as of 30 September 2016 there were 215 exempted limited partnerships registered. This is a decrease compared to 2013 (as of March 2013 there were 296 exempted limited partnerships registered) but this can be explained by the transition in the RGD from paper to electronic, at which time some cleaning up of the register took place.

115. Exempted limited partnerships must provide the details of all general partners to the RGD upon registration and when changes occur (ss. 9 and 10 Exempted Limited Partnership Act). A comprehensive register of all partners must be kept at the exempted limited partnership's registered office in The Bahamas (s. 11 Exempted Limited Partnership Act). As mentioned in the 2013 Report, penalties apply where these obligations are not complied with.

#### *Availability of legal ownership information – practical implementation*

116. General partnerships that wish to do business within The Bahamas must obtain a business licence from the Business Licence Department, and a list of all business owners, which in the case of a general partnership means all partners, must be provided upon application for the licence as well as with the application for renewal. As described in section A.1.1, the Business Licence Department has a strict policy not to issue or renew licences without complete information being furnished. This ensures the availability of ownership information with respect to general partnerships that carry on business in The Bahamas.

117. The RGD is responsible for ensuring compliance with registration and record keeping obligations of all exempted limited partnerships and limited liability partnerships. Exempted limited partnerships must provide the RGD with information on all general partners upon registration and are also required to notify the RGD of any changes.

118. As described in section A.1.1, the RGD has not performed systematic monitoring of compliance with filing obligations during the peer review period, as it was going through a restructuring and a move towards electronic registration and information keeping. In addition, no monitoring of record keeping obligations, such as the obligation for exempted limited partnerships to keep a comprehensive register of partners, was conducted. As a result, no penalties have been imposed during the peer review period for failing to keep a register of partners or for not filing required information by partnerships.

119. The availability of legal ownership information may also be monitored through the inspections on service providers by the AML supervisors.

All exempted limited partnerships must have a registered office in The Bahamas and such registered office must be provided by a licensed service provider (s. 2(g) Financial and Corporate Service Providers Act), which is subject to AML legislation.

120. The register of partners of an exempted limited partnership is not a document of which the presence is specifically checked during on-site inspections by the Securities Commission or the Central Bank. Nevertheless, in practice the register of partners is often part of the customer due diligence information for AML purposes. In addition, a copy of the partnership agreement (if any) must be obtained (s. 5(1)(b) FTRR), which would be expected to identify the partners. The same may be true with respect to other partnerships which engage a Bahamian service provider, for example to open a bank account. However, it is not mandatory for general partnerships or limited liability partnerships to engage a service provider.

## Conclusion

121. Monitoring by the authorities of the requirements to keep legal ownership information for exempted limited partnerships does not consistently take place. The RGD is the primary responsible authority for monitoring compliance with this requirement, and its focus has been on the payment of registration fees. As is the case for companies, this situation is unchanged if compared to the situation described in the 2013 Report. A mitigating factor with respect to partnerships is that, if it has engaged a service provider, it is required to obtain a copy of the partnership agreement, which would be expected to identify the partners. Nevertheless, it is recommended that The Bahamas ensures that its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which require legal ownership information on exempted limited partnerships to be available.

122. With respect to general partnerships carrying on business within The Bahamas, the Business Licence Department has legal ownership information and has a strict policy of checking the availability of this information. Currently, no limited liability partnerships are registered with the RGD.

## *Availability of beneficial ownership information*

123. Legal requirements to identify the beneficial owners of partnerships and keep this information, are contained in the AML legislation. In respect of partnerships, it is required to verify the identity of all partners or beneficial owners in accordance with the rules to verify individuals (s. 5(1)(a) FTRR). This means that where the partner is not an individual, the service provider must look behind that partner until it identifies one or more individuals. The

Central Bank’s AML/CFT Guidelines, the Securities Commission’s Handbook and the Codes of Practice of the Compliance Commission, confirm this rule.

124. This means that where a partnership engages a service provider, all beneficial owners must be identified. The record retention rules and penalties for non-compliance as described in section A.1.1 equally apply where the customer is a partnership.

125. Only in the case of exempted limited partnerships there is an obligation to engage a Bahamian service provider, as it is required to have a registered office with such service provider. General partnerships are not required to engage a Bahamian service provider, although it would be expected to do so where it carries on a business in The Bahamas. Nevertheless, it is recommended that The Bahamas ensures that a requirement to have beneficial ownership information available is in place in respect of all general partnerships. It is noted that limited liability partnerships are also not required to engage a Bahamian service provider, but the RGD has indicated that it has never had any registration of a limited liability partnership; The Bahamas is therefore considering repealing the Partnership Limited Liability Act. The gap in respect of limited liability partnerships seems only theoretical, also given that fact that the act has existed for more than 100 years.

126. Implementation of the rules concerning availability of beneficial ownership information is supervised through the regulators responsible for checking compliance with AML legislation. The AML supervision is carried out through off-site and on-site inspections. In section A.1.1 it is concluded that the supervision by the Securities Commission is adequate and well-documented, and that there is room for improvement in the supervision by the Compliance Commission. In section A.1.4 it is concluded that the supervision by the Central Bank is adequate. The same conclusion applies, therefore, to partnerships.

#### *Availability of ownership information for partnerships in practice (peer experience)*

127. During the peer review period, the EOI requests received by The Bahamas included one request for ownership information of a partnership, which the Bahamas Competent Authority is in the process of obtaining. No peers raised an issue related to the availability of ownership information for partnerships.

#### **A.1.4. Trusts**

128. Under Bahamian law two main types of trusts can be created:

- Ordinary trust: this is a trust mainly governed by common law. In addition, the Trustee Act provides a framework for trustees resident

in The Bahamas (whether they administer a Bahamian or foreign trust), while the Fraudulent Dispositions Act contains rules specific to asset protection trusts.

- Authorised purpose trust: this trust may be established for a specific non-charitable purpose (s. 3 Purpose Trusts Act). The trustee(s) of an authorised purpose trust must be a licensed service provider regulated by the Central Bank or the Securities Commission (s. 7(1) Purpose Trusts Act).

129. The 2013 Report found that Bahamian trustees (whether they administer a Bahamian or foreign trust) which act by way of business are subject to legal and regulatory requirements, most importantly the AML legislation, which sufficiently ensure that identity information with respect to trustees, settlors and beneficiaries is maintained. The type of trust is not relevant in this respect. The 2013 Report also found that, while Private Trust Companies (PTCs) acting as a trustee are not directly covered by the AML legislation, their Registered Representative is and must collect and retain identity information on the trust(s) administered by the PTC. In addition, PTCs (like all trustees) are subject to common law requirements.

130. Trustees which do not act by way of business, which would occur in limited circumstances, are also not covered by the AML legislation but still subject to common law requirements. The 2013 Report asked The Bahamas to monitor the effectiveness of these requirements and in particular the fact that legal proceedings may be started by the settlor or beneficiaries against the trustee. During the peer review period, no specific concerns were identified by The Bahamas in this regard, nor was there any adverse peer input. The Compliance Commission indicated that they are currently exploring whether and if so, to what extent, trustees not acting by way of business should be covered by its supervision.

131. As noted in the 2013 Report, it remains conceivable that a trust could be created which has no connection with The Bahamas other than that the settlor chooses that the trust will be governed by the laws of The Bahamas. In that event, there may be no information about the trust available in The Bahamas.

### *Legal requirements*

132. No relevant changes have occurred in the legal framework that ensures the availability of identity information for trusts since the 2013 Report. It is not allowed for companies, except PTCs, to carry on trust business in The Bahamas without a licence issued by the Central Bank (s. 3(2) Banks and Trust Companies Regulation Act). All licensed service providers are subject to the AML legislation. Persons other than companies that carry

out a trust business are subject to the AML legislation pursuant to section 3(1)(j)(iii) of the FTRA and fall under the supervision of the Compliance Commission.

133. With respect to trusts, professional trustees are required to identify the settlor and persons exercising effective control over the trust (s. 6(2) FTRR). In addition, the Central Bank’s AML/CFT Guidelines require the identification and verification of all beneficiaries with a vested interest, recognising that it may not be possible to identify the beneficiaries precisely at the outset. Similarly, the Codes of Practice of the Compliance Commission require the identification and verification of all beneficiaries. It is reiterated that these Guidelines and Codes of Practice are binding on the service providers covered (s. 8 FITRR).

134. The rules included in the AML legislation ensure that full identity information in respect of relevant persons must be collected and kept by professional trustees. The only person on whom identity information is not explicitly required to be collected, is the protector of a trust. Nevertheless, the protector may be identified where it is considered to exercise effective control over the trust. In this respect, the Central Bank’s AML/CFT Guidelines explicitly mention individuals with the power to “(a) dispose of, advance, lend, invest, pay or apply trust property, (b) vary the trust, (c) add or remove a person as a beneficiary or to or from a class of beneficiaries, (d) appoint or remove trustees, (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in subparagraph (a), (b), (c) or (d)” (paragraph 95(ii)). This requirement is likely to cover the majority of protectors, but the 2016 ToR require the protector to be identified in all cases. It is recommended that The Bahamas introduces a legal requirement for protectors of trusts with a Bahamian trustee or otherwise administered in The Bahamas to be identified in all cases.

135. A PTC is a company that acts as trustee only for a trust or trusts created or to be created by or at the direction of an individual or individuals or their family members (s. 2 Banks and Trust Companies Regulation Act and s. 3(1)(b) Banks and Trust Companies Private Trust Companies Regulations). Although the PTC is exempt from obtaining a licence and is not subject to AML legislation, it must have a Registered Representative which is covered by AML legislation (s. 6 Banks and Trust Companies Private Trust Companies Regulations).

136. In addition to the obligations under the AML legislation, the Registered Representative must maintain the following information under section 13 of the Banks and Trust Companies Private Trust Companies Regulations:

- Trust instruments for each trust (including any sub-trusts or appointed trusts) administered by the PTC.



- Verification documentation related to identity of the following persons in respect of each trust or trusts administered by the PTC:
  - the settlor and any person providing the funds or assets which are subject to the trust or trusts;
  - trust protectors; and
  - persons with a vested interest.

137. The AML legislation and the Banks and Trust Companies Private Trust Companies Regulations ensure that full identity information must be collected and kept in respect of all trusts for which a PTC is acting as the trustee.

138. The record retention rules and penalties for non-compliance under the AML legislation as described in section A.1.1 equally apply to professional trustees and Registered Representatives.

### *Implementation in practice*

139. Companies licensed to carry out trust business fall under the supervision of the Central Bank. As at 31 December 2016, there were 217 companies licensed to carry out trust business, representing about 80% of the entities regulated by the Central Bank. Together, they administered approximately 6 800 trust structures. There were also 121 PTCs and 24 Registered Representatives registered. The Compliance Commission had not identified any persons other than trust companies licensed by the Central Bank acting as a trustee in The Bahamas, even though this may be one of the main businesses of executive entities (see below under section A.1.5 – Other relevant entities and arrangements). It is recommended that The Bahamas monitors its business community, in particular the executive entities, to ensure all persons carrying on trust business in The Bahamas are under supervision.

140. The supervision by the Central Bank has a risk-based approach. Its Supervision Department has more than 70 staff. The off-site units of the Central Bank perform ongoing monitoring and conduct risk assessments of its licensees. These are based on information collected upon registration and on an ongoing basis. This information includes the result of internal audits of the licensees, which the Central Bank requires them to carry out regularly. In addition, annual meetings with the licensee, mandatory periodic filings and the results of previous on-site inspections feed into the risk assessment exercise. The risk profile resulting from the assessment remains valid for a number of years unless there is cause for it to be amended. During the peer review period, the Central Bank carried out about 15-20 risk assessments per year.

141. On the basis of the level of risk determined in the off-site assessments, an on-site inspection programme is established on an annual basis. There is no minimum number of years that a licensee can operate without

having been subject to an on-site inspection, and in particular licensees with a low risk profile may not have been subject to an on-site inspection yet.

142. The Central Bank conducts all on-site inspections with its own staff. Besides the dedicated on-site examiners, the staff that was responsible for the off-site risk assessment is also involved.

143. The on-site inspections generally have a focus area, of which compliance with AML legislation is one. In these inspections, the inspection team takes a sample of client files to check whether the required documentation is present. The Central Bank indicated that trust companies must always identify the individual(s) exercising effective control, even where a settlor, beneficiary or other relevant person is in the form of a company or form other than an individual. During on-site inspections which do not have compliance with AML legislation as a focus area, some documentation related to beneficial ownership information of the service provider's clients may nevertheless be checked.

144. During the peer review period, the Central Bank conducted between 30 and 35 on-site inspections per year (covering 10-15% of the licensees), of which between 20 and 25 were focused on compliance with AML legislation. In 2016, a number of Registered Representatives was also subject to an on-site inspection.

145. According to the Central Bank, compliance has generally been high, in particular after the service provider has been given the opportunity to take remedial action, which is standard practice in respect of less serious deficiencies. Penalties for non-compliance with obligations to keep adequate customer due diligence information have not been issued during the peer review period. More precise statistics on compliance with AML legislation are not available.

## Conclusion

146. The supervision by the Central Bank of its licensees is fairly robust. Although the approach to establishing its on-site inspection programme may result in some licensees not being subject to an on-site inspection for many years, or only to an on-site inspection which does not specifically cover compliance with AML legislation, a stronger off-site monitoring practice mitigates the risk of continuous and serious non-compliance in these cases. It may therefore be concluded that the practical implementation of the legal requirements to keep identity information for trusts with a Bahamian trustee is adequate.

### *Availability of identity information for trusts in practice (peer experience)*

147. During the peer review period, the EOI requests received by The Bahamas included four requests for identity information in respect of a trust.

In all four cases, this information was obtained from banking institutions (see under A.3 for further background information on the relevant supervision measures). No peers raised an issue related to the availability of identity information for trusts and one peer explicitly noted it was very satisfied with the information received.

#### ***A.1.5. Foundations***

148. Foundations may be formed in The Bahamas under the Foundations Act. A foundation's main purpose or purposes may include any purpose or object which is not unlawful, immoral or contrary to any public policy in The Bahamas (s. 4(4) Foundations Act). Foundations must register with the RGD, and as of 30 September 2016, there were 370 foundations registered. All foundations must appoint a foundation agent or secretary which must be a licensed service provider under the Financial and Corporate Service Providers Act or under the Banks and Trust Companies Regulation Act (s. 12 Foundations Act). The details of the foundation agent or secretary must be provided to the RGD upon registration and any changes must be filed within 30 days of the change (s. 21 Foundations Act).

149. The 2013 Report described that information on the founders and the foundation council or other governing body must be kept at the registered office of the foundation. In addition, information on the beneficiaries, if any, must be kept by the foundation agent or secretary pursuant to AML legislation. No changes have occurred in the legislative framework with respect to foundations since the 2013 Report.

150. Under AML legislation, the foundation agent or secretary is required to verify the identity of the beneficial owners (s. 6 FTRA and s. 7A FTTR). The Central Bank's AML Guidelines, which also apply to licensees of the Securities Commission, further explain that in the case of a foundation identification evidence would include information on the (i) founder(s), (ii) persons other than the founder(s) that provided funds for the foundation, (iii) officers and council members as may be signatories for the account(s) of the foundation, and (iv) vested beneficiaries. It is specified that in respect of the founder and other persons that provided funds, individual(s) should be identified, which means that in the case of a company being a founder the individuals effectively controlling that company must be identified. The list in the Central Bank's AML/CFT Guidelines is not exhaustive and the overriding obligation to verify the identity of the beneficial owners continues to apply.

*Implementation in practice*

151. The enforcement measure under the Foundations Act for not keeping information on the founders and the foundation council are not very dissuasive, as the only possibility would be for the Attorney General to apply for a court order which would order the foundation or responsible officer(s) to remedy the situation (s. 70 Foundations Act). Only in the case of a person knowingly falsifying information, a fine of USD 10 000 or imprisonment for a term of two years or both, can be imposed (s. 71 Foundations Act).

152. The RGD has not performed any monitoring on the record keeping obligations of foundations, and no enforcement measures have been applied.

153. Monitoring has taken place in respect of the foundation agents or secretaries, as these are licensees of the Securities Commission or the Central Bank. The supervision mechanisms of the Securities Commission and the Central Bank are comprehensively described in sections A.1.1 and A.1.4 respectively and are considered adequate.

154. Since the information to be collected and kept by the foundation agent or secretary covers both legal and beneficial ownership information, and this person would be expected to have access to the foundation's documentation in any case, the lack of supervision by the RGD on the foundations is compensated by the supervision by the Securities Commission and Central Bank on their agents or secretaries. The availability of legal and beneficial ownership information for foundations is therefore ensured in practice.

*Availability of ownership and identity information for foundations in practice (peer experience)*

155. During the peer review period, the EOI requests received by The Bahamas included one request for ownership and identity information in respect of a foundation. However, this foundation did not appear in the records of the RGD or of the entity identified by the requesting jurisdiction as believed to be in the possession of the information. This was conveyed to the requesting jurisdiction. No peers raised an issue related to the availability of ownership and identity information for foundations.

***Other relevant entities and arrangements***

156. Under Bahamian law two more relevant entities/arrangements may be formed. The 2013 Report had already identified the Executive Entity, and since then The Bahamas enacted the Investment Condominium Act which provides a framework for Investment Condominiums (ICONS).

### *Executive entities*

157. Executive Entities may be formed since 2012. They are established through a charter by the founder(s), which appoints the officers and/or an Executive Entity council, as well as the Executive Entity agent. As of 30 September 2016, there were 75 Executive Entities registered with the RGD.

158. The purpose of Executive Entities must be limited to the carrying out of executive functions. These are defined as powers and duties of an executive, administrative, supervisory, fiduciary and office holding nature as well as the ownership, management and holding of assets (s. 2 Executive Entities Act). Acting as a trustee of a trust is specifically mentioned as an executive function, which means that where an Executive Entity acts as a trustee it is subject to AML legislation as it would be considered to be carrying on trust business (s. 3(1)(j)(iii) FTRA).

159. As described in the 2013 Report, all Executive Entities must have an agent which must be a licensed service provider under the Financial and Corporate Service Providers Act or under the Banks and Trust Companies Regulation Act (s. 13 Executive Entities Act). The registered office of the Executive Entity must be the address of the agent (s. 16 Executive Entity Act). The details of the agent and the registered office must be submitted to the RGD.

160. The 2013 Report described that the executive entity is required to keep details on the founder(s) and the officers. Although there is no express requirement to keep details on the members of the council, if there is any, the provisions related to the appointment, removal and qualification of the council in the Executive Entities Act cannot be properly executed without identifying the council members. The founders, officers and council members of an executive entity would be the persons potentially controlling that Executive Entity and would therefore need to be identified under the 2016 ToR.

161. As mentioned, the Executive Entity agent is subject to AML legislation and they are therefore subject to the supervision by the Securities Commission or Central Bank. Under AML legislation, the executive entity agent is required to verify the identity of the beneficial owners (s. 6 FTRA and s. 7A FTTR). No further specific guidance is provided on who would be considered beneficial owners of an Executive Entity but it may be expected that the agent, as a licensed service provider, is able to adequately determine who the beneficial owners are.

162. Monitoring of the Executive Entity agents has taken place, as these are licensees of the Securities Commission or the Central Bank. The supervision mechanisms of the Securities Commission and the Central Bank are comprehensively described in sections A.1.1 and A.1.4 respectively and are

considered adequate. The availability of ownership information for Executive Entities is therefore ensured in practice.

### *Investment Condominiums (ICONS)*

163. The Investment Condominium Act (ICA) was enacted in 2014. An ICON is “the contractual relationship subsisting between one or more participants pooling assets for the purpose of operating as an investment fund as defined under the Investment Funds Act” (s. 3(1) ICA). An ICON is established upon the execution of its governing regulations by one or more initial participants (s. 6 ICA). Although it does not have legal personality, it must register with the RGD. As of 30 September 2016, there were 52 ICONs registered.

164. An ICON must have an administrator, which is required to keep a register of participant interests (s. 19(1)(b) ICA). Failure to do so makes the administrator liable to a fine of USD 10 000 or to imprisonment for two years (s. 26(2) ICA). The administrator is a financial institution under section 3 of the FTRA and subject to the AML legislation. It is therefore required to verify the identity of the beneficial owners of the ICON (s. 6 FTRA and s. 7A FTRR).

165. Apart from the administrator, which has a certain control, the participants would be considered the beneficial owners of an ICON. Since the ICON is an unincorporated business, this would mean that all the participants and, where the participants are not individuals, their beneficial owners must be identified (s. 5 FTRR). However, it is noted that simplified due diligence may be applied in respect of investment funds and, as mentioned in section A.1.1, it is recommended that The Bahamas clarifies that simplified due diligence should only be applied in respect of investment funds where appropriate.

166. Since ICONs are all investment funds, the supervision falls under the responsibility of the Securities Commission. The supervision mechanism of the Securities Commission is comprehensively described in section A.1.1 and is considered adequate. The availability of identity information for ICONs is therefore ensured in practice.

### *Availability of ownership and identity information for Executive Entities and ICONs in practice (peer experience)*

167. During the peer review period, no EOI requests received by The Bahamas included a request for ownership and/or identity information in respect of an Executive Entity or an ICON. In addition, no peers raised an issue related to the availability of ownership and/or identity information in respect of these entities.

## A.2. Accounting records

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

168. The 2013 Report concluded that comprehensive obligations were in place for all entities to maintain reliable accounting records, including underlying documentation, for a minimum period of five years. It was also concluded that The Bahamas had no monitoring and enforcement experience in respect of these comprehensive obligations, as they generally only came into force in 2011 or 2013. It was recommended for The Bahamas to monitor the implementation of the accounting record keeping obligations and ensure that its enforcement powers are sufficiently exercised in practice.

169. The legislative framework for keeping reliable accounting records has remained the same, and in respect of investment condominiums, which can be formed since 2014, an adequate obligation also exists.

170. Comprehensive monitoring of the obligations to keep reliable accounting records is only taking place in respect of entities and arrangements with a business licence and in respect of trusts with a service provider licensed by the Central Bank as a trustee. Although this covers the vast majority of the trusts with a professional trustee, it covers less than 10% of the relevant entities and arrangements registered in The Bahamas.

171. IBCs are required since 2013 to keep a declaration that reliable accounting records are kept at their registered office. Monitoring of this obligation commenced only recently, and compliance has been found to be very low. The monitoring did also not cover the actual verification of (the presence of) accounting records. The monitoring framework in respect of IBCs, as well as for exempted limited partnerships, has been enhanced in July 2017 by the issuance of guidelines for its registered agents. However, the effectiveness of this new framework could not yet be assessed.

172. Peers indicated they regularly asked for accounting information and were generally satisfied with the information received. However, one peer noted that accounting information was unavailable because the company had been struck off the register.

173. In conclusion, the recommendation for The Bahamas to monitor the implementation of the accounting record keeping obligations and ensure that its enforcement powers are sufficiently exercised in practice, has only been fully addressed in respect of most trusts and where an entity or arrangement has a business licence. The latter group represents less than 10% of the entities and arrangements registered in The Bahamas and they are of relatively low interest to foreign tax authorities. In respect of IBCs and ELPs, a new

monitoring framework has been established in July 2017, but its effectiveness cannot yet be assessed. The recommendation that The Bahamas should monitor the implementation of the accounting record keeping obligations and ensure that its enforcement powers are sufficiently exercised in practice, therefore remains. Considering that the peer input identified one case where accounting information was unavailable because the company had been struck off the register, particular attention should be paid to this situation. The rating for element A.2 remains Largely Compliant.

174. The updated table of determinations and ratings is as follows:

| <b>Legal and Regulatory Framework</b>                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                            | <b>Underlying factor</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Recommendation</b>                                                                                                                                                                                                                                                                           |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
| <b>Determination: The element is in place.</b>                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
| <b>Practical implementation of the standard</b>                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |
|                                                                                            | <b>Underlying factor</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Recommendation</b>                                                                                                                                                                                                                                                                           |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                   | During the peer review period, the availability of accounting records was only effectively monitored in respect of trusts with a professional trustee licensed by the Central Bank and in respect of entities or arrangements with a business licence. Less than 10% of the entities and arrangements registered in The Bahamas had a business licence. In 2017 a monitoring mechanism was established in respect of IBCs and exempted limited partnerships, but its effectiveness cannot yet be assessed. It is also noted that there has been one case during the peer review period where accounting information was unavailable because the company had been struck off the register and the information was not kept in accordance with the standard. | The Bahamas should monitor the implementation of the accounting record keeping obligations in respect of all relevant entities and arrangements, including for entities that are struck off the register, and should ensure that its enforcement powers are sufficiently exercised in practice. |
| <b>Rating: Largely Compliant</b>                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                 |



### ***A.2.1. General requirements and A.2.2 Underlying documentation***

175. In respect of the legal and regulatory framework, the 2013 Report concluded that comprehensive obligations were in place for all entities to maintain reliable accounting records, including underlying documentation, for a minimum period of five years. This was mainly ensured by amendments made to the laws governing the various entities and arrangements in 2011 and 2013. These amendments introduced or clarified an obligation to keep accounting records in relation to:

- all sums of money received and expended and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and
- the assets and liabilities of the relevant entity or arrangement.

176. The amendments also specified that, for these purposes, accounting records shall:

- a. correctly explain all transactions;
- b. enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time;
- c. allow financial statements to be prepared; and
- d. include the underlying documentation, including invoices, contracts and receipts, necessary to facilitate (a), (b) and (c).

177. Finally, the accounting record keeping obligations were accompanied by penalties for non-compliance. With respect to investment condominiums, which can only be formed since 2014, similar obligations can be found in the Investment Condominium Act and the Investment Funds Act (investment condominiums can only be investment funds). An overview can be found in the following table:

|                                | <b>Legal reference for main obligation</b> | <b>Penalty</b> | <b>Remarks</b>                                                                           |
|--------------------------------|--------------------------------------------|----------------|------------------------------------------------------------------------------------------|
| <b>Companies Act companies</b> | s. 117A Companies Act                      | USD 10 000     | Exemption for companies whose business turnover does not exceed USD 50 000. <sup>a</sup> |
| <b>IBCs</b>                    | s. 67 IBC Act                              | USD 10 000     |                                                                                          |
| <b>SACs</b>                    | s. 24 Segregated Accounts Companies Act    | USD 50 000     | Records must differentiate between segregated accounts.                                  |
| <b>General partnerships</b>    | s. 29 Partnership Act                      | USD 25 000     |                                                                                          |

|                                       | Legal reference for main obligation                             | Penalty                                                                                                                                                                             | Remarks                                   |
|---------------------------------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| <b>Exempted limited partnerships</b>  | s. 12 Exempted Limited Partnership Act                          | USD 10 000                                                                                                                                                                          |                                           |
| <b>Limited liability partnerships</b> | s. 2(2) Partnership Limited Liability Act                       | USD 25 000                                                                                                                                                                          | Obligation under Partnership Act applies. |
| <b>Trusts</b>                         | s. 92A Trustee Act                                              | USD 2 000                                                                                                                                                                           |                                           |
| <b>Purpose trusts</b>                 | s. 7A Purpose Trusts Act                                        | USD 5 000                                                                                                                                                                           |                                           |
| <b>Foundations</b>                    | s. 42 Foundations Act                                           | USD 10 000                                                                                                                                                                          |                                           |
| <b>Executive entities</b>             | s. 43 Executive Entities Act                                    | Court order to remedy situation; in case of intentional false representation of or withholding information on the financial position: USD 10 000 or two years imprisonment, or both |                                           |
| <b>Investment condominiums</b>        | s. 19 Investment Condominium Act and s. 23 Investment Funds Act | USD 20 000 or two years imprisonment, or both                                                                                                                                       |                                           |

*Note:* a. This exemption was not viewed as material in the 2013 Report as they would mainly concern local businesses providing seasonal and tourist services. This remains unchanged.

178. The legal obligations all contain a requirement to keep the accounting records for a minimum period of five years. However, in most cases the requirement states that the records must be kept five years “from the date of the transaction to which such records relate”. In other cases, the starting point is not specified. The 2016 ToR state that the minimum period of five years applies from the end of the period to which the information relates and would generally relate either to a taxable year, a calendar year, or an accounting period.

179. It is clear that not all accounting records that must be kept under Bahamian legislation relate to a transaction, such as the financial statements and records related to assets and liabilities. It is then unclear what the starting point of the five-year retention period is. There is also no clarity where the starting point is not specified at all. This may lead to an uneven application in practice, and it is recommended that The Bahamas clarifies that the minimum period of five years applies from the end of the period to which the information relates.

180. Where a company is being dissolved, the liquidator must take possession or control of all the company’s books and records (Order 26.3(1) of the Companies Liquidation Rules). They may then be disposed in such manner as the company by resolution directs and after five years all responsibility for keeping the books and records is waived (s. 252(b) Companies Act

and s. 89 IBC Act). Where the company has been wound up by or subject to the supervision of the court, the court should decide on the retention of the records (s. 252(a) Companies Act and s. 89 IBC Act). No information is available with respect to the general timeframe provided in the company resolution or court order.

181. With respect to other entities and arrangements, the governing laws are silent on what would happen with the records upon dissolution. This means that the rule requiring the records to be kept for a minimum period of five years will continue to apply. The same applies where any entity or arrangement (including a company) is struck off the register by the RGD without having been liquidated. It is noted that no specific guidance exists on how information must be kept in that case. It is recommended that The Bahamas monitors that accounting information of entities and arrangements that have been liquidated, otherwise dissolved or struck off the register is effectively kept for a minimum period of five years in all cases.

182. The governing laws of the different entities and arrangements do not require them to have their financial accounts or financial statements audited or to file these with a Bahamian authority. Although such requirements may exist for certain regulated entities and arrangements, this would only cover a small subset. It is also noted that none of the governing laws contain a requirement to keep the accounting records in The Bahamas. Specific requirements in respect of IBCs, trusts and to entities and arrangements with a business licence are described in the context of the monitoring and enforcement mechanisms immediately below.

### *Monitoring and enforcement to ensure the availability of accounting records in practice*

183. The 2013 Report noted that, following the 2011 and 2013 enactment of comprehensive accounting record keeping obligations, The Bahamas was developing a system of monitoring. At the time of the 2013 Report, The Bahamas had no enforcement experience to ensure the availability of accounting information. Although some efforts have been made since, there is no comprehensive system of monitoring the availability of accounting records as at the date of this report.

### International Business Companies (IBCs) and Exempted Limited Partnerships (ELPs)

184. With respect to IBCs, The Bahamas issued an order in 2013 requiring them to maintain at the registered office a declaration stating that reliable accounting records of the IBC are available through its registered agent. The registered agent was then required to submit this declaration annually

to the RGD. This order was replaced in 2016 by the International Business Companies (Accounting Records) Order, 2016.

185. The new order still requires the IBC to keep a declaration at its registered office stating that reliable accounting records are maintained by the IBC and shall be made available to its registered agent. It is no longer required to submit this declaration annually to the RGD, but only once within 90 days of registration and upon change of registered agent. The term “available” is defined as “able to be provided to the registered agent pursuant to a lawful request, process or order of a court [...]”. This means, for example, that it must be produced on the basis of a Notice served by the Competent Authority. Existing IBCs that had not filed a declaration under the 2013 order must have done so under the 2016 order within 60 days of commencement of the 2016 order (which meant by the end of 2016).

186. The RGD reported that compliance with the 2013 order was very low and was not enforced. Compliance with the 2016 order has also been low, although exact figures could not be provided by the RGD because its new electronic filing system is not able to produce this information. It is difficult to see how in that case useful monitoring of this obligation can take place. In any case, this monitoring would only capture the declaration and not the accounting records themselves.

187. The presence of a declaration in accordance with the 2016 order (and previously the 2013 order) is also monitored through the supervision programme of the Securities Commission in respect of FCSPs since 2015. Where this was included in the sample of IBCs checked during the on-site inspections, the Securities Commission reported the following compliance statistics:

| Year | IBC files checked for presence of declaration | IBC files with declaration | Compliance rate |
|------|-----------------------------------------------|----------------------------|-----------------|
| 2015 | 290                                           | 120                        | 41%             |
| 2016 | 234                                           | 31                         | 13%             |

188. It is clear from these statistics that IBCs did not consistently comply with the obligation to keep an accounting records declaration at their registered office. Since the requirement is not on the registered agent (FCSP), the Securities Commission has not imposed any penalties in this respect.

189. On 1 July 2017, the Securities Commission issued a Guideline on the Management of Accounting Records to all FCSPs. This Guideline applies to accounting records kept for the own business of the FCSP as well as accounting records kept in respect of the IBCs and ELPs for which the FCSP acts as a registered agent and/or provides a registered office.

190. For accounting records in respect of IBCs and ELPs, two situations may be distinguished. Firstly, the FCSP may provide directors or a general partner for the IBC or ELP respectively. In those cases, the FCSP, in its capacity of director or general partner, is responsible to keep reliable accounting records of the IBC or ELP.

191. Where the FCSP does not act as a director or general partner, the Guideline requires it must still ensure that accounting records for the IBC or ELP are in the possession of the IBC or ELP respectively, and are accessible to the registered agent (paragraph 4.2.1(i)). In respect of IBCs, the FCSP must also ensure that the 2016 order is complied with. These requirements may be included in the contract between the FCSP and its clients. Where an FCSP suspects non-compliance with accounting record keeping obligations, it should terminate its relationship with the IBC or ELP (paragraph 4.4.2).

192. In order for the Securities Commission to better monitor compliance of the FCSPs with the new Guideline, it requires them to file an annual declaration of compliance. Compliance with the Guideline may then also be integrated in the Securities Commission's monitoring programme.

### Entities and arrangement with a Bahamian business licence

193. Entities and arrangements with a business licence (approximately 5 000 in total, other businesses are mostly personal businesses) must submit their financial results in a prescribed manner showing the turnover of the business on an annual basis (s. 3(3) Business Licence Act) and where this turnover is more than USD 100 000 this must be accompanied by a certified statement of a qualified accountant (s. 5 Business Licence Regulations). On the basis of the submission of the business turnover, the rate and/or amount of the business licence tax is determined.

194. Since the turnover is essential for determining the rate and/or amount of the business licence tax, compliance with submitting this information is high although late filing and payment of the tax regularly occur (see below). The Business Licence Department may assess and audit the accounts of a licensee to verify whether the correct amount of tax has been paid (s. 10 Business Licence Act).

195. The monitoring of the Business Licence Act and the Business Licence Regulations is one of the responsibilities of the Compliance Unit of the Department of Inland Revenue (DIR). The Compliance Unit was established in July 2015, when the DIR also assumed responsibility for the VAT introduced that year. In 2015, new systems for the business licence (including penalties for late filing and payment) and the property tax were introduced as well.

196. Starting in July 2015, the DIR Compliance Unit carries out on-site inspections to check compliance with the requirements related to the business licence, the VAT and property tax. The checks in respect of the business licence and the VAT may include the verification of accounting records. Results of the inspections in 2015 and 2016 are as follows:

| Year | Number of on-site inspections conducted |              | Number of tax adjustments made (VAT only) | Number of penalties imposed for non-compliance |       |              |
|------|-----------------------------------------|--------------|-------------------------------------------|------------------------------------------------|-------|--------------|
|      | Business Licence/VAT                    | Property tax |                                           | Business Licence                               | VAT   | Property tax |
| 2015 | 1 500                                   | 2 900        | 117                                       | 169                                            | 507   | 33 295       |
| 2016 | 6 248                                   | 3 800        | 672                                       | 7 909                                          | 1 558 | 32 940       |

197. Almost all penalties imposed by the DIR were related to late filing or payment of taxes, although a check of the accounting records has led to VAT adjustments also. The DIR indicated that more detailed audits of the accounting records commenced in September 2016. This should lead to more accurate accounting records being kept by those Bahamian businesses subject to the above licence and taxes going forward.

## Trusts

198. Since 2013, the Central Bank's AML/CFT Guidelines contain a requirement for service providers acting as a trustee to maintain accounting records, including related underlying documentation, pertinent to its trusteeship and appropriate to the trust and trust property.

199. The presence of accounting records for trusts administered by licensed trust service providers is included in the supervision practice of the Central Bank, which is comprehensively described in section A.1.4. The Central Bank indicated that it has found that accounting records are not always consistently kept. Records are generally present, but not necessarily in a manner which shows the full and current financial position of the trust. Where non-compliance has been found, the Central Bank has directed the trust service provider to compile the accounting records so they comply with the legal requirements under the Trustee Act. This is followed up by a check during the next mandatory internal audit of which the results are reported to the Central Bank for its off-site risk assessment.

### *Availability of accounting information in practice (peer experience)*

200. During the peer review period, accounting information was requested by peers in 36 instances, mostly related to companies but also several related to other entities and arrangements. This information was usually obtained through a service provider, as it related to entities or arrangements which had

engaged a Bahamian service provider. Peers indicated they regularly asked for accounting information and were generally satisfied with the information received.

201. One peer noted that accounting information was unavailable because the company had been struck off the register. In this case, information on some of the relevant years should have still been available but no contact could be established with any person related to the struck off company other than the registered agent (which did not have and was not required to have the company's accounting records).

### *Conclusion*

202. Legal requirements to keep reliable accounting records are in place in respect of all relevant entities and arrangements. Although monitoring is taking place in respect of certain entities and arrangements, this does not cover all of them and in some cases the monitoring only recently commenced.

203. Monitoring is taking place in respect of trusts with a service provider licensed by the Central Bank as a trustee. This covers the vast majority of the trusts with a professional trustee (some professional trustees are supervised by the Securities Commission). Monitoring is also taking place in respect of entities and arrangements with a business licence, but this covers less than 5 000 of the more than 70 000 relevant entities and arrangements registered (please note that trusts are not registered in The Bahamas).

204. Finally, monitoring takes place in respect of IBCs and ELPs, but this does not cover the actual verification of (the presence of) accounting records in all cases (only where the FCSP acts as a director or general partner), and a more comprehensive monitoring framework has only been introduced very recently and its effectiveness can therefore not yet be assessed. Compliance by IBCs with keeping an accounting records declaration at its registered office has been found to be very low during the peer review period.

205. The different monitoring mechanisms in The Bahamas cover most relevant entities and arrangements, although it should be noted that it is likely that no monitoring is taking place in respect of most companies incorporated under the Companies Act. As discussed under element A.1.1, most of these companies will not possess a business licence and are not otherwise covered by a monitoring mechanism. The Bahamas indicated that such companies are often used as vehicles for Bahamian residents to hold assets, estate planning, family management and other non-revenue generating matters.

206. It can be concluded that during the peer review period the availability of accounting records was only effectively monitored in respect of trusts with a professional trustee and if the entity or arrangement had a business licence. Entities with a business licence represent less than 10% of the entities

and arrangements registered in The Bahamas and it is likely that these are of relatively low interest to foreign tax authorities. From the second half of 2017 a monitoring framework has been put in place in respect of IBCs and ELPs as well, but it is not yet possible to assess its effectiveness. The recommendation that The Bahamas should monitor the implementation of the accounting record keeping obligations and ensure that its enforcement powers are sufficiently exercised in practice, therefore remains. Considering that the peer input identified one case where accounting information was unavailable because the company had been struck off the register and no specific guidance exists on how information must be kept in that case, particular attention should be paid to this situation.

### A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

207. The 2013 Report concluded that the legal and regulatory framework of The Bahamas ensured that all records pertaining to accounts as well as related financial and transactional information were available with banks and other financial institutions. No relevant changes have been made to these obligations since the 2013 Report.

208. The addition in the 2016 ToR of the requirement that beneficial ownership information must also be available does not have a big impact in relation to The Bahamas, since the relevant obligations to have information available for all account holders is included in the AML legislation. Element A.3 therefore remains “in place”.

209. With respect to the practical implementation, the 2013 Report noted that the Central Bank had a comprehensive monitoring programme but that, while compliance was generally found to be high, The Bahamas should ensure that penalties are being applied in practice where banks and other financial institutions are found not to have complied with ownership information keeping obligations.

210. The monitoring programme of the Central Bank is comprehensively described in section A.1.4 and is considered adequate to ensure that banking information and beneficial ownership information is available for all account holders in practice. It has been further strengthened in September 2016 by the introduction of an administrative penalty regime, which has been put to use immediately. The Central Bank reported that it has not been necessary to apply penalties for non-compliance with ownership information keeping requirements.



211. Banking information was requested regularly by peers during the peer review period, and it was reported that they were generally satisfied or very satisfied with the information received. Element A.3 is rated Compliant.

212. The table of determinations and ratings remains as follows:

| <b>Legal and Regulatory Framework</b>                                                      |                          |                       |
|--------------------------------------------------------------------------------------------|--------------------------|-----------------------|
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b> |                          |                       |
| <b>Determination: The element is in place</b>                                              |                          |                       |
| <b>Practical implementation of the standard</b>                                            |                          |                       |
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                   |                          |                       |
| <b>Rating: Compliant</b>                                                                   |                          |                       |

#### ***A.3.1. Record-keeping requirements***

213. Carrying on banking business from within The Bahamas is not permitted without a valid licence issued by the Central Bank (s. 3(1) Banks and Trust Companies Regulation Act). As at 31 December 2016, there were 93 entities licensed to carry out banking business, two-thirds of which are also licensed to carry on trust business. In addition, 14 money transmission businesses or agents and 10 co-operative credit unions were registered.

214. The 2013 Report concluded that the combination of the obligations as set out under the Banks and Trust Companies Regulation Act and the AML legislation ensured that all records pertaining to accounts as well as related financial and transactional information were available with banks and other financial institutions. No relevant changes have been made to these obligations since the 2013 Report.

215. Transaction records that must be kept include (i) the parties to the transaction, (ii) the beneficial owner of the account and any intermediaries involved, (iii) the date, amount and currency of the transaction, and (iv) the nature of the transaction (s. 23(2) FTRA and paragraphs 206-208 Central Bank AML/CFT Guidelines). In addition, banks and other financial institutions must verify the identity of all account holders and, where applicable, their beneficial owners (s. 6 FTRA and s. 7A FTRR).

216. All transaction records and records related to the verification of customers must be kept for a period of at least five years after the completion of the transaction or after end of the business relationship with the customer (ss. 23(3) and 24(4) FTRA). Failing to carry out customer due diligence before establishing a business relationship as well as failing to retain records are an offence, which can lead to fines of up to USD 20 000 in the case of an individual and up to USD 100 000 in the case of a body corporate (ss. 12(2) and 30(2) FTRA). In addition, failing to comply with the Central Bank's AML/CFT Guidelines may result in fine a upon summary conviction of up to USD 10 000, or upon conviction on information, to a fine of up to USD 50 000 for the first offence and of up to USD 100 000 for subsequent offences (s. 8 FITRR).

### *Beneficial ownership information on account holders*

217. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. The legal requirements for banks and other financial institutions to keep beneficial ownership information can be found in the AML legislation and are described throughout Part A.1 for the different types of entities and arrangements. For banks and other financial institutions supervised by the Central Bank, the Central Bank's AML/CFT Guidelines, based on the relevant acts and regulations and binding as well, apply and their requirements are broadly in line with the standard.

218. One area was identified where improvement could be made. There is no explicit legal requirement for service providers (other than PTCs) to identify the protector(s), if any, of a trust. Although the requirements in paragraph 95(ii) of the Central Bank's AML/CFT Guidelines are likely to cover the majority of protectors, the 2016 ToR require the protector to be identified in all cases. It is recommended that The Bahamas introduces a legal requirement for protector(s), if any, of trusts that hold an account with a Bahamian bank or other financial institution to be identified in all cases.

219. As described in section A.1.1, the Central Bank's AML/CFT Guidelines (paragraphs 127-131) allow banks and other financial institutions to accept a business relationship with a customer without verifying its identity where the customer is introduced by an eligible introducer. Nevertheless, the service provider accepting a customer in this manner remains ultimately responsible for ensuring that adequate due diligence procedures are followed and that the documentary evidence of the eligible introducer that is being relied upon, is satisfactory for these purposes. In addition, the service provider must still (i) upon establishing the business relationship obtain all relevant information in respect of the customer's identity, and (ii) within 30 days of receipt of the written confirmation of the eligible introducer that it verified the customer's identity, have clear and legible copies of all verification documentation in its possession.

*Monitoring and enforcement to ensure the availability of banking information in practice*

220. The 2013 Report noted that the Central Bank had a comprehensive monitoring programme but that, while compliance was generally found to be high, The Bahamas should ensure that penalties are being applied in practice where banks and other financial institutions are found not to have complied with ownership information keeping obligations.

221. The supervision practice of the Central Bank is comprehensively described in section A.1.4, as it applies to all of its licensees, whether they are licensed to carry out banking business, trust business, or both. It is concluded that, although the approach to establishing its on-site inspection programme may result in some licensees not being subject to an on-site inspection for many years, or only to an on-site inspection which does not specifically cover compliance with AML legislation, a stronger off-site monitoring practice mitigates the risk of continuous and serious non-compliance in these cases. The monitoring of the legal requirements to keep banking information, including transactional and legal and beneficial ownership information, in respect of all account holders is therefore considered adequate.

222. Regarding the application of penalties where banks and other financial institutions are found not to have complied with ownership information keeping obligations, the Central Bank reported that penalties for non-compliance with obligations to keep adequate customer due diligence information have not been issued during the peer review period. If issues were detected during on-site inspections, these have been remedied satisfactorily before further enforcement actions became necessary.

223. More generally, enforcement actions against banks and other financial institutions have in the past mostly been taken in relation to serious offences. In the peer review period, six licensees (four banks, one bank and trust company and one trust company) have been subject to enforcement actions. The underlying non-compliance mostly related to capital ratios and organisational requirements.

224. In September 2016, the Central Bank issued the Banks and Trust Companies (Administrative Monetary Penalties) Regulations. These regulations provide for administrative penalties to be applied for non-compliance of 93 identified obligations, giving the Central Bank an additional instrument to enforce compliance. Between September 2016 and 22 June 2017, the Central Bank issued the following amount of administrative penalties:

| Total amount of penalties imposed | Amount of licensees affected | Commercial banks | Public banks and/or trust companies | Restricted banking licensees | Others |
|-----------------------------------|------------------------------|------------------|-------------------------------------|------------------------------|--------|
| 65                                | 34                           | 8                | 17                                  | 1                            | 8      |

225. The total amount of these penalties amounts to USD 492 062.50. Almost all penalties were issued in respect of late or erroneous periodic filings although one penalty was in relation to a breach classified as “very serious”.

226. From its inception, the Central Bank has started using the administrative penalty as an additional enforcement instrument. This further strengthens the off-site monitoring by the Central Bank, as periodic filings which are used for the risk assessments of each licensee (see also under section A.1.4) will become more reliable with this more persuasive enforcement strategy.

*Availability of banking information in practice (peer experience)*

227. During the peer review period, banking information was requested by peers in 61 instances. This information was available and exchanged in the vast majority of cases, and to the satisfaction of the peers. A number of requests are still pending but there are no indications that this is related to the unavailability of the information.

## Part B: Access to information

228. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

### 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).

229. As already concluded in the 2013 Report, The Bahamas Competent Authority has appropriate powers to access information for the purpose of responding to EOI requests. During the peer review period, these powers were successfully applied to obtain a wide range of information from service providers, including banks, entities as well as other government bodies.

230. The access powers are complemented by compulsory powers to compel the production of information. These compulsory powers have not been used in the peer review period, even though it could reasonably have been expected. This is because non-compliance occurred with respect to one service provider affecting a relatively high amount of cases (11 out of 88 EOI requests received).

231. Apart from the cases referred to in the previous paragraph, The Bahamas Competent Authority has applied its access powers effectively. One issue that needs monitoring is the clause in the Notice to Produce Information that extraordinary costs incurred by the information holder shall be paid by The Bahamas Competent Authority. This does not apply in all cases and the clause may raise unfounded expectations and may cause undue delays in obtaining the information, although to date the latter has not been the case.

232. The updated table of determinations and ratings is as follows:

| <b>Legal and Regulatory Framework</b>                                                      |                                                                                                                                                                                                                                         |                                                                                                              |
|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
|                                                                                            | <b>Underlying factor</b>                                                                                                                                                                                                                | <b>Recommendation</b>                                                                                        |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b> |                                                                                                                                                                                                                                         |                                                                                                              |
| <b>Determination: The element is in place.</b>                                             |                                                                                                                                                                                                                                         |                                                                                                              |
| <b>Practical implementation of the standard</b>                                            |                                                                                                                                                                                                                                         |                                                                                                              |
|                                                                                            | <b>Underlying factor</b>                                                                                                                                                                                                                | <b>Recommendation</b>                                                                                        |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                   | The Bahamas has not used its compulsory powers during the peer review period, even though in a relatively high amount of cases (11 out of 88) non-compliance occurred and only one service provider was involved in all of those cases. | The Bahamas should apply its compulsory powers where appropriate in cases where information is not produced. |
| <b>Rating: Largely Compliant</b>                                                           |                                                                                                                                                                                                                                         |                                                                                                              |

### ***B.1.1. Ownership, identity and bank information***

233. The 2013 Report concluded that The Bahamas Competent Authority had broad powers to obtain relevant information from any person within its jurisdiction which has relevant information in its possession or custody or under its control. These powers were predominantly exercised by issuing a notice requesting the information to the person believed to hold that information. No fundamental changes occurred in this process and its underlying legal framework.

234. The International Tax Cooperation Act, 2010 (“ITC Act”) forms the legal basis for access powers that are available to The Bahamas Competent Authority, and a separate piece of legislation (The Bahamas and the United States of America Tax Information Exchange Agreement Act) applies with respect to EOI requests received from the United States. There are no material differences between the two acts and, unless indicated otherwise, the description and analysis in this report apply to EOI requests received from any jurisdiction.

*Obtaining information in practice*

235. Once it has been determined that an EOI request is valid, the Competent Authority will start the process of obtaining the information. The Competent Authority is housed in the Ministry of Finance, which does not hold information which is generally the subject of EOI requests. This means that information must in all cases be obtained from other government bodies or private parties.

236. Where information must be obtained from a private party, a Notice to Produce Documents is issued using the powers given by the relevant legislation. The Notice sets a deadline of 28 days. Where information needs to be obtained from another government body, the Competent Authority sends a request for assistance. No official Notice is used in that case since co-operation between government bodies is generally good and the Competent Authority has an established relationship with the government bodies from which information is requested on a regular basis. An official Notice could be issued to another government body under the relevant legislation, but so far this has not been necessary.

237. In the vast majority of EOI requests, the information sought is a combination of ownership, accounting information and other types of information. Where the name and address of the person believed to be in possession or control of the information is in the EOI request, the Competent Authority can immediately issue a Notice to Produce Documents. However, where information needs to be obtained from an entity or trust this would usually take place through a service provider in The Bahamas and its details should then be retrieved from the RGD as a first step. At the same time, any of the information sought by the EOI request which may also be held by the RGD, is also requested.

238. In the course of the peer review period, the average response time of the RGD increased, which meant that the Competent Authority could not move forward with obtaining the rest of the information from the service provider as they were waiting to receive its details. Acting on these events, the Competent Authority took two measures. Firstly, it now asks the RGD upfront for the details of the service provider. This allows the Competent Authority to start collection of information from that service provider while the Registrar General's Department gathers the information held by the RGD, if any. Second, it has recently started to include a deadline of 28 days to respond in the requests for assistance sent to government bodies also. These measures seem sufficient to ensure that no undue delays occur and show that the Competent Authority recognises a situation where the process to obtain information needs improvement and acts accordingly.

239. As was the case in the previous peer review period, there have only been a few EOI requests received in the current peer review period where all information could be obtained from other government bodies. In both peer review periods, other government bodies always complied with the request for information.

240. As indicated, the Notice to Produce Information sets a deadline of 28 days for the information holder to respond. This deadline is monitored by the case officer at the Competent Authority on a weekly basis. Extensions may be granted if requested, which occurred on ten occasions during the peer review period. Examples of reasons for extension include the absence of the person authorised to sign off on the provision of information and the need for more time to locate the documents because the entity was or had been in liquidation. The length of the extension is determined based on the circumstances of the specific case.

241. The practical application of the general access powers by The Bahamas can be considered effective. Although final response times for the peer review period are sometimes long, this is mainly attributable to the organisation and resources of the Competent Authority as analysed under element C.5.

242. It may be noted that the process for obtaining information from banks does not differ from the process described above, although the name of the bank is usually identified in the EOI request and it is therefore not necessary to go through the Registrar General's Department. During the peer review period, banking information was requested with respect to 61 persons (entities, legal arrangements and individuals). In none of these cases was the requested banking information unavailable because of the lack of access powers, and peers indicated they were satisfied or very satisfied with the banking information received.

### *Geographical location of information holder*

243. In the 2013 Report it was indicated that slight delays had occurred in obtaining information from islands within the Bahamian archipelago other than New Providence, where the Competent Authority is located. The Bahamas was asked to ensure that its procedures for accessing information located on other islands do not negatively impact the exchange of information.

244. In New Providence, all Notices to Produce Information are delivered by the messenger from the Ministry of Finance, which collects a delivery receipt for the file at the Competent Authority. Where the information holder is located on another island in the Bahamas, it is delivered through the local liaison of the Attorney General's Office.



245. During the peer review period, there were two occasions where information needed to be obtained from an information holder located on an island in the Bahamas other than New Providence. Although it may have taken a few additional days for the information to be obtained, no undue delays or other negative impact on the exchange of information were reported as a result of the geographical location of the information holder.

### *Extraordinary costs*

246. The template Notice to Produce Documents contains a clause stating that The Bahamas Competent Authority shall pay any extraordinary costs incurred by the information holder in providing the documents. This statement is not based on domestic legislation and the term extraordinary costs is also not further explained. In practice, the Competent Authority would only consider reimbursement of costs if they would be USD 500 or more. In that case, reimbursement would only take place if the requesting competent authority would agree to pay the costs under the relevant article of the tax information exchange agreement between The Bahamas and the requesting jurisdiction (see Article 9 of the OECD Model Tax Information Exchange Agreement [OECD Model TIEA]).

247. It may be noted that the language of the Commentary to Article 9 of the OECD Model TIEA implies that this provision is targeted to costs incurred by governments rather than private parties. However, costs incurred by private parties are not explicitly excluded and competent authorities may agree on compensation of non-government information holders.

248. According to The Bahamas Competent Authority, the issue of costs was raised by the information holder in approximately five cases during the peer review period. Only in one of these cases, the expected costs were such that The Bahamas Competent Authority consulted the requesting competent authority, with which a Competent Authority Agreement was in place. The information holder was reimbursed and provided the information. In all other cases where the issue of costs was raised, the information holder provided the requested information without being compensated. In those cases the information was also provided before a discussion on the reimbursement was held, which would be the normal course of events.

249. The clause regarding extraordinary costs in the template Notice to Produce Information is unclear and may raise expectations with information holders. The template contains no definition of “extraordinary costs” or an explanation that the reimbursement of costs is subject to the agreement of the requesting competent authority to bear these costs. As such, it could cause unnecessary delays by information holders enquiring about this clause, although it should be recognised that these delays will be very limited where

The Bahamas Competent Authority decides not to pursue this issue with the requesting competent authority. In addition, current practice is that the requested information should be provided before a decision on the reimbursement is made. It is nevertheless recommended that The Bahamas monitor that the clause regarding extraordinary costs in the template Notice to Produce Information does not cause undue delays in obtaining information, and consider clarifying the practical implementation of the clause or remove it from the template.

### ***B.1.2. Accounting records***

250. As noted under section A.2 of this report, the legislative amendments requiring all entities and arrangements to keep comprehensive accounting records came into force in 2011 and 2013. In the previous peer review period, there were five EOI requests pertaining to years prior to these legislative amendments where accounting information could not be exchanged because it had not been kept. The 2013 Report asked The Bahamas to continue to monitor the effectiveness of the accounting record keeping requirements while using its access powers to obtain accounting records.

251. In the current peer review period, accounting information was requested with respect to 33 entities or arrangements and three individuals. The Bahamas Competent Authority indicated that it did not encounter unavailability of accounting records in these cases for reasons other than the one case described in section A.2 of this report.

### ***B.1.3. Use of information gathering measures absent domestic tax interest***

252. The information gathering powers of The Bahamas Competent Authority are specifically designed for giving effect to the EOI agreements concluded by The Bahamas. These powers are not subject to any requirement that they may only be exercised where there is a domestic tax interest (there are presently no domestic income taxes imposed by The Bahamas).

### ***B.1.4. Effective enforcement provisions to compel the production of information***

253. Compulsory powers available to The Bahamas Competent Authority include enforcement provisions for monetary penalties, imprisonment and applying to a judge for a search warrant. A search warrant may be issued if the judge is satisfied that there are reasonable grounds to suspect that an offence has been, is or will be committed that will endanger the delivery of the information. A monetary penalty of up to USD 25 000 or imprisonment

for a term not exceeding twelve months may be imposed on any person which, *inter alia*, fails to deliver information pursuant to a Notice to Produce Information or wilfully obstructs the execution of a search warrant (section 12 ITC Act and section 9 The Bahamas and the United States of America Tax Information Exchange Agreement Act).

254. The 2013 Report did not mention any use of or the need to use compulsory powers in relation to obtaining information for EOI purposes. Similarly, no compulsory powers have been used to compel the production of information pertaining to EOI requests received in the current peer review period.

255. To monitor non-compliance, officers of the Competent Authority check the status of all outstanding Notices to Produce Information at least once per week. Where the 28-day deadline has passed and no request for extension has been received, the Competent Authority will contact the person that was issued the Notice either by telephone and/or by sending a reminder, which is delivered through the same channel as the original Notice. Further discussion may also take place between the Competent Authority and the information holder. This has proven sufficient for the information to be produced in the majority of cases in the peer review period.

256. Nevertheless, in 11 of the pending EOI requests information has been requested from the same service provider. This service provider has been unable to provide the information stating that its head office, located in another jurisdiction, removed the access rights of the branch in The Bahamas to the (electronic) information which is kept by the head office. According to the service provider, it does not have possession or control over the requested information. However, it was required to keep this information (beneficial ownership information) under Bahamian law (see under section A.1.1).

257. The Bahamas Competent Authority indicated it has had an ongoing dialogue with the service provider, and also contacted the regulatory body for AML purposes (the Securities Commission), as there was likely consequential non-compliance with AML legislation. Eventually, more than one year after the EOI requests were received, the Securities Commission withdrew the licence of the service provider. The Competent Authority is now engaging with the liquidator of the service provider in an effort to obtain the information.

258. In these circumstances, starting prosecution for non-compliance with a Notice to Produce Information is unlikely to be successful, as it may be difficult to prove that the service provider is in possession or control of the information. However, it is likely that an offence (i.e. not adequately keeping certain information that must be kept under Bahamian law or otherwise the concealing of such information) has been committed that endangers the

delivery of the information. The Competent Authority could therefore have considered applying for a search warrant to make sure the statement of the service provider that it does not have the information in its possession or control, is correct. Given the relatively high amount of cases affected (11 out of 88 in the peer review period) and only one service provider being involved, it is reasonable to expect that The Bahamas Competent Authority would have considered taking this step expeditiously. It is recommended that The Bahamas applies its compulsory powers where appropriate in cases where information is not produced.

### ***B.1.5. Secrecy provisions***

259. Legal professional privilege is mentioned as a ground for not providing information in section 3(3) of the ITC Act and section 3(4) of the The Bahamas and the United States of America Tax Information Exchange Agreement Act, following the same wording as in Article 26(3)(c) of the OECD Model Tax Convention. The 2013 Report concludes that the application of legal professional privilege in The Bahamas, which follows the principles set out under English common law, is in line with the international standard.

260. With respect to other secrecy provisions, the legislation related to the access powers of the Competent Authority provides an absolute defence to any claim brought against a person that is compelled to produce information pursuant to a Notice to Produce Information. This is also expressly set out in the Notice to Produce Information.

261. In the peer review period, no information holder claimed legal professional privilege or refused to provide information on the basis of any other secrecy obligation. In addition, no peer has indicated any issues in this regard.

## **B.2. Notification requirements, 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.

262. The 2013 Report notes that The Bahamas legislative framework requires The Bahamas Competent Authority to hold the obtained information for a 20-day period before exchanging it. This holding period is meant for the taxpayer or interested person to object to the exchange of the information. One form of objection which is formalised in the ITC Act and the The Bahamas and the United States of America Tax Information Exchange Agreement Act, is judicial review. A person may also apply for judicial review outside of the 20-day holding period.

263. During the peer review period, no objection was received during the 20-day holding period and one application for judicial review was made before the information was obtained. In addition, in one case part of the requested information could not be obtained because it was held by the taxpayer under investigation while the requesting competent authority had asked The Bahamas Competent Authority not to notify the taxpayer. Both cases have been dealt with adequately by The Bahamas, most importantly by communicating clearly with the requesting competent authority.

264. The rights and safeguards provided for in The Bahamas have so far been compatible with effective exchange of information, which corresponds to the fact that no peers have indicated issues related to rights and safeguards with respect to the peer review period.

265. The table of determinations and ratings remains as follows:

| <b>Legal and Regulatory Framework</b>                                                      |                          |                       |
|--------------------------------------------------------------------------------------------|--------------------------|-----------------------|
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b> |                          |                       |
| <b>Determination: In place</b>                                                             |                          |                       |
| <b>Practical implementation of the standard</b>                                            |                          |                       |
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                   |                          |                       |
| <b>Rating: Compliant</b>                                                                   |                          |                       |

### ***B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information***

#### *Notification and holding period*

266. The Bahamas legislation does not contain a notification requirement. However, it may be the case that the foreign taxpayer is also the information holder or is connected to the information holder, and the requesting competent authority has indicated that it does not want the taxpayer to be notified of the request. In that case, The Bahamas Competent Authority would assist its EOI partners by trying to obtain the information from other sources, such as other government bodies, and inform the requesting competent authority accordingly. This happened in one case during the peer review period, and in that case The Bahamas Competent Authority obtained part of the information

from the Registrar General’s Department and informed the requesting competent authority that it could not obtain the remainder of the information without the taxpayer becoming aware (since the taxpayer was the director of the entity expected to hold the requested information). According to The Bahamas Competent Authority, the requesting competent authority then indicated it did not need the remainder of the information.

267. As mentioned in the 2013 Report, The Bahamas legislative framework provides for a 20-day holding period by The Bahamas Competent Authority before information is exchanged. This holding period is meant for the taxpayer or interested person to object to the exchange of the information. If an objection is received, the holding period may be extended. The 2013 Report does not contain any conclusion that the 20-day holding period is incompatible with the effective exchange of information, and that in any case a status update can be provided by The Bahamas to its affected EOI partner.

268. So far, there has never been a case where an objection was received during the 20-day holding period. This means that there has also never been a need to consider an extension of this holding period. It may therefore be concluded that the 20-day holding period is very unlikely to have a general negative impact on the effective exchange of information.

#### *Other rights and safeguards*

269. The ITC Act (section 10) and the The Bahamas and the United States of America Tax Information Exchange Agreement Act (section 12) explicitly provide for the possibility for a person to apply for judicial review of the (performance of) any function under these pieces of legislation, such as the issuance of a Notice to Produce Information.

270. There has been one case during the peer review period where the information holder applied for judicial review. This application occurred before the information was obtained so the 20-day holding period analysed above had not yet started. In this case The Bahamas Competent Authority informed the requesting jurisdiction, which advised that they had closed the case and no further investigations were necessary. This happened before the judicial review case reached the court. It may also be noted that The Bahamas had already provided other information in this case to the requesting jurisdiction.

## Part C: Exchanging information

271. Sections C.1 to C.5 evaluate the effectiveness of The Bahamas' EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether the mechanisms respect the rights and safeguards of taxpayers and third parties and whether The Bahamas could provide the information requested in an effective manner.

### C.1. Exchange of information mechanisms

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

272. The 2013 Report did not raise any issues in respect of The Bahamas' information exchange agreements, which consists entirely of TIEAs. Since the 2013 Report, The Bahamas concluded five additional TIEAs which contain substantially the same language as the agreements previously entered into by The Bahamas. On 15 December 2017, The Bahamas also signed the Multilateral Convention. This complements its existing network of more than 30 TIEAs and will allow The Bahamas to exchange information with more than 100 jurisdictions once the Multilateral Convention enters into force.

273. It was noted in the 2013 Report that The Bahamas requested clarifications in a large number of cases, and should continue to ensure that any additional consultations to the requesting jurisdiction on the application of relevant laws do not go beyond what is necessary to establish foreseeable relevance and create unnecessary burden on the requesting jurisdiction. During the current peer review period, the number of clarification requests was still high (clarifications were requested in approximately 34% of the incoming EOI requests), although the vast majority was not related to the foreseeable relevance of the request but was necessary to establish whether the request was covered by the relevant TIEA. In addition, no peer has raised any issues related to foreseeable relevance or requests for clarification made by The Bahamas.

274. The table of determinations and ratings remains as follows:

| <b>Legal and Regulatory Framework</b>                                                      |                          |                       |
|--------------------------------------------------------------------------------------------|--------------------------|-----------------------|
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b> |                          |                       |
| <b>Determination: The element is in place.</b>                                             |                          |                       |
| <b>Practical implementation of the standard</b>                                            |                          |                       |
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                   |                          |                       |
| <b>Rating: Compliant</b>                                                                   |                          |                       |

### ***C.1.1. Foreseeably relevant standard***

275. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2013 Report did not raise any issues with the content of the 29 bilateral TIEAs entered into by The Bahamas at that time, as they generally followed the OECD's *2002 Model Agreement on Exchange of Information on Tax Matters* (OECD Model TIEA). Since the 2013 Report, The Bahamas concluded five more bilateral TIEAs, which contain substantially the same language as the agreements previously entered into by The Bahamas. In December 2017, The Bahamas also signed the Convention On Mutual Administrative Assistance In Tax Matters (Multilateral Convention), allowing for tax information exchange in accordance with the 2016 ToR.

276. It is noted that the TIEA with the United States, which was the first TIEA entered into by The Bahamas, does not follow the OECD Model TIEA but still provides for information exchange in accordance with the 2016 ToR, albeit only from The Bahamas to the United States and not vice versa (since The Bahamas does not impose direct incomes taxes it has no need to send EOI requests).

277. The 2013 Report describes a number of cases where The Bahamas had asked the requesting competent authority to clarify their EOI request and provide additional information. Some of the requests for clarification related to the foreseeable relevance of the request and asked for explanations on tax law provisions in the requesting jurisdiction. It was noted that The Bahamas should continue to ensure that any additional consultations to the requesting



jurisdiction on the application of relevant laws do not go beyond what is necessary to establish foreseeable relevance and create unnecessary burden on the requesting jurisdiction.

278. The information expected to be included in an EOI request to demonstrate its foreseeable relevance, is set out in Article 5(5) of the OECD Model TIEA. Most of the TIEAs entered into by The Bahamas contain further details in this respect. The 2013 Report already mentioned that many of the TIEAs require the requesting jurisdiction to provide “the reasons for considering that the information requested is foreseeably relevant to the requesting party’s tax administration and enforcement with respect to the person under examination or investigation”. It was concluded that this appeared to be in line with the purpose of the requirements in Article 5(5) of the OECD Model TIEA.

279. In addition, many of the TIEAs concluded by The Bahamas require the requesting jurisdiction to include in its EOI requests (i) the identity of the person in respect of whom information is requested, if that person is not also the person under examination or investigation, (ii) the (taxable) period with respect to which the information is requested, (iii) a reference to the legal basis under the requesting party’s tax law or other relevant law with respect to which the information is sought, and/or (iv) whether the matter is a criminal or civil tax matter.

280. All of the additional requirements are in line with the purpose of the requirements in Article 5(5) of the OECD Model TIEA. Also, the taxable period and whether the matter is a criminal or civil tax matter are necessary for The Bahamas to determine whether an EOI request is covered by the TIEA (which would depend on the entry into force provision).

281. In general, more of the additional requirements are included in the more recently concluded TIEAs. In respect of 14 TIEAs, mostly ones that were concluded earlier, The Bahamas Competent Authority entered into an additional agreement with its partner competent authority to, among other things, agree on the contents of an EOI request.

282. During the peer review period, The Bahamas Competent Authority requested clarification of 34 issues in approximately 30 EOI requests (in respect of some requests clarification was asked of multiple issues). The vast majority of the clarification requests related to the tax period (26 out of the 34), while all but two TIEAs<sup>5</sup> contain a requirement to provide this information. As mentioned, the tax period is necessary for The Bahamas to determine whether an EOI request is covered by the TIEA, and the clarification requests are therefore considered appropriate.

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5. The two TIEAs that do not contain this requirement are the ones concluded with Aruba and the Netherlands.

283. Two of the requests for clarification indirectly related to the application of the law of the requesting jurisdiction in respect of the statute of limitations, since the EOI request indicated that this date was in the past and it was unclear whether the information could still be used by the requesting jurisdiction. These clarification requests are considered appropriate. No other requests for clarification related to the application of relevant laws of the requesting jurisdiction.

284. No peer has raised any issues related to foreseeable relevance or requests for clarification made by The Bahamas.

### *Group requests*

285. None of The Bahamas' TIEAs or the Multilateral Convention exclude the possibility for making and responding to group requests, and Bahamian law does not prevent The Bahamas from responding to such requests. The Bahamas indicated that it has not received group requests in the peer review period, but that it would follow the same process in exchanging the information as for individual EOI requests.

### ***C.1.2. Provide for exchange of information in respect of all persons***

286. All of The Bahamas' TIEAs and the Multilateral Convention allow for exchange of information with respect to all persons. During the peer review period, no restrictions in respect of persons on whom information can be exchanged have been experienced and no issues have been raised by peers.

### ***C.1.3. Obligation to exchange all types of information***

287. The 2013 Report did not identify any issues with The Bahamas' TIEAs in terms of ensuring that all types of information could be exchanged. The five TIEAs concluded since the 2013 Report as well as the Multilateral Convention are all in accordance with the 2016 ToR in this respect. No issues have been raised by peers in either review period.

### ***C.1.4. Absence of domestic tax interest***

288. The 2013 Report did not identify any issues with The Bahamas' TIEAs related to a domestic tax interest. The five TIEAs concluded since the 2013 Report as well as the Multilateral Convention are all in accordance with the 2016 ToR in this respect. No issues have been raised by peers in either review period.

### ***C.1.5. Absence of dual criminality principles***

289. There are no dual criminality provisions in any of The Bahamas' TIEAs or the Multilateral Convention. Accordingly, there has been no case where The Bahamas declined a request because of a dual criminality requirement and no issues have been raised by peers.

### ***C.1.6. Exchange information relating to both civil and criminal tax matters***

290. All of The Bahamas' TIEAs and the Multilateral Convention provide for exchange of information in both civil and criminal tax matters. The Bahamas processes EOI requests related to civil and criminal tax matters in the same manner, although it is noted that the TIEAs may have different application periods for civil and criminal tax matters. For that purpose, The Bahamas asked the requesting jurisdiction to clarify whether the EOI request pertained to a civil or criminal tax matter in two instances during the peer review period. No issues were raised by peers in relation to this aspect.

### ***C.1.7. Provide information in specific form requested***

291. None of The Bahamas' TIEAs or the Multilateral Convention prevent the exchange of information in a specific form requested, as long as this is allowable under its domestic laws. As described in the 2013 Report, The Bahamas' domestic law accommodates the exchange of information in the form of witness depositions and authenticated copies of documents (s. 8 ITC Act).

292. The Bahamas Competent Authority has adopted as a standard practice to always ask for a declaration of authenticity of the records to be provided to the Competent Authority, and has developed a template which is always attached to the Notice to Produce Information. This may avoid follow-up requests where a case goes to court in the requesting jurisdiction. No peers have raised any issues related to the form of the information.

### ***C.1.8. Signed agreements should be in force***

293. The Bahamas' EOI network covers 115 jurisdictions through 34 bilateral TIEAs and the Multilateral Convention. The Multilateral Convention was signed by The Bahamas on 15 December 2017 and is not currently in force in respect of The Bahamas. The Bahamas is in the process of completing the formalities to ratify the Multilateral Convention and deposit the instrument of ratification.

294. Of the 34 bilateral TIEAs, 33 are currently in force. Since the 2013 Report, the three TIEAs that were not yet in force at that time have now entered into force. In addition, The Bahamas concluded five new TIEAs, of which four are in force. In respect of the other TIEA (with Indonesia), The Bahamas has completed all domestic steps for ratification and has informed Indonesia through diplomatic channels.

295. The ratification process in The Bahamas takes approximately six months in practice. When a TIEA has been signed by both parties an Order is prepared for signature by the Minister. Once the Order is signed, the Office of the Attorney General and Ministry of Legal Affairs ensure it is gazetted. Publication in the gazette completes the process of bringing the TIEA into force in The Bahamas. This is then notified through diplomatic channels to the TIEA partner.

#### **Bilateral EOI mechanisms**

|   |                                                                        |         |    |
|---|------------------------------------------------------------------------|---------|----|
| A | Total Number of DTCs/TIEAs                                             | A= B+C  | 34 |
| B | Number of DTCs/TIEAs signed but not in force                           | B = D+E | 1  |
| C | Number of DTCs/TIEAs signed and in force                               | C = F+G | 33 |
| D | Number of DTCs/TIEAs signed (but not in force) and to the Standard     | D       | 1  |
| E | Number of DTCs/TIEAs signed (but not in force) and not to the Standard | E       | 0  |
| F | Number of DTCs/TIEAs in force and to the Standard                      | F       | 33 |
| G | Number of DTCs/TIEAs in force and not to the Standard                  | G       | 0  |

#### ***C.1.9. Be given effect through domestic law***

296. The Bahamas has given effect to its TIEAs through the ITC Act and the The Bahamas and the United States of America Tax Information Exchange Agreement Act. The TIEA with the United States is scheduled to the latter act and all other TIEAs are scheduled to the ITC Act as part of the ratification process. This ensures the implementation of the TIEAs in the domestic legislation.

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

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

297. The 2013 Report concluded that The Bahamas' network of information exchange agreements covered all relevant partners, meaning all partners who are interested in entering into an EOI agreement with The Bahamas.

298. Since the 2013 Report, The Bahamas concluded five more TIEAs, with the Czech Republic, Georgia, Indonesia, Ireland and Poland, and now has a total of 34 bilateral information exchange agreements. In addition, The Bahamas signed the Multilateral Convention on 15 December 2017, bringing its total number of tax information exchange partners to 115.

299. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction advised that The Bahamas refused to negotiate or sign an EOI instrument with it. However, a peer indicated that it experienced a delay of more than two years in negotiating a TIEA with The Bahamas, including for the reason that The Bahamas asked for the inclusion of provisions in the TIEA which are not part of the standard. It may be noted that this jurisdiction will be covered by the Multilateral Convention once ratified by The Bahamas but this does not mitigate the fact that the peer has so far not been able to send EOI requests to The Bahamas as desired. As the standard ultimately requires that jurisdictions establish an EOI relationship in accordance with the 2016 ToR with all partners who are interested in entering into such relationship, The Bahamas is recommended to, expeditiously, enter into exchange of information agreements with all relevant partners, meaning those partners who are interested in doing so.

300. The updated table of determinations and ratings is as follows:

| <b>Legal and Regulatory Framework</b>                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                 | <b>Underlying factor</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Recommendation</b>                                                                                                                                               |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b>                                      | A peer indicated that it experienced a delay of more than two years in negotiating a TIEA with The Bahamas, including for the reason that The Bahamas asked for the inclusion of provisions in the TIEA which are not part of the standard. It may be noted that this jurisdiction will be covered by the Multilateral Convention once ratified by The Bahamas but this does not mitigate the fact that the peer has so far not been able to send EOI requests to The Bahamas as desired. | The Bahamas should, expeditiously, enter into exchange of information agreements with all relevant partners, meaning those partners who are interested in doing so. |
| <b>Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                     |

| Practical implementation of the standard                                 |                   |                |
|--------------------------------------------------------------------------|-------------------|----------------|
|                                                                          | Underlying factor | Recommendation |
| <b>Deficiencies identified in the implementation of EOIR in practice</b> |                   |                |
| <b>Rating: Largely Compliant</b>                                         |                   |                |

### C.3. Confidentiality

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

301. The 2013 Report concluded that The Bahamas had an adequate legal framework in place to ensure the confidentiality of information received. In addition, several internal measures and practices were in place at The Bahamas Competent Authority to ensure the confidentiality of information in practice. No relevant changes have been made to the legal framework and the practices at the Competent Authority have been further strengthened.

302. A concern was raised in the 2013 Report with respect to the content of the Notices to Produce Information, and an in-text recommendation was issued for The Bahamas to monitor that they are not disclosing information to third parties which is not needed to obtain the information requested.

303. During the peer review period, The Bahamas has still included information in its Notices to Produce Information which is not necessary for the information holder to produce the requested information. While in some cases this was agreed with the requesting competent authority, in respect of more than half of the EOI requests received during the peer review period this was not the case. Although The Bahamas indicated that all of their TIEA partners have been made aware of the information that is included in the Notice to Produce Information and did not object, and most of the unnecessary information is not personal information and not directly related to the taxpayer under investigation, it is recommended that The Bahamas only discloses information from the EOI request as is necessary for the information holder to produce the requested information. Because this is a practice which already existed at the time of the 2013 Report and The Bahamas has recently significantly increased its EOI network by signing the Multilateral Convention, the recommendation is now included in the box immediately below and the rating of element C.3 is downgraded to Largely Compliant.

304. Other than the issue raised in the previous paragraph, no breach of the confidentiality obligations by The Bahamas Competent Authority in

respect of the exchanged information has been identified, and no concerns in this respect have been raised by peers.

305. The updated table of determinations and ratings is as follows:

| <b>Legal and Regulatory Framework</b>                                                      |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
|--------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                            | <b>Underlying factor</b>                                                                                                                                                                                                                                                                           | <b>Recommendation</b>                                                                                                                              |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b> |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| <b>Determination: The element is in place.</b>                                             |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
| <b>Practical implementation of the standard</b>                                            |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
|                                                                                            | <b>Underlying factor</b>                                                                                                                                                                                                                                                                           | <b>Recommendation</b>                                                                                                                              |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                   | The Bahamas has included information in its Notices to Produce Information which was not necessary for the information holder to produce the requested information. In more than half of the EOI requests received this happened without explicit agreement of the requesting competent authority. | The Bahamas should only disclose information from the EOI request as is necessary for the information holder to produce the requested information. |
| <b>Rating: Largely Compliant</b>                                                           |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |

### ***C.3.1. Information received: disclosure, use and safeguards and C.3.2 Confidentiality of other information***

306. All bilateral TIEAs concluded by The Bahamas as well as the Multilateral Convention meet the standards for confidentiality including the limitations on disclosure of information received, and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA.

307. As described in the 2013 Report, staff of The Bahamas Competent Authority are bound by the Official Secrets Act, which makes it an offence for public officers, either during their service or afterwards, to communicate, retain or fail to take reasonable care of information received by them (s. 2 Official Secrets Act). A person guilty of an offence under the Official Secrets Act shall be liable to imprisonment with or without hard labour for a maximum term of two years or a fine of USD 500 or to both.

308. The 2013 Report also refers to the Data Protection Act, which requires data controllers to take appropriate security measures against unauthorised access to, or alteration, disclosure or destruction of, personal data and against their accidental loss or destruction (s. 6(1)(d) Data Protection Act). Personal data is defined as “data relating to a living individual who can be identified either from the data or from the data in conjunction with other information in the possession of the data controller” (s. 2 Data Protection Act). The Bahamas considers its Competent Authority as a data controller under the Data Protection Act and compliance with that act is required when dealing with personal data, which will be the case in respect of most EOI requests. Unauthorised disclosure of personal data by the data controller, its staff or third parties may lead to a fine not exceeding USD 2 000 on summary conviction, or a fine not exceeding USD 100 000 on conviction on information (section 29(1) Data Protection Act).

309. In addition to criminal sanctions, the unauthorised disclosure of information may lead to the application of a variety of disciplinary measures, including dismissal, to public officers under the Public Service Commission Regulations (section 40). Although there is no set list of conduct or events which may lead to proceedings under these regulations, it is clear that violating any law may set such proceeding in motion.

#### *Practical measures to ensure the confidentiality of the information*

310. There are several controls in place to ensure that staff of The Bahamas Competent Authority keep information confidential. Staff hired in the public service is subject to a background check and review by the Public Service Commission. Upon taking up service, staff are required to take an oath of secrecy under the Official Secrets Act.

311. Staff hired to work at The Bahamas Competent Authority must familiarise themselves with the confidentiality obligations under the TIEAs in addition to the domestic laws. The TIEA Request Processing Training Manual contains a chapter on this and covers both legal and practical issues, such as legal obligations, file handling and how to act in cases of a potential breach of confidentiality. When staff members leave The Bahamas Competent Authority, their supervisor must complete an exit checklist to ensure, among other things, that the staff member no longer has access to confidential information.

312. Information related to EOI requests is generally processed on paper. All files are kept in locked cabinets, which are only accessible by staff who are dealing directly with the processing of EOI requests. The offices of The Bahamas Competent Authority are further protected by doors that can only be opened by The Bahamas Competent Authority staff.



313. In addition to the paper documentation, an electronic database is kept containing a record of all EOI requests received and the steps taken to respond to them. Correspondence is scanned and uploaded to designated folders. Again, only staff of The Bahamas Competent Authority have access to the database and the designated folders. Correspondence in respect of EOI requests with the requesting competent authority is sent via courier, while correspondence with information holders is hand-delivered by the messenger of the Ministry of Finance (see also section B.1.1).

### *Content of Notice to Produce Information*

314. The 2013 Report explained that The Bahamas Competent Authority provides its template summary request form to its partner upon conclusion of a TIEA, with a view to coming to an agreement on what should be included in the Notice to Produce Information sent to the perceived information holder. It was mentioned that in one case a delay occurred because it took a long time to reach agreement on the content of the summary request form. From a broader perspective, The Bahamas was recommended to monitor that they are not disclosing information to third parties which is not needed to obtain the information requested.

315. The Bahamas Competent Authority has concluded agreements with 16 of its TIEA partners which contain an agreed summary request form. When making an EOI request, the requesting competent authority uses this form to set out the details to be included in or attached to the Notice to Produce Information. Since the 2013 Report, no new agreements of this nature have been concluded, although The Bahamas indicated that discussions have been held with new TIEA partners and all of them have been made aware of the information that is included in the Notice to Produce Information and, according to The Bahamas, none of the TIEA partners has objected.

316. The Notice to Produce Information is the instrument used by The Bahamas Competent Authority to compel the production of information. This is based on section 5 of the ITC Act, which requires the Notice to Produce Information to include details of the request to which the Notice relates and the timeframe for producing the information. The Bahamas Competent Authority has discretion with respect to the details of the request reflected in the Notice to Produce Information.

317. Where no written agreement with the requesting competent authority exists, The Bahamas Competent Authority transposes the information sought by the requesting competent authority as identified in its EOI request into the Notice to Produce Documents. This is of course necessary for the information holder to produce the requested information and it is accepted that a requested competent authority may disclose information from the EOI

request so long as this is limited to that which is necessary for this purpose, as reflected in the Commentary to Article 26, paragraph 2 of the OECD Model Tax Convention:

... it is understood that the requested State can disclose the minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State.

318. Irrespective of whether an agreement is in place with the requesting competent authority, the template Notice to Produce Information includes information on (i) the relevant tax period in the requesting jurisdiction, (ii) the date the request was received, and (iii) a reference to the relevant (tax) law of the requesting jurisdiction. Although these three items may be relevant for the receiving competent authority to determine the foreseeable relevance, they would generally not be necessary for the information holder to produce the requested information and are therefore not considered part of the minimum information that may be disclosed by the requested competent authority.

319. With respect to the tax period, it is acknowledged that this period may match the period for which documents are requested and would in that case generally also be identified in the description of the information sought. The date of receipt of the EOI request and the reference to the relevant (tax) law of the requesting jurisdiction are not considered necessary for the information holder to produce the requested information, although it is noted that it does not concern taxpayer information. The reference to the relevant (tax) law of the requesting jurisdiction is also general and does not cite a specific provision. It is also noted that the requesting competent authority may have agreed that this information is included in the Notice to Produce Information where an agreement exists on this issue.

320. The template request also contains a field to indicate which person the Notice to Produce Information pertains to. Although in the past The Bahamas Competent Authority used this field to include the name of the taxpayer under investigation in the requesting jurisdiction, this practice has changed very soon after the 2013 Report and now it is used to indicate the person in The Bahamas from or about which information should be produced. This can be the same person as the taxpayer under investigation in the requesting jurisdiction but it is not identified as such.

321. Other elements of the Notice to Produce Information relate to the domestic procedures in The Bahamas and refer to the domestic legal basis (the ITC Act), the possible reimbursement of extraordinary costs (see under B.1.1) and the possible consequences of non-compliance. These elements do not come from the confidential EOI request. Finally, the Notice to Produce

Information identifies the jurisdiction which made the EOI request, which is in accordance with the 2016 ToR.

322. In conclusion, it is clear that The Bahamas includes information in its Notices to Produce Information which is not necessary for the information holder to produce the requested information. Where this is agreed with the requesting competent authority confidentiality obligations have not been breached. However, more than half of the EOI requests received come from jurisdictions with which no competent authority agreement is in place in respect of the information to be included in the Notice to Produce Information, although The Bahamas indicates that all new TIEA partners have been made aware of the contents of the Notice to Produce Information and did not object. It should also be considered that The Bahamas has signed the Multilateral Convention, expanding its network of tax information exchange partners significantly without any bilateral discussions having taken place with its new EOI partners. It is recommended that The Bahamas only discloses information from the EOI request as is necessary for the information holder to produce the requested information.

#### *Confidentiality of information in practice*

323. Other than the information included in the Notices to Produce Information, no breach by The Bahamas Competent Authority of the confidentiality obligations in respect of the exchanged information has been identified, and no concerns in this respect have been raised by peers.

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

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

#### ***C.4.1. Exceptions to requirement to provide information***

324. The 2013 Report mentioned that The Bahamas' TIEAs did not require information which is subject to legal privilege, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or which would be contrary to public policy to be exchanged. The TIEAs concluded by The Bahamas since the 2013 Report as well as the Multilateral Convention contain the same rule. This is in line with the OECD Model TIEA, and incorporated also in the ITC Act and the The Bahamas and the United States of America Tax Information Exchange Agreement Act.

325. As described in section B.1.5, there are no domestic secrecy provisions which interfere with the powers to obtain and exchange information for

tax purposes in a manner which would be inconsistent with the 2016 ToR. During the peer review period, no information holder claimed legal professional privilege or refused to provide information on the basis of any other secrecy obligation. In addition, no peer has indicated any issues in this regard.

326. The table of determinations and ratings remains as follows:

| <b>Legal and Regulatory Framework</b>                                                      |                          |                       |
|--------------------------------------------------------------------------------------------|--------------------------|-----------------------|
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of the legal and regulatory framework</b> |                          |                       |
| <b>Determination: The element is in place.</b>                                             |                          |                       |
| <b>Practical implementation of the standard</b>                                            |                          |                       |
|                                                                                            | <b>Underlying factor</b> | <b>Recommendation</b> |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                   |                          |                       |
| <b>Rating: Compliant</b>                                                                   |                          |                       |

### C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

327. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI instruments in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

328. In the 2013 Report, it was concluded that The Bahamas' response times, organisational processes and resources were adequate. During the current peer review period, response times have increased and a full response or

status update was not sent within 90 days in all cases. This is largely attributable to a sudden increase in incoming EOI requests while at the same time the human resources at The Bahamas Competent Authority dropped.

329. Notwithstanding the increase in response times, peers have indicated they are satisfied with the information received from The Bahamas as well as the communication about the status of their EOI requests. Taking all factors into consideration, the rating for element C.5 is now Largely Compliant.

330. The updated table of determinations and ratings is as follows:

| <b>Legal and Regulatory Framework</b>                                                                                                             |                                                                                                                                                                                  |                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Determination: This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.</b> |                                                                                                                                                                                  |                                                                                                                                                                                         |
| <b>Practical implementation of the standard</b>                                                                                                   |                                                                                                                                                                                  |                                                                                                                                                                                         |
|                                                                                                                                                   | <b>Underlying factor</b>                                                                                                                                                         | <b>Recommendation</b>                                                                                                                                                                   |
| <b>Deficiencies identified in the implementation of EOIR in practice</b>                                                                          | The Bahamas has not consistently sent a status update within 90 days of receipt of an EOI request where it was unable to provide a response within that timeframe.               | The Bahamas should send a status update within 90 days of receipt of an EOI request in all cases where it is unable to provide a response within that timeframe.                        |
|                                                                                                                                                   | The Bahamas experienced delays in responding to EOI requests received, which are largely attributable to a temporary reduction in human resources during the peer review period. | The Bahamas should ensure that it sends timely responses to EOI requests received by its competent authority, and monitor that it maintains at all times sufficient resources to do so. |
| <b>Rating: Largely Compliant</b>                                                                                                                  |                                                                                                                                                                                  |                                                                                                                                                                                         |

### ***C.5.1. Timeliness of responses to requests for information***

331. Over the period under review (1 October 2013 to 30 September 2016), The Bahamas received a total of 88 EOI requests for information, representing a substantial increase compared to the 48 requests received by The Bahamas in the review period of the 2013 Report. The table below summarises The Bahamas' response times in relation to the current peer review period:

### Statistics on response times

|                                                                          | Year 1 |     | Year 2 |     | Year 3 |     | Total |     |
|--------------------------------------------------------------------------|--------|-----|--------|-----|--------|-----|-------|-----|
|                                                                          | Num.   | %   | Num.   | %   | Num.   | %   | Num.  | %   |
| Total number of requests received                                        | 19     | 100 | 42     | 100 | 27     | 100 | 88    | 100 |
| Full response:                                                           |        |     |        |     |        |     |       |     |
| ≤ 90 days                                                                | 4      | 21  | 3      | 7   | 3      | 11  | 10    | 11  |
| ≤ 180 days (cumulative)                                                  | 11     | 58  | 9      | 21  | 9      | 33  | 28    | 32  |
| ≤ 1 year (cumulative)                                                    | 16     | 84  | 21     | 50  | 16     | 59  | 53    | 60  |
| > 1 year                                                                 | 2      | 11  | 18     | 43  | 1      | 4   | 21    | 24  |
| Declined for valid reasons                                               | 0      | 0   | 0      | 0   | 0      | 0   | 0     | 0   |
| Status update provided within 90 days (for responses sent after 90 days) | 13     | 87  | 26     | 67  | 14     | 58  | 53    | 68  |
| Requests withdrawn by requesting jurisdiction                            | 0      | 0   | 0      | 0   | 0      | 0   | 0     | 0   |
| Failure to obtain and provide information requested                      | 0      | 0   | 0      | 0   | 0      | 0   | 0     | 0   |
| Requests still pending at date of review                                 | 1      | 5   | 3      | 7   | 10     | 37  | 14    | 16  |

332. Compared to the previous review period (1 July 2009-30 June 2012), The Bahamas' response times have increased. For example, during the previous period, The Bahamas was able to respond to 25% of its requests within 90 days and to 75% within 180 days. Only two EOI requests (4%) received in the previous review period were pending at the date of the 2013 Report.

333. The statistics show a sudden increase in the number of incoming EOI requests in the 2<sup>nd</sup> year of the peer review period (1 October 2014-30 September 2015). This is also the time when the response times show a significant increase. The Bahamas explained that the main reason for this was the quick drop in resources at its competent authority, where the staff went from seven to two persons in the course of several months (see also under C.5.2 below). As a result, little progress was made in responding to EOI requests at that time.

334. It is important to note that in most cases where an EOI request was not fully responded to within 90 days, status updates were sent within that 90 day period, although the reduction in staff in year 2 of the peer review period had a detrimental effect on the sending of status updates also. In addition, The Bahamas reported that, in addition to the 53 status updates sent within 90 days, another 26 status updates were sent between 90 and 180 days of receipt of the request. With more than 70% of all status updates, The Bahamas Competent Authority also sent part of the requested information. This general picture is confirmed by the peer input received.

335. Apart from the drop in human resources in 2014, some delays in responding may also be explained by the time it took for the requesting competent authority to respond to some requests for clarification. As explained in section C.1.1, The Bahamas asked for clarifications in respect of approximately 30 EOI requests.

336. An issue related to seeking clarifications was raised in the 2013 Report, where The Bahamas was asked to continue to monitor the need for further clarifications to ensure that they do not cause unnecessary delays in its response times for exchanging information. This in-text recommendation was related to the fact that The Bahamas wanted to include specific details in its Notices to Produce Information and had agreed a specific format with many of its EOI partners about the form of the EOI request. The Bahamas would ask for clarifications where this format was not followed.

337. During the current peer review period, almost all clarification requests were related to the tax period or whether the EOI request related to a criminal or civil matter. These facts are necessary for The Bahamas Competent Authority to determine whether the request is covered by the TIEA. This is different from the issue raised in the 2013 Report, where the clarifications were mostly related to the fact that the EOI request was not made in a specific format. Clarification requests related to errors in the specific format of an EOI request have not been made in the current peer review period.

338. As concluded in section C.1.1, the clarification requests made in respect of EOI requests received in the current peer review period are considered appropriate. In addition, no peer has raised any issues related to requests for clarification made by The Bahamas Competent Authority.

339. Of the 14 pending EOI requests, 11 are related to the Bahamian service provider which is not able to access the requested information because it is kept by its head office in another jurisdiction, and to which the service provider has been denied access. The Bahamas Competent Authority advised that it has forwarded the information that was available in these cases to the requesting jurisdiction(s). This is a practice generally followed by The Bahamas, evidenced by the fact, as mentioned above, that with more than 70% of the status updates partial information is sent.

340. Input from peers indicates that they are generally satisfied or very satisfied with the information received. Peers also mention that some cases are still pending but that in the majority of cases responded to after 90 days, a status update, often with partial information, was sent. Nevertheless, improvements could be made in the response times by The Bahamas to EOI requests received, as status updates were not sent within 90 days in all cases where The Bahamas could not respond within that timeframe. It is recommended that The Bahamas ensures that it sends a status update within 90 days of receipt of an EOI request in all cases where it is unable to provide a response within that timeframe.

### *C.5.2. Organisational processes and resources*

341. The organisational processes for exchanging information in The Bahamas have remained almost identical to the ones described in the 2013 Report (paragraphs 398-403), which were considered adequate. Improvements have been made in describing the internal processes in the TIEA Request Processing Manual, to which more detail has been added since the 2013 Report. This manual also contains templates for letters to information holders and EOI partners covering different scenarios. The manual is an important resource and ensures continuity for the future.

#### *Resources and training*

342. Under The Bahamas' TIEAs and the ITC Act, the Minister of Finance or his duly authorised representative is the competent authority. The minister has delegated this role to the Financial Secretary, who signs all official correspondence coming from The Bahamas Competent Authority. The day-to-day operations are the responsibility of the Legal Unit at the Ministry of Finance.

343. The 2013 Report stated that the Legal Unit had seven full-time staff. This was considered sufficient to handle the increasing number of incoming EOI requests. In addition to handling EOI requests, the Legal Unit is responsible for all matters related to international tax policy and co-operation as well as legal issues for the Ministry of Finance.

344. In 2014, during the current peer review period, the number of staff at the Legal Unit dropped to only two. This was right at the time where The Bahamas experienced an increase of incoming EOI requests. As a result, significant delays occurred in responding to these requests.

345. Since then, the number of staff has gone back up. The Legal Unit now consists of five full-time staff (one Legal Officer (in charge), two analysts, one technical/administrative officer and one clerical officer). In addition, a very experienced consultant provides advice on a regular basis. This seems adequate to handle the number of incoming EOI requests at The Bahamas Competent Authority. The Bahamas indicated that it is considering increasing the staff further to handle the potential increase in EOI requests as a result of the implementation of US FATCA and the AEOI Standard. Nevertheless, it is recommended that The Bahamas ensures that it sends timely responses to EOI requests received by its competent authority, and monitors that it maintains sufficient human resources to do so.

346. Training is mostly given “on the job” by the experienced staff, and is based on the TIEA Request Processing Manual. The Bahamas has also sent staff to trainings organised by the Global Forum.



*Incoming requests*

347. As already mentioned, the organisational processes for handling incoming EOI requests have not changed since the 2013 Report. These processes are still considered adequate.

348. Internal monitoring takes place by maintaining an electronic database which shows actions taken as well as pending actions. The analysts check the database on a weekly basis at a minimum to see which actions are still pending, and the Legal Officer checks the database from time to time as well. In addition, all incoming EOI requests and correspondence to other competent authorities are reviewed and validated by the Legal Officer before further action is taken.

*Outgoing requests*

349. The 2016 ToR includes an additional requirement to ensure the quality of requests made by assessed jurisdictions. The Bahamas does not impose direct taxes and has not sent any EOI requests.

***C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI***

350. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI.



## **Annex 1: List of in-text recommendations**

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. A list of such recommendations is reproduced below for convenience.

- Section A.1.1 Liquidated IBCs – “With respect to IBCs, it is recommended that The Bahamas monitors that legal ownership information of liquidated IBCs is effectively kept for a minimum period of five years in all cases.”
- Sections A.1.1 and A.1.5 Simplified due diligence in respect of investment funds – “In order to increase the reliability of this information, it is recommended that The Bahamas clarifies that simplified due diligence should only be applied in respect of investment funds where appropriate.”
- Sections A.1.1 and A.3.1 Trust protectors – “It is recommended that The Bahamas introduces a legal requirement for protectors of trusts with a Bahamian trustee or otherwise administered in The Bahamas to be identified in all cases.”
- Section A.1.4 Trust business – “It is recommended that The Bahamas monitors its business community, in particular the executive entities, to ensure all persons carrying on trust business in The Bahamas are under supervision.”
- Section A.2 Retention period – “It is recommended that The Bahamas clarifies that the minimum period of five years applies from the end of the period to which the information relates.”
- Section A.2 Entities and arrangements ceasing to exist – “It is recommended that The Bahamas monitors that accounting information of entities and arrangements that have been liquidated, otherwise

dissolved or struck off the register is effectively kept for a minimum period of five years in all cases.”

- Section B.1.1 Extraordinary costs – “It is nevertheless recommended that The Bahamas monitor that the clause regarding extraordinary costs in the template Notice to Produce Information does not cause undue delays in obtaining information, and consider clarifying the practical implementation of the clause or remove it from the template.”

## Annex 2: List of Jurisdiction’s EOI mechanisms

### 1. Bilateral international agreements for the exchange of information

|    | EOI partner                  | Type of agreement | Date signed      | Date entered into force |
|----|------------------------------|-------------------|------------------|-------------------------|
| 1  | Argentina                    | TIEA              | 3 December 2009  | 27 July 2012            |
| 2  | Aruba                        | TIEA              | 8 August 2011    | 1 September 2012        |
| 3  | Australia                    | TIEA              | 30 March 2010    | 11 January 2011         |
| 4  | Belgium                      | TIEA              | 7 December 2009  | 11 February 2014        |
| 5  | Canada                       | TIEA              | 17 June 2010     | 16 November 2011        |
| 6  | China (People’s Republic of) | TIEA              | 1 December 2009  | 28 August 2010          |
| 7  | Czech Republic               | TIEA              | 6 March 2014     | 2 April 2015            |
| 8  | Denmark                      | TIEA              | 10 March 2010    | 9 September 2010        |
| 9  | Faroe Islands                | TIEA              | 10 March 2010    | 24 October 2010         |
| 10 | Finland                      | TIEA              | 10 March 2010    | 9 September 2010        |
| 11 | France                       | TIEA              | 7 December 2009  | 13 September 2010       |
| 12 | Georgia                      | TIEA              | 4 November 2016  | 1 September 2017        |
| 13 | Germany                      | TIEA              | 9 April 2010     | 12 December 2011        |
| 14 | Greenland                    | TIEA              | 10 March 2010    | 21 June 2012            |
| 15 | Guernsey                     | TIEA              | 8 August 2011    | 28 March 2012           |
| 16 | Iceland                      | TIEA              | 10 March 2010    | 15 October 2012         |
| 17 | India                        | TIEA              | 11 February 2011 | 1 March 2011            |
| 18 | Indonesia                    | TIEA              | 25 June 2015     | Not in force            |
| 19 | Ireland                      | TIEA              | 12 January 2015  | 19 February 2016        |
| 20 | Japan                        | TIEA              | 27 January 2011  | 25 August 2011          |
| 21 | Korea                        | TIEA              | 4 August 2011    | 15 July 2013            |

|    |                |      |                   |                   |
|----|----------------|------|-------------------|-------------------|
| 22 | Malta          | TIEA | 18 January 2012   | 30 October 2012   |
| 23 | Mexico         | TIEA | 23 February 2010  | 30 December 2010  |
| 24 | Monaco         | TIEA | 18 September 2009 | 18 February 2011  |
| 25 | Netherlands    | TIEA | 3 December 2009   | 1 December 2010   |
| 26 | New Zealand    | TIEA | 18 November 2009  | 14 January 2017   |
| 27 | Norway         | TIEA | 10 March 2010     | 9 September 2010  |
| 28 | Poland         | TIEA | 28 June 2013      | 29 September 2014 |
| 29 | San Marino     | TIEA | 24 September 2009 | 10 November 2011  |
| 30 | South Africa   | TIEA | 14 September 2011 | 25 May 2012       |
| 31 | Spain          | TIEA | 11 March 2010     | 17 August 2011    |
| 32 | Sweden         | TIEA | 10 March 2010     | 24 December 2010  |
| 33 | United Kingdom | TIEA | 29 October 2009   | 7 January 2011    |
| 34 | United States  | TIEA | 25 January 2002   | 31 December 2003  |

## 2. Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Multilateral Convention).<sup>6</sup> The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Multilateral Convention was opened for signature on 1 June 2011.

The Bahamas signed the Multilateral Convention on 15 December 2017. It has not yet deposited its instrument of ratification so the Convention has not yet entered into force.

6. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Currently, the amended Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People’s Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curacao (extension by the Netherlands), Cyprus,<sup>7</sup> Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, the Netherlands, New Zealand, Nigeria, Niue, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the following are the jurisdictions that have signed the amended Convention, but where it is not yet in force: Bahrain, Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Jamaica, Kenya, Kuwait, Morocco, Peru, Philippines, Qatar, Turkey, the United Arab Emirates and the United States (the 1988 Convention in force on 1 April 1995, the amending Protocol signed on 27 April 2010).

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7. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

### **Annex 3: Methodology for the review**

The reviews are conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The current EOIR report is based on the new terms of reference and methodology adopted by the Global Forum in 2015 (the 2016 ToR and 2016 Methodology). The assessment is based on (i) The Bahamas' EOI mechanisms in force at the time of the review, (ii) the laws and regulations in force or effective as of 8 January 2018, (iii) The Bahamas' EOIR practice in respect of requests made and received during the three year period from 1 October 2013-30 September 2016, (iv) The Bahamas' responses to the EOIR questionnaire, (v) information supplied by partner jurisdictions, (vi) independent research by the assessment team, and (vii) information provided to the assessment team prior, during and after the on-site visit, which took place from 4 to 6 July 2017 in Nassau, The Bahamas.

#### **Laws, regulations and other materials consulted**

##### ***International tax co-operation***

International Tax Cooperation Act, 2010

International Tax Cooperation (Amendment) Act, 2011

International Tax Cooperation (Amendment) Act, 2013

The Bahamas and the United States of America Tax Information Exchange Agreement Act

The Bahamas and the United States of America Tax Information Exchange Agreement (Amendment) Act, 2010

The Bahamas and the United States of America Tax Information Exchange Agreement (Amendment) Act. 2011

The Bahamas and the United States of America Tax Information Exchange Agreement Regulations



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The Bahamas and the United States of America Tax Information Exchange Agreement (Amendment) Regulations, 2010

***Companies***

Companies Act

Companies (Amendment) Act, 2012

Companies (Amendment) Act, 2013

Companies (Amendment) Act, 2014

Companies Liquidation Rules, 2012

Companies (Non-Profit Organisations) Regulations, 2014

International Business Companies Act

International Business Companies (Amendment) Act, 2010

International Business Companies (Amendment) Act, 2011

International Business Companies (Winding up Amendment) Act, 2011

International Business Companies (Amendment) Act, 2013

International Business Companies (Amendment) Act, 2014

International Business Companies (Accounting Records) Order, 2013  
[revoked]

International Business Companies (Accounting Records) Order, 2016

Segregated Account Companies (Amendment) Act

Segregated Account Companies (Amendment) Act, 2011

Segregated Account Companies (Amendment) Act, 2013

***Partnerships***

Exempted Limited Partnership Act, 1995

Exempted Limited Partnership (Amendment) Act, 2011

Exempted Limited Partnership (Amendment) Act, 2014

Exempted Limited Partnership Regulations, 1995

Partnership Act

Partnership (Amendment) Act, 2013

Partnership Limited Liability Act  
Partnership Limited Liability (Amendment) Act, 2011

***Trusts***

Purpose Trusts Act  
Purpose Trusts (Amendment) Act, 2011  
Purpose Trusts (Amendment) (No. 2) Act, 2011  
Trustee Act  
Trustee (Amendment) Act, 2011  
Trustee (Amendment) Act, 2013  
Trustee (Amendment) Act, 2016

***Foundations***

Foundations Act  
Foundations (Amendment) Act, 2011  
Foundations (Winding up) Rules

***Other relevant entities and arrangements***

Executive Entities Act, 2011  
Executive Entities Regulations, 2012  
Investment Condominium Act, 2014

***AML legislation and materials***

Financial Intelligence (Transactions Reporting) Regulations, 2001  
Financial Transactions Reporting Act  
Financial Transactions Reporting (Amendment) Act, 2014 [Act No. 27 of 2014]  
Financial Transactions Reporting (Amendment) Act, 2014 [Act No. 42 of 2014]  
Financial Transactions Reporting (Amendment) Act, 2015  
Financial Transactions Reporting Regulations

Anti-Money Laundering and Anti-Terrorism Financing – Handbook and Code of Practice for Lawyers, issued by the Compliance Commission

Guidelines for Supervised Financial Institutions on the Prevention of Money Laundering and Countering the Financing of Terrorism, issued by the Central Bank of The Bahamas

Guidelines for Licensees/Registrants on the Prevention of Money Laundering and Countering the Financing of Terrorism, issued by the Securities Commission of The Bahamas

### ***Regulatory laws***

Banks and Trust Companies Regulation Act

Banks and Trust Companies Regulation (Amendment) Act, 2010

Banks and Trust Companies Regulation (Amendment) Act, 2014

Banks and Trust Companies Regulation (Amendment) Act, 2015 [Act No. 6 of 2015]

Banks and Trust Companies Regulation (Amendment) Act, 2015 [Act No. 24 of 2015]

Banks and Trust Companies (Private Trust Companies) Regulations

Banks and Trust Companies (Private Trust Companies) (Amendment) Regulations, 2012

Banks and Trust Companies (Private Trust Companies) (Amendment) Regulations, 2014

Banks and Trust Companies (Administrative Monetary Penalties) Regulations, 2016

Exchange Control Regulations

Financial and Corporate Service Providers Act

Financial and Corporate Service Providers (General) Regulations, 2001

Investment Funds Act

Investment Funds (Amendment) Act, 2010

Investment Funds (Amendment) Act, 2011

Investment Funds (Amendment) Act, 2014

Securities Industry Act, 2010

Securities Industry (Amendment) Act, 2016

### *Miscellaneous legislation*

Business Licence Act, 2010  
Business Licence (Amendment) Act, 2011  
Business Licence (Amendment) Act, 2013  
Business Licence (Amendment) (No. 2) Act, 2013  
Business Licence (Amendment) Act, 2014  
Business Licence (Amendment) Act, 2015 [Act No. 7 of 2015]  
Business Licence (Amendment) Act, 2015 [Act No. 23 of 2015]  
Business Licence (Amendment) Act, 2017  
Business Licence Regulations, 2010  
Business Licence (Amendment) Regulations, 2015  
Data Protection (Privacy of Personal Information) Act  
Official Secrets Act, 1911 as amended by Official Secrets Act, 1920 (relevant provisions)  
The Public Service Commission Regulations, 1971

### **Authorities interviewed during on-site visit**

Ministry of Finance – Competent Authority  
Department of Inland Revenue – Business Licence Department  
Registrar General’s Department  
Securities Commission of The Bahamas  
Central Bank of The Bahamas  
Compliance Commission  
Association of International Banks and Trust Companies  
Bahamas Financial Services Board

## Current and previous reviews

This report is the third review of The Bahamas conducted by the Global Forum. The Bahamas previously underwent a full EOIR review through two assessments during the first round of reviews: the 2011 Phase 1 Report and the 2013 Phase 2 Report (2013 Report).

The Bahamas' assessments during the first round of reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews (2010 Methodology). The 2013 Report was initially published without a rating of the individual essential elements or any overall rating, as the Global Forum waited until a representative subset of reviews from across a range of Global Forum members had been completed in 2013 to assign and publish ratings for each of those reviews. The Bahamas' 2013 Report was part of this group of reports. Information on the previous reviews is listed in the following table.

| Review                                              | Assessment team                                                                                                                                                                                    | Period under review                 | Legal framework as of (date) | Date of adoption by Global Forum |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------|----------------------------------|
| <b>Phase 1 report</b>                               | Mr. Philippe Cahanin, Tax Administration (France); Mr. Malcolm Campbell, Comptroller and Competent Authority (Jersey); and Ms. Caroline Malcolm (Global Forum Secretariat)                         | N/A                                 | November 2010                | April 2011                       |
| <b>Phase 2 report</b>                               | Mr. Thierry Glajean, Tax Administration (France); Mr. Andrew Cousins, Deputy Comptroller and Competent Authority (Jersey); and Ms. Mary O'Leary and Ms. Renata Teixeira (Global Forum Secretariat) | 1 July 2009 to 30 June 2012         | May 2013                     | November 2013                    |
| <b>EOIR report, 2<sup>nd</sup> round of reviews</b> | Mr. Rob Gray, Director of International Tax Policy (Guernsey); Mr. Jaime Mas, Ministry of Finance (Spain); and Mr. Mikkel Thunnissen (Global Forum Secretariat)                                    | 1 October 2013 to 30 September 2016 | 8 January 2018               | March 2018                       |

## **Annex 4: Jurisdiction’s response to the review report<sup>8</sup>**

The Bahamas is a member of the Global Forum and Peer Review Group and is committed to the implementation of the accepted international standards for the effective exchange of information.

The Bahamas would like to thank the assessment team for their efforts and hard work as well as their technical and constructive guidance.

The Bahamas notes the views and observations made by the Peer Review Group. Further, The Bahamas is aware of the recommendations made by the Assessors in the Report and intends to address the concerns reflected therein.

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

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information  
on Request THE BAHAMAS 2018 (Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of the Bahamas.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264291805-en>.

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