

GLOBAL FORUM ON  
**TRANSPARENCY AND EXCHANGE OF  
INFORMATION FOR TAX PURPOSES**

Peer Review Report on the Exchange of Information  
on Request

**KUWAIT**

2022 (Second Round, Phase 1)



# **Global Forum on Transparency and Exchange of Information for Tax Purposes: Kuwait 2022 (Second Round, Phase 1)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes on 10 October 2022 and adopted by the Global Forum members on 7 November 2022. The report was prepared for publication by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

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Note by the Republic of Türkiye

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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye 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 Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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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 160 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

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

<b>2016 Assessment Criteria Note</b>	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015, as amended on 18 November 2021
<b>2016 Terms of Reference (ToR)</b>	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015
<b>AML</b>	Anti-Money Laundering
<b>BKSC</b>	Boursa Kuwait Securities Company
<b>CBK</b>	Central Bank of Kuwait
<b>CDD</b>	Customer Due Diligence
<b>CITC</b>	Combatting Information Technology Crimes
<b>CMA</b>	Capital Markets Authority
<b>CL</b>	Company Law
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions, as established in the Anti-Money Laundering and Combating the Financing of Terrorism Law of Kuwait (Law 106/2013)
<b>DTC</b>	Double Taxation Convention
<b>EOI</b>	Exchange of information
<b>EOIR</b>	Exchange of information on Request
<b>EUR</b>	Euro
<b>FATF</b>	Financial Action Task Force
<b>GCC</b>	Co-operation Council for the Arab States of the Gulf or Gulf Co-operation Council
<b>GPC</b>	General Partnership Company

<b>Global Forum</b>	Global Forum on Transparency and Exchange of Information for Tax Purposes
<b>ITL</b>	Income Tax Law
<b>ITR</b>	Income Tax Regulation
<b>IRU</b>	Insurance Regulatory Unit
<b>JVC</b>	Joint Venture Company
<b>KAPF</b>	Kuwait Awqaf Public Foundation
<b>KCC</b>	Kuwait Clearing Company
<b>KDIPA</b>	Kuwait Direct Investment Promotion Authority
<b>KFIU</b>	Kuwait Financial Intelligence Unit
<b>KTA</b>	Kuwait Tax Administration
<b>KWD</b>	Kuwaiti Dinar
<b>LLC</b>	Limited Liability Company
<b>LPC</b>	Limited Partnership Company
<b>MCI</b>	Ministry of Commerce and Industry
<b>MENAFATF</b>	Middle East and North Africa Financial Action Task Force
<b>MOF</b>	Ministry of Finance
<b>Multilateral Convention</b>	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital
<b>PLS</b>	Partnership Limited by Shares
<b>PSC</b>	Public Shareholding Company
<b>PRSC</b>	Private Shareholding Company

## Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in Kuwait on the second round of reviews conducted by the Global Forum. The present report assesses the legal and regulatory framework in force as at 30 July 2022 against the 2016 Terms of Reference (Phase 1).

2. Due to its limited practical experience with exchange of information on request (EOIR), Kuwait is subjected to a phased review. This Phase 1 report analyses the legal implementation of the EOIR standard by Kuwait, while a Phase 2 review assessing the implementation in practice of the EOIR standard with an onsite visit will take place at a later time.

3. Kuwait joined the Global Forum in 2016. Hence, the current report is the first assessment of the legal and regulatory framework for transparency and exchange of information on request in Kuwait. This report concludes that Kuwait does not have in place a legal and regulatory framework that ensures the availability of, access to and exchange of relevant information for tax purposes in line with the EOIR standard.

### Summary table of determinations on the legal and regulatory framework of Kuwait

	Element	Determination
A.1	Availability of ownership and identity information	Needs improvement
A.2	Availability of accounting information	Needs improvement
A.3	Availability of banking information	Needs improvement
B.1	Access to information	Not in place
B.2	Rights and safeguards	In place
C.1	EOIR mechanisms	Not in place
C.2	Network of EOI mechanisms	Not in place
C.3	Confidentiality	Not in place
C.4	Rights and safeguards	Needs improvement
C.5	Quality and timeliness of responses	Not applicable

*Note:* The three-scale determinations for the legal and regulatory framework are In place, In place but certain aspects of the legal implementation of the element need improvement (needs improvement), and Not in place.

## Transparency framework

4. While the Company Law (CL), tax legislation and Anti-Money Laundering (AML) legislation establish obligations towards the availability of legal and beneficial ownership, substantial gaps prevent information from being available in all cases.

5. Shareholder companies are required to register in the Commercial Registry of the Ministry of Commerce and Industry (MCI) upon incorporation, while also holding a shareholders register with the Kuwait Clearing Company (KCC). The Company Law requires that changes to the legal ownership of shareholder companies be amended in the shareholder registry.

6. Kuwait relies on its AML legislation to avail of beneficial ownership information. However, gaps in the legal framework prevent the identification of the beneficial owner(s) of legal persons and legal arrangements in all cases.

7. The availability of accounting information depends on Kuwait's tax legislation, Audit Profession Law and Company Law, which place the necessary requirements on legal persons and legal arrangements to maintain reliable accounting records with underlying documentation. Legislation on specific sectors of the economy impose additional accounting records obligations. However, a significant gap is the lack of requirement for *waqfs* to maintain accounting records available in all cases.

8. Although banking information is generally available, the AML legislation does not provide for identification of beneficial owners of bank account holders in Kuwait in line with the standard. In addition, such information might not be up to date for all customers.

## Exchange of information on request

9. Since 2018, Kuwait has received six requests for information and sent one request. Due to this limited experience, the review of Kuwait takes place in two phases. The assessment of EOI in practice is not covered by this report and will be subject to a future Phase 2 review. This Phase 1 review nonetheless assesses whether Kuwait has in place the EOI mechanisms and the necessary powers to access information requested by peers.

10. Kuwait has an exchange of information instrument with 162 partners, including 79 double taxation conventions (DTCs) and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

11. Kuwait has significant deficiencies in its EOI mechanisms that prevent it from effectively exchanging information in line with the EOIR

standard. Many DTCs and protocols are not in line with the standard and some are not currently in force.

12. Most importantly, the legislation does not expressly provide for access powers for EOIR purposes. The Competent Authority may use its domestic access powers for the collection of information. However, these domestic access powers are limited by a domestic tax interest and in case the information is held by persons subject to bank or professional secrecy.

## Key recommendations

13. The key recommendations in this report relate to several gaps identified regarding the availability of information on legal ownership, accounting records and beneficial ownership (elements A.1, A.2 and A.3), access to information (element B.1) and the effectiveness of Kuwait's network of EOI mechanisms (elements C.1, C.2, C.3 and C.4).

14. Substantial gaps in the legal framework prevent Kuwait from ensuring the availability of legal and beneficial ownership and identity information in respect of legal persons and legal arrangements in line with the standard. The framework does not require relevant legal entities and arrangements to engage with AML-obliged persons, while they are the only source of beneficial ownership information. As a result, information on beneficial owners for all relevant legal entities and arrangements in Kuwait may not be available in line with the standard in all cases.

15. Regarding elements A.1 and A.3 in particular, the AML framework presents a number of issues and is not in line with the EOIR standard. It does not establish a clear methodology for the identification of beneficial owners and sets an ineffective control threshold of 50% for legal persons. In addition, regarding element A.1, there is no specified frequency for updating beneficial ownership information in respect of customer due diligence measures, except for banks and exchange companies.

16. In light of the above, Kuwait is recommended to address deficiencies in respect of the coverage of the beneficial ownership requirements for relevant legal entities and arrangements, and the definitions, method and frequency update regarding the identification of their beneficial owners, to ensure compliance with the standard. Kuwait must also address specific recommendations on the identification of all relevant persons related to *waqfs*, owners of foreign companies and partnerships having a sufficient nexus with Kuwait, and members or beneficial owners of Joint Venture Companies.

17. While accounting information is generally available in line with the standard, accounting information and underlying documentation for *waqfs* is

not available in all cases. Kuwait is recommended to ensure that accounting information and underlying documentation is available and within the possession or control of a person in Kuwait for a minimum period of five years.

18. Kuwait has no legislation providing access powers for EOI purposes. Access powers in Kuwait are limited due to the combination of the requirement for having a domestic tax interest in the information being requested and the restricted scope of the Kuwaiti tax system. This prevents the competent authority from accessing information on natural persons and exempt incorporated bodies. In addition, Kuwaiti tax authorities do not have access to information held by persons subject to bank secrecy and do not have enforcement penalties available to ensure access to information for EOI purposes. Finally, the scope of the professional secrecy for lawyers, accountants and other legal professions in Kuwait is unclear and could impede access to information. In light of these deficiencies, Kuwait is recommended to ensure that the competent authorities have access to information in line with the standard.

19. The report also presents recommendations to ensure the effectiveness of Kuwait's network of EOI mechanisms. Despite being a signatory to the Multilateral Convention as of December 2018, Kuwait has 17 DTCs that are not in line with the standard. In addition, Kuwait is currently party to three DTCs and three signed amending protocols that are currently not in force.

20. The access powers for the exchange of information under international agreements is not explicitly provided through Kuwait's legal and regulatory framework, particularly when there is no domestic tax interest in the requested information or the information is held by persons subject to bank or professional secrecy. Thus, it is uncertain that Kuwait can access and exchange information in accordance with the standard and its international agreements. Kuwait is recommended to address these deficiencies to ensure it can exchange information with all its partners in line with the standard.

21. Finally, Kuwait's legal and regulatory framework does not provide for confidentiality provisions consistent with the standard, possibly resulting in information being disclosed to persons not authorised by EOI agreements. In addition, although the Income Tax Law (ITL) imposes monetary sanctions on the unauthorised disclosure of confidential information, the sanction is not explicitly extended to exchanged information. The associated quantum of monetary sanctions may not be dissuasive. Kuwait is recommended to address these deficiencies to ensure confidentiality is ensured in line with the standard.



## Next steps

22. This report only assesses Kuwait's legal and regulatory framework for transparency and exchange of information for tax purposes. Kuwait receives an “in place” determination for element B.2, an “in place but needs improvement” determination for elements A.1, A.2, A.3 and C.4, and a “not in place” determination for elements B.1, C.1, C.2 and C.3. The rating for each element and the overall rating will be issued at the conclusion of the Phase 2 review.

23. Kuwait is not considered to have in place the elements that are crucial to effectively comply with the EOIR and Transparency standard. Kuwait is expected to act on the recommendations provided in the report to achieve an improved legal and regulatory framework. The launch of the Phase 2 review will be subject to the implementation of recommendations and improvement of the framework.

24. This report was approved at the Peer Review Group of the Global Forum on 10 October 2022 and was adopted by the Global Forum on 7 November 2022. A follow-up report on the measures taken by Kuwait to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023, and thereafter annually in accordance with the procedure set out under the Methodology for peer reviews and non-member reviews.

25. In case the Peer Review Group concludes – based on the follow-up reports provided by Kuwait over a two-year period – that the legal and regulatory framework of the jurisdiction does not allow for effective exchange of information, Kuwait may be prevented from moving to a Phase 2 review. As a result, Kuwait would be assigned an overall rating of Non-Compliant.



## Summary of determinations, ratings and recommendations

Determinations	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> )		
<b>The legal and regulatory framework is in place but needs improvement</b>	Kuwait has no requirement to keep and update information on the legal ownership of foreign companies and on identity information of foreign partnerships having sufficient nexus with Kuwait.	Kuwait should ensure that legal ownership information on foreign companies and identity information on foreign partnerships having sufficient nexus with Kuwait is available in line with the standard.
	Kuwait has no legislation regulating the reinstatement procedure for dissolved bodies. While Kuwait has indicated that the procedure is regulated by executive regulations to the Company Law, no legal provisions were provided by Kuwait in this regard. The lack of a time limit for the reinstatement of dissolved bodies may lead to the unavailability of legal ownership records.	Kuwait should ensure that legal ownership information remains available after the reinstatement of dissolved bodies, in line with the standard.

Determinations	Factors underlying recommendations	Recommendations
	<p>The anti-money laundering legislation is the only source of beneficial ownership information in Kuwait. There is no requirement for all relevant legal entities and arrangements in Kuwait to engage with an AML-obliged person. Whilst in practice the vast majority of companies, partnerships, foreign trusts and <i>waqfs</i> will come in contact with AML-obliged persons in Kuwait, there is no legal requirement to ensure that beneficial ownership information is available in all cases. In addition, there is no specified frequency for updating beneficial ownership information in respect of customer due diligence measures, except for banks and exchange companies. This could lead to situations where the available beneficial ownership information is not up to date.</p>	<p>Kuwait is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard.</p>
	<p>Although the anti-money laundering framework contains a general definition of beneficial owner in line with the standard, there is no regulatory guidance on how to identify the beneficial owners for domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements and <i>waqfs</i>. In addition, a 50% control threshold is established for legal persons. As a result, information on beneficial owners for all relevant legal entities and arrangements in Kuwait may not be available in line with the standard in all cases.</p>	<p>Kuwait should ensure that the methods of identification of beneficial owners of relevant legal entities and arrangements secure that adequate, accurate and up-to-date beneficial ownership information is available in all cases.</p>
	<p>Kuwait has no requirement for the disclosure of nominee status. There are no requirements under the Company Law in relation to companies having nominee shareholdings in their ownership structure, to disclose the nominee status of the shareholders and identity information of persons whom the nominees represent (the nominators) to the company or the Commercial Registry. Under the anti-money laundering framework, only professional nominees and reporting institutions have an obligation to conduct CDD on their customers.</p>	<p>Kuwait is recommended to ensure that accurate identity information on the nominators and their beneficial owners is available where nominees act as the legal owners on behalf of any other persons.</p>

Determinations	Factors underlying recommendations	Recommendations
	Kuwait has no legislation requiring the identification of all relevant persons related to a waqf.	Kuwait should ensure that identity ownership information on waqfs is available in line with the standard.
	Kuwait has no requirement for the identification of members and beneficial owners of Joint Venture Companies.	Kuwait should ensure that identity and beneficial ownership information on all Kuwaiti partnerships is available in line with the standard.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The legal and regulatory framework is in place but needs improvement</b>	Kuwait does not require <i>waqfs</i> to maintain accounting records and underlying documentation that allow for the preparation of financial statements in all cases. Although annual financial statements are required when the Kuwait Awqaf Public Foundation is a trustee or co-trustee of a <i>waqf</i> , no similar obligation is in place for <i>waqfs</i> under a distinct trusteeship structure.	Kuwait should ensure that accounting information records and underlying documentation of <i>waqfs</i> are available and within the possession or control of a person in Kuwait for a minimum period of five years.
	The legal framework of Kuwait does not explicitly establish an obligation for underlying documentation of accounting records to be maintained by legal entities. While the Audit Profession Law requires auditors to maintain the accounting records of clients, there is no similar explicit obligation in relation to underlying documentation.	Kuwait should clearly establish a requirement for underlying accounting documentation to be available for a minimum five-year period in line with the standard.

Determinations	Factors underlying recommendations	Recommendations
	Kuwait has no legislation regulating the reinstatement procedure for dissolved bodies. While Kuwait has indicated that the procedure is regulated by executive regulations to the Company Law, no legal provisions were provided by Kuwait in this regard. The lack of a time limit for the reinstatement of dissolved bodies may lead to the unavailability of accounting records.	Kuwait should ensure that accounting records remain available after the reinstatement of dissolved bodies, in line with the standard.
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 but needs improvement</b>	Although the anti-money laundering framework provides for the identification of beneficial owners of bank account holders in Kuwait and a general definition of beneficial owner in line with the standard, the absence of a regulatory guidance to identify the beneficial owners for domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements, foreign foundations and <i>waqfs</i> in the regulations, coupled with a 50% control threshold established for legal persons means that the information on beneficial owners of bank accounts may not be available in line with the standard in all cases.	Kuwait should ensure that the methods of identification of beneficial owners of bank accounts are in line with the standard; that beneficial ownership information is available for bank accounts held in Kuwait by domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements, foreign foundations and <i>waqfs</i> .
	The Company Law does not provide details on the records that must be kept upon the liquidation of a company. In case a bank ceases to exist, it is uncertain that CDD information collected by a bank on its clients is required to be retained.	Kuwait should ensure the availability of banking information when a bank ceases to exist or to operate in Kuwait for at least five years.

Determinations	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The legal and regulatory framework is not in place</b>	There is no express access power legislation for EOI purposes. Although the Income Tax Law authorises the tax administration to obtain information that forms the basis of a tax obligation in Kuwait, this power does not apply when the information holder is another public authority or is not a Kuwaiti taxpayer, thus excluding all natural persons and legal entities fully owned by nationals of Kuwait and Gulf Co-operation Council countries. In addition, absent a clear obligation to provide information for EOIR purposes, it is unlikely that AML-obliged persons would disclose information covered by confidentiality obligations under the AML legislation as they would be subject to sanctions.	Kuwait should ensure that the competent authority has the power to obtain and provide information for EOI purposes from any person within their territorial jurisdiction who is in possession or control of such information.
	Kuwaiti tax authorities do not have access to information held by persons subject to bank secrecy.	Kuwait should ensure the competent authority has the power to obtain and exchange banking information.
	The lack of a clear procedure or expected timeline on the involvement of the Attorney General for the exchange of information on criminal tax matters may result in delays or restrictions to effective exchange of information.	Kuwait should consider clarifying the procedural rules concerning exchange of information on criminal tax matters to avoid any delay or restriction to the effective exchange of information.

Determinations	Factors underlying recommendations	Recommendations
	There is no penalty available to ensure access to information for exchange purposes likely to be requested under exchange of information agreements.	Kuwait should ensure its access powers are supported by adequate penalties for failure to provide information necessary to comply with its EOI obligations.
	The scope of professional secrecy for lawyers, accountants and other legal professions in Kuwait is unclear and could impede access to information.	Kuwait should ensure that the scope of professional secrecy is in line with the international standard.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The legal and regulatory framework is in place</b>		
Exchange of information mechanisms should provide for effective exchange of information ( <i>ToR C.1</i> )		
<b>The legal and regulatory framework is not in place</b>	Kuwait competent authority's access powers and enforcement measures for exchange of information purposes are not explicitly provided by law especially in cases where there is no domestic tax interest in the requested information and in case the information is held by persons subject to bank or professional secrecy. In addition, the required involvement of the Attorney General for the exchange of information in criminal tax matters may restrict or cause significant delays in the competent authority's response capacity.	Kuwait should ensure it can access and exchange information for civil and criminal tax purposes in accordance with the standard, regardless of a domestic tax interest or secrecy provisions.



Determinations	Factors underlying recommendations	Recommendations
	While Kuwait is a signatory to the Multilateral Convention as of 1 December 2018, 17 DTCs are not in line with the EOIR standard and not otherwise covered by the Multilateral Convention.	Kuwait should ensure that it can exchange information in line with the EOIR standard with all its EOI partners.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The legal and regulatory framework is not in place</b>	Kuwait, due to its domestic law limitations, including confidentiality of bank and professional secrecy, and a domestic tax interest requirement, cannot exchange information with all its partners in accordance with the international standard under any of its agreements.	Kuwait should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with all its relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The legal and regulatory framework is not in place</b>	Confidentiality provisions in Kuwait's domestic law are not consistent with the standard as information received may be disclosed to persons not authorised by the EOI agreements.	Kuwait should ensure that disclosure of information received pursuant to its agreements is consistent with the standard.
	Although the Income Tax Law imposes monetary sanctions on the unauthorised disclosure of confidential information, the sanction is not explicitly extended to disclosure of exchanged information. In addition, the quantum of monetary sanctions may not be dissuasive.	Kuwait should ensure that adequate sanctions apply to the unauthorised disclosure of confidential information received under an EOI agreement.

Determinations	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The legal and regulatory framework is in place but needs improvement</b>	There are some uncertainties as to whether professional secrecy provisions in Kuwait's domestic laws would impede the effective exchange of information under its international agreements.	Kuwait should ensure that the extent of professional secrecy in its domestic legal framework does not impede the exchange of information under its EOI agreements.
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>	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

## Overview of Kuwait

26. This overview provides some basic information about Kuwait that serves as context for understanding the analysis in the main body of the report. Kuwait is a country on the Persian Gulf with a population of over 4.3 million. Kuwait is a member of the Gulf Co-operation Council (GCC).<sup>1</sup> It had a gross domestic product of USD 105 949 million, in 2020, with the oil sector as the main driver of the national economy.<sup>2</sup> The official currency is the Kuwaiti Dinar (KWD).<sup>3</sup>

### Legal system

27. Kuwait is a unitary constitutional monarchy divided into six governorates. There are two levels of Government – the central government and the six Governorates. The legislative power is fully vested in the central government through the National Assembly of Kuwait.

28. The Kuwaiti Constitution defines the country's system of government, basic foundations of society, main fundamental rights and obligations, and the separation of the government's powers into executive, legislative and judiciary powers.

29. The executive power is vested in the monarch (Emir) as the Head of State, the Prime Minister as Head of Government and the Cabinet of Ministers. The Emir appoints the Prime Minister and Cabinet of Ministers and has the power to relieve them of their posts.

30. Legislative power is exercised by the Emir and the unicameral National Assembly of Kuwait. The National Assembly has 65 seats, with 50 members elected by popular vote and the remaining 15 members appointed by the Emir. National Assembly members serve four-year terms. The Emir has the power to dissolve the National Assembly.

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1. The Gulf Co-operation Council is formed by Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.
  2. World Bank indicator, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=KW>.
  3. Exchange rate on 18 July 2022, EUR 1 = KWD 0.31; Source: Central Bank of Kuwait.

31. Kuwait has a Civil Law legal system; however it is considered a mixed system as it consists of elements from French civil law, Egyptian law, Islamic legal principles and English common law. The Kuwaiti Constitution is the supreme law and any other law that is inconsistent with the Constitution is deemed null and void. International treaties and conventions on tax matters are incorporated to the legal framework through a decree from the Emir that must be ratified by the National Assembly through a law. After ratification and publication, the treaty has force of law. International treaties are on the same hierarchical level as ordinary laws and Emir Decrees. Therefore, international treaties do not prevail over domestic law, unless otherwise specified in domestic law.

32. The Judiciary system is divided into six main divisions (administrative, civil, commercial, criminal, family and leases) and structured in the following three levels: (i) The Courts of First Instance; (ii) The Higher Court of Appeal, which operates as an intermediate or final court of appeal, depending on the matter upon discussion; and (iii) The Court of Cassation, which is divided into commercial, civil and criminal boards and serves as the final court of appeal. Members of the Judiciary are appointed by the Emir upon recommendation of the Supreme Judicial Council, which is comprised of Kuwaiti judges and officials from the Ministry of Justice.<sup>4</sup>

33. The Constitutional Court is the interpreter of the constitution, with the power to settle disputes pertaining to the constitutionality of laws and regulations. It can review and repeal any unconstitutional legislation. The Court is comprised of five Kuwaiti nationals.

## Tax system

34. The tax system for companies, partnerships, trusts, *waqfs* and foundations includes the Corporate Income Tax, the Zakat Contribution, the National Labour Support Tax and the Kuwait Foundation for the Advancement of Sciences Contribution. For all tax law purposes, GCC nationals are equated to Kuwaiti nationals. The tax system of Kuwait establishes the liability of companies and partnerships based on the nationality of their owners and shareholders. Thus, there is an important distinction between foreign nationals and the nationals of Kuwait/GCC countries.

35. The Income Tax Law (ITL) imposes income tax at a rate of 15% on legal entities carrying on trade or business in Kuwait, wherever incorporated.

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4. The principal pieces of legislation governing the Judiciary are: Constitution of 1962; Law 14 of 1973 establishing the Constitutional Court; Decree Law 23 of 1990 on the organisation of the judiciary; Law 40 of 1972 on cases appeal procedures; Decree Law 38 of 1980 promulgating the Code of Civil Procedure and Commercial Law.

However, in practice, companies entirely owned by nationals of Kuwait or other GCC countries are not subject to income tax. Kuwait only imposes income tax on the foreign ownership of entities performing business activities in Kuwait, resulting in companies with ownership by foreign nationals being taxed to the extent of the foreign ownership of the company. For example, a company whose capital is 40% owned by a foreign national will be subject to income taxation only in relation to 40% of its annual income.

36. The ITL also imposes that public bodies and private entities retain 5% from the contract, agreement, transaction value or payment made to incorporated bodies.<sup>5</sup> The withheld amount is only released upon the presentation of a tax clearance certificate provided by the Kuwait Tax Administration (KTA) confirming that the incorporated body has settled all of its tax liabilities in Kuwait.

37. Kuwait has a special regime for direct investment implemented by the Kuwait Direct Investment Promotion Authority (KDIPA). The status of investment entity is available to both domestic and foreign companies without a limit on foreign ownership. Licensed investment entities may be exempt from income tax for a ten-year period provided that the domestic and foreign entities meet the criteria established by KDIPA.

38. Entities operating in the partitioned neutral zone between Kuwait and Saudi Arabia and the islands of Kubbar, Qaruh and Umm al Maradim and their territorial waters are subject to a distinct income tax regime for the designated area. Profits up to KWD 500 000 (EUR 1 600 816) are taxed at 20%, while profits above the threshold are taxed at 57%. Kuwait has not provided the number of companies operating in the designated area.

39. Kuwait has also established a Free Trade Zone in the Shuwaikh port area. Although legal entities operating in the Free Trade Zone are exempt from income taxation and customs duty, they are subject to the ITL and its reporting obligations. Foreign entities can operate within the Free Trade Zone area through trading, manufacturing and service activities. Kuwait has not provided the number of companies operating in the Free Trade Zone.

40. The ITL also explicitly exempts companies listed on the Bursa Kuwait Securities Company (BKSC) and income realised by a natural person

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5. The term “incorporated body” is defined by Article 2 of the Income Tax Law: The term body corporate, wheresoever incorporated, carrying on trade or business in Kuwait, includes any body corporate carrying on trade or business in Kuwait either directly or through an agent, provided such agent is a body corporate, and also any body corporate carrying on trade or business in Kuwait as an agent for others.

The report uses the term “incorporated body” to refer to companies and partnerships, in line with Kuwait’s Income Tax legislation.

carrying on business in Kuwait. On the other hand, Kuwait imposes the Zakat contribution as an Islamic contribution by Kuwaiti stock companies to the extent of the participation of Kuwaiti/GCC nationals. Zakat is not levied on companies operating in the partitioned neutral zone between Kuwait and Saudi Arabia. Zakat is characterised as a contribution levied on property and income in accordance with Sharia. Zakat is levied at a rate of 1% of net profits. In addition, Kuwait also levies the National Labour Support Tax on companies listed in BKSC to support Kuwaiti nationals entering employment in the private sector, at a rate of 2.5% of net profits.

41. Finally, Kuwait levies the Kuwait Foundation for the Advancement of Sciences Contribution on all Kuwaiti shareholding companies to support national scientific progress at a rate of 1% of net profits.

42. Kuwait does not levy Personal Income Tax on its residents or foreign individuals, irrespective of nationality. The tax legislation of Kuwait does not define the concept of tax residence for individuals. Kuwait does not levy value-added-tax either. While in 2017, the GCC agreed on a Unified Value-Added-Tax Agreement at a 5% rate, the agreement remains under discussion in the National Assembly. Kuwait imposes customs tariffs as part of a GCC unified customs tariff.

43. The competent authority for exchange of information purposes in Kuwait is the Minister of Finance (MOF), who has delegated this power to the Undersecretary of the Ministry of Finance. The Assistant Undersecretary for Financial and Taxes Affairs is authorised to discharge the competent authority (CA) functions. Exchange of information (EOI) requests are processed by the EOI Unit within the International Treaties department of the Directorate for Tax Liability and Planning.

## Other forms of exchange of information for tax purposes

44. Kuwait received three spontaneous exchanges from two jurisdictions in the period between 1 July 2018 to 30 June 2021.

45. Kuwait started to exchange information under the Automatic Exchange of Information on Financial Accounts standard in 2019. Kuwait exchanges information with the United States under a Foreign Account Tax Compliance Act agreement (FATCA) since November 2016.

## Foreign ownership of Kuwaiti entities

46. The Kuwaiti legal system restricts the participation of foreign entities in its national economy. Kuwaiti legislation establishes that no person other than a national of Kuwait or of a GCC country may perform business in

Kuwait, unless the foreign person has Kuwaiti/GCC partners with ownership of at least 51% of the entity. Kuwait further states that no foreign company may establish a branch or carry on economic activities in Kuwait except through a resident agent. As a result, a foreign entity seeking to conduct business in Kuwait is normally required to appoint a Kuwaiti agent or own a minority participation in a Kuwaiti/GCC company or partnership.

47. However, there are exceptions to such rules restricting foreign ownership and requiring the appointment of agents.

- Full foreign ownership is permitted within the Free Trade Zone in the Shuwaikh port area. Foreign entities operating in the area are also exempt from income tax.
- Foreign companies often operate in Kuwait through Joint Venture Companies (JVC). A JVC is formed under a contract between two or more persons, is not subject to restrictions on foreign participation and has no legal status in Kuwait. JVCs are often used by foreign contractors operating in projects in Kuwait. JVCs are not by themselves liable to tax, however the persons forming a JVC are subject to income tax to the extent of their ownership in the JVC.
- Unlimited foreign ownership is also permitted under the KDIPA investment regime. KDIPA allows unlimited foreign ownership of stock companies, Single Person Companies and Limited Liability Companies (LLCs) for the purpose of direct investment. The investment regime also permits the issuance of licences to branches of foreign companies to operate in the country for direct investment.
- Companies listed in the BKSC have no restrictions on foreign ownership, except for insurance companies. The limitations to foreign ownership can also be avoided in stock companies through nominee arrangements. Foreign entities may own a majority control of a Kuwaiti stock company through a Kuwaiti/GCC nominee. This is often carried out through a nominee agreement that reserves all economic and beneficial rights of the ownership to the foreign entity, with the nominee owning the legal title to the shares in the Kuwaiti legal entity.

48. In addition, a foreign company may also operate in Kuwait through an agency agreement. Agency agreements are regulated by the Commercial Code and the Regulation of Commercial Agencies and must be registered with the Commercial Agencies Department at the Ministry of Commerce and Industry (MCI). Any unregistered agreement is not legally recognised. The agency agreements set out the authorities and responsibilities of the foreign company and the resident agent. Under such agreement, the business is carried out in the name of the resident agent.

49. Resident agents must be Kuwaiti nationals or a legal person with a majority ownership (at least 51%) held by Kuwaiti nationals. The resident agent must be registered in the Commercial Registry.

50. Kuwait has provided no information or legal provision on the requirement for the KTA, the MCI or other government authorities to look through the ownership structure of a legal entity for the identification of potential foreign shareholders.

## Financial sector

51. Kuwait's financial sector contributed just under 9% of its national gross domestic product in 2019. It included 11 foreign banks, 5 conventional banks, 5 Islamic banks and 1 specialised bank, with total net assets of KWD 85.4 billion (EUR 273.4 billion). There are also 32 exchange companies, 48 finance companies, 39 insurance companies and 33 investment companies. Kuwait is not considered an international financial centre as the financial sector is primarily domestically oriented.

52. The financial sector is regulated and supervised by two authorities: the Central Bank of Kuwait (CBK) and the Capital Markets Authority (CMA). The CBK is responsible for banks, finance companies and exchange companies. All banks must be licensed by the CBK and are subject to the CBK Law, which establishes that all Kuwaiti banks must be set up as stock companies, resulting in all Kuwaiti banks being listed in the BKSC and regulated by the CBK and CMA. Foreign branches are exclusively regulated by the CBK.

53. The CMA aims to regulate securities, grow the capital markets in line with best international practice, enhance investor protection, reduce systemic risks, impose disclosure requirements and ensure compliance of securities activities. The CMA is established under the CMA Law and is empowered to issue further bylaws and instructions to ensure the execution of the legislation. The CMA is responsible for investment companies, securities brokerage companies, financial brokerage companies, underwriters, asset managers, mutual funds and custodian companies.

54. There is currently one securities exchange in Kuwait – the BKSC. Securities traded on the BKSC include shares and Real Estate Investment Trusts. As at July 2022, there were 158 companies listed on the BKSC.

## Anti-Money Laundering Framework

55. The Kuwaiti Anti-Money Laundering (AML) framework is based on Law 106/2013 (The Anti-Money Laundering and Combating the Financing of Terrorism Law), its Executive Regulation (Decision 37/2013)



and the Ministerial Resolution which established the Kuwait Financial Intelligence Unit (KFIU) (Resolution 1532/2013). The AML Law is complemented by other instruments including the CBK's instructions for banks (Instruction 2/2019) and exchange companies (Instruction 2/2020), circulars from MCI for companies operating in precious metals (Decision 431/2016), exchange companies (Decision 409/2013), insurance companies (Decision 412/2013) and real estate brokers (Decision 430/2016).

56. The Financial Action Task Force (FATF) reviews the compliance of Kuwait to the AML standard through the Middle East and North Africa Financial Action Task Force (MENAFATF). Kuwait underwent the first round of the mutual evaluation by MENAFATF in 2011. The assessment rated Kuwait as Partially Compliant and Non-Compliant on a total of 38 out of 40 FATF recommendations, concluding that the AML framework in Kuwait had numerous shortcomings. As a result, Kuwait was placed in a regular follow-up process.

57. Following its inclusion in the review list, Kuwait provided a high-level political commitment to co-operate with FATF and MENAFATF and an action plan was agreed to address the deficiencies identified in the report. As a result, Kuwait enacted the AML Law and established the KFIU. Kuwait submitted follow-up reports to MENAFATF in May 2013 and June 2014. In 2015, an International Reviewing Team of FATF conducted an on-site visit to verify Kuwait's implementation of the action plan. The 3<sup>rd</sup> Follow-up Report of Kuwait<sup>6</sup> concluded that the level of compliance of Kuwait on the core recommendations and key recommendations is rated at a level equal to Largely Compliant, with the exception of Recommendation 23 on Regulation, Monitoring and Follow-up. As a result, Kuwait was removed from the regular follow-up process in 2015.

58. Kuwait is scheduled to undergo a Mutual Evaluation joint-procedure by FATF and MENAFATF in May 2023, with the expected onsite visit in November 2023 and plenary discussion on the report in June 2024.

## Recent developments

59. Kuwait is currently drafting a proposed legislation on Exchange of Information. The draft is receiving input from all relevant authorities and stakeholders to ensure it covers the main gaps currently witnessed in Kuwait's legal framework. For instance, Kuwait has indicated that the legislation is expected to provide direct access to banking information for EOIR purposes.

6. Accessible here: [https://www.menafatf.org/sites/default/files/Kuwait\\_Exit\\_FUR\\_Eng.pdf](https://www.menafatf.org/sites/default/files/Kuwait_Exit_FUR_Eng.pdf).

60. Kuwait adopted the policy of engaging with EOI partners to amend its DTCs through protocols in line with the provisions of the Multilateral Convention. It is currently negotiating one DTC protocol.

61. The CBK is currently considering issuing a new AML regulation to reduce the beneficial ownership control threshold from its current 50% to a 25% threshold. The change would ensure that natural persons with substantial ownership control over legal entities are effectively considered and identified as beneficial owners.

62. Finally, Kuwait is currently developing a new Information Security Management policy to increase data safeguard and the confidentiality of exchanged information in line with international best practices. The new policy is expected to be published and implemented in the second semester of 2022.

## Part A: Availability of information

63. 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 banking 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.

64. Legal and beneficial ownership and identity information in respect of legal persons and legal arrangements is generally available as a result of obligations laid down in Company Law, tax legislation and AML legislation, albeit with substantial gaps as described below.

65. Legal ownership information is available with two registrars:

- All relevant legal persons incorporated<sup>7</sup> in Kuwait are required to register in the Commercial Registry of the Ministry of Commerce and Industry (MCI). In so doing, they are required to provide information on their incorporators, shareholders and partners, which include means of identifying these members. The registration has a four-year duration and must be renewed by the legal person within one year of its expiration. While Kuwait has indicated that a stock company may not modify the registration of its legal owners without the consent of the MCI through the Commercial Registry, no legal provision or detailed information on this requirement was provided for stock companies.
- Legal ownership information for public and private stock companies is also available through a Shareholders Registry held with the Kuwait Clearing Company (KCC). Changes of shareholders must be notified to the KCC.

7. The report uses the term “incorporated body” to refer to companies and partnerships, in line with Kuwait’s Income Tax legislation.

66. Additional disclosure requirements are imposed on companies operating in specific sectors, such as insurance and direct investment, as well as when listed on the stock market (see paragraphs 103 to 115).

67. No up-to-date legal ownership information is available in the Kuwait Tax Administration (KTA) database. Apart from legal and identity information obtained upon registration of both foreign-owned companies and domestic exempt stock companies, the tax legislation does not impose an obligation for companies to inform the KTA of a change in legal ownership of the company.

68. Kuwait's legal framework does not require foreign companies to keep and update legal ownership information, or foreign partnerships with sufficient nexus with Kuwait to keep and update identity information, which is not in accordance with the standard.

69. The legal framework of Kuwait does not establish a time limitation for the reinstatement of dissolved incorporated bodies. Thus, the reinstatement of dissolved bodies after a five-year period would result in the unavailability of legal ownership records for reinstated companies.

70. Requirements on the availability of beneficial ownership information are solely imposed by the AML framework, which presents a number of issues and is not in line with the standard.

- The framework does not specify the methodology for identifying the beneficial owner of legal persons and legal arrangements. In addition, as regards legal persons, AML regulations set a control threshold of 50% that is not in line with the standard. It also does not include a specific definition for beneficial ownership of trusts and similar legal arrangements. Finally, the AML law does not lay down a specified frequency for updating beneficial ownership information, except for banks and exchange companies.
- There is no obligation for legal persons and arrangements to engage with AML-obliged persons during the life of the company, such that there is no assurance that accurate, adequate and up-to-date information is available for all of them.
- The list of AML-obliged persons exclusively refers to nominee arrangements concluded with a Company and Trust Service Provider, creating a gap for nominee arrangements established with other persons.

71. The legal and regulatory framework is therefore not in line with the standard.

72. Bearer shares are not allowed in Kuwait. Kuwaiti entities may not issue bearer instruments.

73. Partnerships are generally subject to registration at the Commercial Registry, with the transfer of membership interests only considered effective upon a notification to the Commercial Registry. Partnerships Limited by Shares (PLSs) are additionally required to register with the KCC and notify any changes to its membership interest to KCC. However, Joint Venture Companies (JVCs) are not required to register at the Commercial Registry.

74. Trusts are not recognised under Kuwait's legislation. Persons in Kuwait can act as a trustee or trust administrator of a trust formed under foreign law. Kuwait legislation does not provide guidance on what identity information would need to be obtained where foreign trusts are administered from Kuwait and ensure that such information is available in all cases. Kuwait recognises the concept of *waqf* which is similar to common law trusts and provides for a legal separation between ownership and control of assets. Kuwaiti *waqfs* may be revoked and their assets returned to the original owner. In addition, family *waqfs* are available in Kuwait, without a charitable purpose. There is no requirement in the legal framework of *waqfs* to identify the parties to the *waqfs* and the beneficial owners of *waqfs*. Although identity and beneficial information should be collected under the AML framework if a *waqf* engages with an AML-obliged person (e.g. bank), there is no requirement for *waqfs* to engage with such obliged persons. In addition, the identity requirements of persons related to legal arrangements are not in line with the standard, as there is no requirement for the settlor, protectors (if any) and any other natural person exercising ultimate effective control over the arrangement to be identified.

75. Foundations in Kuwait must pursue a non-profit activity towards a public interest and do not constitute relevant entities for EOI purposes.

76. Kuwait is recommended to address all the deficiencies in the legal framework mentioned in this section.

77. The conclusions are as follows:

**Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement**

Deficiencies identified/Underlying factor	Recommendations
Kuwait has no requirement to keep and update information on the legal ownership of foreign companies and on identity information of foreign partnerships having sufficient nexus with Kuwait.	Kuwait should ensure that legal ownership information on foreign companies and identity information on foreign partnerships having sufficient nexus with Kuwait is available in line with the standard.
Kuwait has no legislation regulating the reinstatement procedure for dissolved bodies. While Kuwait has indicated that the procedure is regulated by executive regulations to the Company Law, no legal provisions were provided by Kuwait in this regard. The lack of a time limit for the reinstatement of dissolved bodies may lead to the unavailability of legal ownership records.	Kuwait should ensure that legal ownership information remains available after the reinstatement of dissolved bodies, in line with the standard.
The anti-money laundering legislation is the only source of beneficial ownership information in Kuwait. There is no requirement for all relevant legal entities and arrangements in Kuwait to engage with an AML-obliged person. Whilst in practice the vast majority of companies, partnerships, foreign trusts and <i>waqfs</i> will come in contact with AML-obliged persons in Kuwait, there is no legal requirement to ensure that beneficial ownership information is available in all cases. In addition, there is no specified frequency for updating beneficial ownership information in respect of customer due diligence measures, except for banks and exchange companies. This could lead to situations where the available beneficial ownership information is not up to date.	Kuwait is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard.
Although the anti-money laundering framework contains a general definition of beneficial owner in line with the standard, there is no regulatory guidance on how to identify the beneficial owners for domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements and <i>waqfs</i> . In addition, a 50% control threshold is established for legal persons. As a result, information on beneficial owners for all relevant legal entities and arrangements in Kuwait may not be available in line with the standard in all cases.	Kuwait should ensure that the methods of identification of beneficial owners of relevant legal entities and arrangements secure that adequate, accurate and up-to-date beneficial ownership information is available in all cases.

Deficiencies identified/Underlying factor	Recommendations
Kuwait has no requirement for the disclosure of nominee status. There are no requirements under the Company Law in relation to companies having nominee shareholdings in their ownership structure, to disclose the nominee status of the shareholders and identity information of persons whom the nominees represent (the nominators) to the company or the Commercial Registry. Under the anti-money laundering framework, only professional nominees and reporting institutions have an obligation to conduct CDD on their customers.	Kuwait is recommended to ensure that accurate identity information on the nominators and their beneficial owners is available where nominees act as the legal owners on behalf of any other persons.
Kuwait has no legislation requiring the identification of all relevant persons related to a waqf.	Kuwait should ensure that identity ownership information on waqfs is available in line with the standard.
Kuwait has no requirement for the identification of members and beneficial owners of Joint Venture Companies.	Kuwait should ensure that identity and beneficial ownership information on all Kuwaiti partnerships is available in line with the standard.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

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

78. Under Kuwaiti law, a company is “incorporated by virtue of a contract by which two or more persons undertake to participate in a profit-making project with each of them offering a contribution in assets or labour, to divide what is generated from the project in profits and losses” (CL, Art. 3). This definition comprises not only the concept of a “company”, but also that of a “partnership” (CL, Art. 4).

79. The Company Law provides for seven types of entity: two types of stock companies (Section A.1.1) and five types of partnerships (Section A.1.3). In addition, these entities can have additional features depending on their object.

80. The main characteristics of the two types of stock companies that may be created under the Kuwaiti Company Law are as follows:

- **Public Shareholding Company (PSC):** A company whose capital is divided into tradable shares of equal value. Shareholders are

not liable for the company's obligations beyond the nominal value of the shares subscribed (CL, Art. 119). A minimum of five shareholders is required to incorporate a PSC, unless the company is established by the State, public authorities or public institutions (CL, Art. 121). The incorporators<sup>8</sup> must own at least 10% of the company capital, which must be deposited in an account of the PSC in a bank<sup>9</sup> (CL, Art. 127). PSCs have a minimum capital of KWD 25 000 (EUR 80 040) (Ministerial Decision 234/2015).

- Private Shareholding Company (**PRSC**): A company which is regulated in line with PSCs for most issues – including ownership information availability obligations – however it may only be subscribed by the original incorporators of the company, which must deposit the full value of the company capital in a local bank (CL, Art. 235). As such, the public has no opportunity to subscribe to the company (CL, Art. 234). A PRSC may be transformed into a PSC in case public subscription is pursued to increase its capital (CL, Art. 242). A minimum of five shareholders is required to incorporate a PRSC. PRSCs have a minimum capital of KWD 10 000 (EUR 32 016) (Ministerial Decision 234/2015).

81. Companies (PSC and PRSC) acquire legal personality upon registration in the Commercial Registry maintained by MCI.

82. As at July 2022, Kuwait indicated that there is a total of 9 120 companies and partnerships fully owned by Kuwaiti/GCC nationals and 3 211 partially owned by foreigners registered at the Commercial Registry. Kuwait did not provide clear information on the number of active and inactive companies, nor the figures per type of entities (see paragraph 147). The registry of stock companies at the Shareholding Department of MCI includes 3 712 companies. Kuwait has not provided separate figures for PSCs and PRSCs.

83. The Company Law also provides that companies (or partnerships) can be tailored for specific purposes:

- A Professional Company, established between two or more persons that exercise a number of professions described as *free professions* in the Company Law. The free professions include independent

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8. The term “incorporator” is defined by article 1 of the Company Law: Anyone who takes actual part in the incorporation of the company, executes the contract thereof in person or through a representative and participates in the capital of the company with a cash or in-kind share.
9. The bank account required for the subscription to PSCs at the time of their incorporation may be held with a local bank, foreign branches of Kuwaiti banks or their representative abroad after the approval of CBK.



scientific, artistic, literary, teaching, engineers, doctors and lawyers. The objective of the company is to practice the free profession through collective co-operation. It must be established in the form of a PRSC, GPC, LPC or LLC (CL, Art. 80). The company contract<sup>10</sup> of a professional company must be registered in a special registry established in co-ordination between the MCI and the professional bodies that regulate the professional activities practiced by the Professional Company (CL, Art. 81). The Ministry and the respective professional bodies will specify the particulars of the company contract (CL, Art. 82).

- A Single Person Company, fully owned by one natural or legal person. The owner of the company is not liable for the obligations incurred by the company beyond its capital, unless *mala fide* is demonstrated or the personal financial obligations of the owner are not properly separated from the company's obligations. Single Person Companies have a minimum capital of KWD 1 000 (EUR 3 201) (Ministerial Decision 234/2015), are required to be registered at the Commercial Registry and have articles of incorporation specifying its name, objectives, term, owner's particulars and manner of its management and liquidation.
- A Holding Company with the objective of investing in shares, membership interests, or investment units in Kuwaiti or foreign companies or funds. Holding Companies may be established in the form of a PSC, PRSC, LLC or Single Person Companies and are subject to the legal provisions regulating the utilised form of the company.

84. The assessment below captures these specific types of companies and are specifically mentioned only when the general rules do not apply to them.

### *Legal Ownership and Identity Information Requirements*

85. The legal ownership information on companies in Kuwait is available under Company Law, Insurance Regulatory Unit Law, Capital Markets Authority Law and the Kuwait Direct Investment Promotion Authority Law, as well as under Income Tax Law, the Zakat Law and AML legislation.

86. PSCs and PRSCs are required to be registered at the Commercial Registry at the moment of their incorporation and to renew their registration, which has a four-year duration, within one year of the expiration. In

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10. The term "company contract" is defined by Article 1 of the Company Law: The memorandum of incorporation or the memorandum of incorporation and articles of association, if applicable.

addition, they must hold a shareholders register with the KCC. While there is an obligation to update legal ownership information in the KCC shareholder register, there are no legal obligations for stock companies to notify the Commercial Registry in case of changes in their legal ownership.

87. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

#### Companies covered by legislation regulating legal ownership information<sup>11</sup>

Type	Company Law and/or CMA Law (Commercial/ KCC registers)	Insurance Regulatory Unit Law	Direct		
			Investment Promotion Authority Law	Tax and Zakat Law	AML Law
Private Shareholding Company	All	Some	Some	Some	Some
Public Shareholding Company	All	Some	Some	Some	Some
Foreign companies (tax resident)	Some	Some	Some	Some	Some

#### Legal obligation of registration at the Commercial Registry

88. The Company Law requires public and private stock companies to be registered at the Commercial Registry of the MCI<sup>12</sup> within 30 days from the date of incorporation of the company (CL, Art. 145). The process of registration in the Commercial Registry is completed by the publication of the incorporation notice in the Official Gazette (CL, Art. 9). Failure to register at the Commercial Registry within 30 days of incorporation results in the dissolution of the company (CL, Art. 266/7).

89. The methods for incorporation of PSCs and PRSCs differ. Due to its public character, PSCs are required to apply to the MCI for the incorporation of the company (CL, Art. 125). PRSCs are established through a document issued by their incorporators and do not require ministerial approval, unless the PRSC holds public concessions or monopolies (CL, Art. 235).

90. A company contract must be issued by PSCs and PRSCs at the moment of their incorporation, with a physical copy of the contract being stored at the company's file in the MCI (CL, Art. 125 and 235). The Company Law states that an electronic registry is to be prepared by MCI to register the

11. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.
12. Kuwait Chamber of Commerce and Industry – <https://www.ekcci.org.kw/newweb/>.

applications for incorporation of PSCs (CL, Art. 124). Kuwait has indicated that the electronic registry has been fully functional since 2019, however no additional information has been provided. The development and effective implementation of the electronic registry will be covered during the Phase 2 review.

91. Kuwaiti legislation establishes that the following information must be included in the company contract of PSCs and PRSCs (CL, Art. 10 and 121):

- the name of the company and the address of its headquarters
- the objectives of the company
- the names of the incorporators
- the memorandum of incorporation and the articles of incorporation, containing the name, nationality, and place of residence of its incorporators (for PRSCs) or of its incorporators and initial legal owners (for PSCs)
- the company's capital and number of shares into which the capital is divided
- a statement of each non-cash contribution, including the name of the contributor.

92. In case one of the incorporators is a legal person, a certified copy of the incorporation certificate and proof that the relevant body of the legal person has approved the participation in the incorporation must be provided at the moment of application to incorporate the company (CL, Art. 122).

93. Persons applying for share ownership of a PSC during an offering of public subscription are required to submit a shareholder's subscription, which must provide the name of the subscriber and his/her domicile in Kuwait, the number of subscribed shares and the acceptance of the provisions of the company contract (CL, Art. 131). The subscription by fictitious or anonymous persons is prohibited, with the incorporators obliged to vet subscription applications to exclude irregular subscriptions (CL, Art. 130).

94. A statement providing the number of shares subscribed for at the subscription procedure of a PSC, together with the names of subscribers and their addresses, the number of shares subscribed for by each one of them, the value per share and the amount paid of such value must be submitted by the incorporators to the MCI (CL, Art. 140).

95. The Commercial Register Law establishes that an incorporated body must renew its registration, which has a four-year duration, within one year of the expiration (Commercial Register Law, Art. 5). While this provision ensures that legal ownership information must be updated at least once in a five-year period, it does not address the modification of legal ownership

or its communication to the Commercial Registry when a change occurs. While Kuwait has indicated that a company may not modify its legal ownership structure after the incorporation of the entity without the consent of MCI through the Commercial Registry, thus ensuring the MCI has effective and up-to-date ownership information, no legal provision was provided in this direction. Thus, the legal framework does not establish an obligation to inform the Commercial Registry of such changes, an oversight structure or a sanction regime (but see next section).

96. The Company Law establishes that all interested parties have the right to review the company contract and other documents kept with the MCI (CL, Art. 32). The Company Law does not establish a specific period for the retention of a company's data. Kuwait has indicated that the ownership information provided is kept permanently. The implementation in practice of the record-keeping obligation of the MCI will be considered in Phase 2.

### **Shareholders register at the Kuwait Clearing Company**

97. Public and private stock companies must also hold a shareholders register with the KCC.<sup>13</sup> The KCC is the central clearing, settlement and depository entity for the Kuwaiti securities market, in addition to providing depository services for unlisted equity securities and other services related to keeping and transferring ownership of securities (CMA Law, Arts. 1 and 48). The KCC is supervised and licensed by the Capital Market Authority (CMA Law, Arts. 49 and 50).

98. The legal rights related to the legal ownership of stock companies are only formally recognised through the registration of legal ownership information in the Shareholders Registry in the KCC (CMA Bylaw Module 4, Art. 2-9-3). Notifications related to ownership information to the KCC are processed in the same day of their submission. The Shareholders Registry at the KCC must include the following information on the shareholders of stock companies (CL, Art. 156):

- the name, nationality and domicile of the shareholders
- the number and type of shares owned by each shareholder and the value paid for each share.

99. Any changes to the legal ownership of stock companies must be amended in the Shareholders Registry in accordance with the particulars received by the company or the KCC. The transfer of shares of stock companies and the legal rights related to it are only formally recognised upon registration in the KCC records, which takes place in the same day the

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13. Kuwait Clearing Company – <https://www.maqasa.com/en/>.

change is notified to the KCC (CMA Bylaw Module 4, Arts. 2-9-1 and 2-9-3). Thus, the transfer of shares is only considered effective upon its notification to the KCC. Any party with an interest may request the company or the KCC to provide it with details from the Shareholders Registry (CL, Art. 156). In case a share of the company is seized by a creditor of the shareholder, the seizure is recorded in the Shareholders Registry. The KCC carries out the necessary amendments to the Shareholders Registry according to the outcome of the sale procedures carried out by the creditor (CL, Art. 174).

100. Securities<sup>14</sup> issued by a stock company are also recorded at a central depository system for securities at the KCC. The depository receipt of the securities held at the KCC serves as title deed of the securities, and each owner is handed a receipt enumerating the securities owned (CL, Art. 154).

101. The CMA Law imposes to all licensed persons a minimum record-keeping period of five years from the date of preparation of a record or until a dispute between the licensed person and a client is settled (CMA Law, Art. 68). As an entity licensed by the CMA, the KCC is subject to the five years retention period in relation to its Shareholders Registry and its central depository system for securities. Kuwait has informed that in practice the KCC keeps records for a ten-year period. The implementation in practice of the record-keeping obligation of the KCC will be considered in Phase 2.

102. The CMA Law establishes a penalty between KWD 1 000 (EUR 3 201) and KWD 100 000 (EUR 320 163) for any person that violates ownership disclosure requirements supervised by the CMA (CMA Law, Art. 121), which include providing information on any changes to the particulars recorded in the Shareholders Registry of stock companies (CL, Art. 156). The CMA is empowered to perform periodical on-site inspection to ensure compliance with the provisions of the CMA Law (CMA Regulation, Module 3, Art. 2-2).

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14. Securities are defined in Kuwaiti legislation (Capital Markets Authority Law, Executive Bylaw Module 1) as any instrument – in any legal form – that evidences ownership of a share in a financial transaction and that is negotiable pursuant to a licence from the CMA, such as (i) shares issued or proposed to be issued in the capital of a company; (ii) any instrument that creates or acknowledges a debt issued or to be issued by a company; (iii) loans, Bonds, Sukuks and other instruments that can be converted shares in the capital of a company; (iv) all public Debt Instruments that are tradable and issued by the various government entities or public institutions or authorities; (v) any right, option or derivatives relating to Securities; (vi) Units in a Collective Investment Scheme; (vii) Financial instruments whose value is derived from assets or price references, specifically the value of shares, bonds, commodities, currencies and interest rates, and can be bought, sold and traded in a manner similar to Shares or any other financial assets.

### **Obligations on specific economic sectors**

103. In addition to the requirements imposed by the Company Law, further obligations are established by laws focused on specific economic sectors. The following paragraphs focus on legal ownership obligations imposed by the Insurance Regulatory Unit Law (IRU Law) and the Capital Market Authority Law (CMA Law).

104. Insurance companies are subject to additional regulation and licensing by IRU (IRU Law, Art. 26). As at July 2022, 39 insurance companies have been licensed by the IRU, including 2 branches of foreign insurance companies. Branches of foreign insurance companies are required to register at the Commercial Registry (IRU Law, Art. 26). Insurance companies applying for a licence are required to provide the name, address, commercial registration number and the company contract (IRU Executive Regulations, Art. 70).

105. The IRU Law establishes a penalty between KWD 5 000 (EUR 16 008) and KWD 10 000 (EUR 32 016) for a licensed person that fails to provide information requested by IRU (IRU Law, Art. 76). The IRU is empowered to perform on-site inspections to ensure compliance with the provisions imposed on licensed insurance companies (IRU Executive Regulations, Art. 43).

106. The licensing of companies by the IRU ensures the availability of ownership information of companies operating in the sector. However, the IRU Law does not impose an obligation for insurance companies to notify the Commercial Registry or the IRU in the event of modification of legal ownership. Thus, it does not secure the availability of adequate, accurate and up-to-date ownership information in case the legal ownership structure of an insurance company is modified (see paragraph 95).

107. The CMA is the authority that regulates and supervises securities activities, the KCC and listed companies at BKSC. The CMA imposes further disclosure obligations on the sector. All Kuwaiti banks are listed on the BKSC and are regulated by the CMA (CBK Law, Art. 56). As at July 2022, 158 companies are listed on BKSC.

108. BKSC listed companies must be set up as stock companies. The CMA Law provides further obligations to ensure legal ownership availability on companies listed at the BKSC (CMA Law, Art. 1 and Arts. 100 to 105):

- Persons acquiring at least 5% of legal ownership in a listed company must notify the CMA, BKSC and the company within five business days from acquiring the interest.
- Listed companies are required to disclose the names of the shareholders who own 5% or more of its capital or any change of such percentage.

- Listed companies are required to notify the CMA and BKSC of any changes that exceed 0.5% in the interest of a person that owns at least 5% of the company, within ten business days from the change in control.
- Listed companies are required to maintain a special registry for the disclosure of the members of the board of directors, executive directors and managers.

109. All ownership and identity information received by the BKSC is made public upon the receipt of the information from the shareholder or the company (CMA Law, Art. 106).

110. The CMA Law establishes the obligation for listed companies to disclose changes in the ownership of the company above the 5% threshold, as well as any changes that exceed 0.5% in the ownership interest of persons owning at least 5% of the company. While the CMA Law explicitly establishes the obligation for listed companies to notify changes in the ownership structure, the obligation is restricted by such thresholds. As a result, changes of ownership under the threshold are not required to be disclosed. Thus, the disclosure obligation does not ensure the availability of information on all changes to the ownership structure of listed companies.

### **Investment Promotion Law**

111. The Kuwait Direct Investment Promotion Authority (KDIPA) implements a direct investment promotion regime in the country and supervises investment entities. It oversees specific rules regarding the registration of legal ownership information for investment entities, which can be either Kuwaiti stock company (PSC or PRSC) with unlimited foreign ownership, LLCs with unlimited foreign ownership and single person companies (KDIPA Regulation, Art. 8) or branches of foreign companies (KDIPA Law, Art. 12).

112. Investment entities must get an investment licence issued by KDIPA and be registered in a specialised Investment Registry established by KDIPA and MCI. As at July 2022, 54 investment entities are registered.

113. Investment entities are required to provide the following information and documents upon registration (KDIPA Investment Register Regulation, Arts. 2 and 3):

- the name, legal form, type of activity, capital, location and headquarters of the investment entity
- names, nationalities of the shareholders in the investment entity and the value and percentage of their respective shares in the capital
- commercial licence issued by the Commercial Registry of the MCI



- the last certificate of registration from the Commercial Registry prior to registration in the Investment Registry
- memorandum of Association and Articles of Incorporation of the entity, as well as any amendments, containing the name, nationality, and place of residence of its incorporators (for PRSCs) or of its incorporators and initial legal owners (for PSCs).

114. Investment entities are required to notify KDIPA within 30 days of an event or decision that requires the amendment of the data held in the Investment Registry, which includes identity information of shareholders (KDIPA Investment Register Regulation, Art. 8). KDIPA can impose sanctions including warnings, withdrawal of incentives and temporary administrative detention to investors that violate KDIPA Law provisions (KDIPA Law, Art. 32).

115. The KDIPA Investment Register Regulation requires amendments to the Memorandum of Association and Articles of Incorporation of registered entities to be notified to KDIPA within 30 days. While the obligation for investment entities to notify KDIPA of all changes made to their ownership structure ensures the availability of legal ownership information of active investment entities, KDIPA has no record-keeping obligation in relation to investment entities that have ceased to exist. Kuwait has indicated that while KDIPA is empowered to maintain any data related to investment entities for an indefinite period, currently there is no record retention obligation or habitual practice by KDIPA to do so.

### **Tax law and Zakat**

116. The tax law requirements imposed by the Income Tax Law (ITL) and Zakat Law requires that some initial legal ownership information is available in regard to all stock companies at registration. However, no obligation is in place for a company to inform the KTA or MOF of a change in the legal ownership structure of the company in all cases, such that legal ownership information held by the tax administration may not be updated.

117. First, as concerns income tax, all incorporated bodies must register at the Tax and Liabilities Department of the KTA within 30 days from starting an economic activity or signing a contract related to an economic activity in the country (ITR, Art. 11). The legal framework establishes no sanction or enforcement of the obligation in case of delay in the registration by the incorporated body.

118. Companies with ownership by nationals of GCC countries are exempt from income tax, while companies with foreign ownership by nationals of other countries are subject to income tax. Therefore, companies fully held by Kuwaiti or other GCC nationals are issued a Tax Release Certificate



of Income Tax Guarantee, which states their exemption status in relation to income taxation by the Tax Certificate section of the KTA.

119. On the other hand, companies with foreign ownership are assessed to determine their status as subject to income tax or exempt from income tax (e.g. investment entities).

120. In case the initial assessment confirms that the company with foreign ownership is subject to income tax, a registration number is provided to the company, its documents are audited and registered in a separated file in the tax system. The KTA stores all documents provided by the company in a specific file to be checked at the moment the company files its annual tax return. As at July 2022, Kuwait has 2 414 companies with foreign ownership liable to income tax registered with the KTA.

121. Whether or not the company is afterwards exempted from tax, the initial request for registration with the KTA must contain the following information:

- name and address of the incorporated body in Kuwait, and outside Kuwait if relevant
- the starting date of the economic activity or of the contract
- the name and address of the agent and the identification details of the agency agreement, if relevant (i.e. branch of a foreign company).

122. Following the determination by the KTA of the status of incorporated bodies as liable to income tax or exempt from income tax, all incorporated bodies determined to be liable to income taxation are required to request a Tax Card to the KTA. Incorporated bodies subject to income tax which have not been provided with a KTA Tax Card are restricted from engaging with government authorities, public and private institutions (ITR, Art. 12). The following documents must be attached to the Tax Card (ITR, Art. 12):

- a copy of the articles of incorporation related to the incorporated body, containing the name, nationality and place of residence of its incorporators (for PRSCs), of its incorporators and initial legal owners (for PSCs) and of its partners (for partnerships).
- a copy of the agency agreement and the agency registration certificate issued by MCI, if relevant
- address of the incorporated body in Kuwait and outside Kuwait.

123. The submission of the articles of incorporation is only required at the moment an incorporated body requests its Tax Card to the KTA. As only incorporated bodies liable to income taxation must apply for a Tax Card, entities that are exempt from income taxation are not required to provide their articles of incorporation to the KTA. Thus, the ITR does not impose

legal ownership disclosure requirements on Kuwaiti incorporated bodies in all cases.

124. The tax legislation does not impose an obligation for incorporated bodies liable to income tax to update the documents provided at the moment of requesting the Tax Card, unless the ownership change affects the tax liability of the body. Such changes must be notified to the KTA within 30 days. This includes the change of shareholding from GCC to non-GCCs owners as the company would then no longer be tax exempt. On the other hand, modifications that do not affect the tax liability do not need be reported, e.g. transfer from one foreigner to another foreigner. Thus, there is no obligation for companies to inform the KTA of changes in legal ownership of the company in all cases. An incorporated body is also required to notify the KTA that it has ceased its economic activity within 30 days of the termination of the activity (ITR, Art. 11).

125. Incorporated bodies subject to income taxation are required to file an annual tax return within four months of the end of the fiscal year, unless its income does not exceed KWD 5 250 (EUR 16 808) in the assessed period (ITL, Art. 8). The annual tax return does not include legal ownership information.

126. Second, as concerns Zakat, the MOF requires all stock companies to register at the Zakat Public Registry of MOF. Foreign companies subject to income taxation are also required to register despite being exempted from Zakat.<sup>15</sup> Both domestic and foreign stock companies are required to provide the following documents for the registration:

- articles of incorporation, containing the name, nationality, and place of residence of its incorporators (for PRSCs) or of its incorporators and initial legal owners (for PSCs)
- business registration at the Commercial Registry of the MCI
- information on the audit firm hired by the company
- document authorising a natural person to sign declarations on behalf of the company.

127. The Zakat Law requires companies to submit an annual financial statement as a Zakat declaration to the MOF stating the annual net profit of the company (Zakat Law, Art. 4). The obligation for domestic stock companies to submit articles of incorporation for Zakat purposes ensures that legal ownership is available in regard to all stock companies at the time of

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15. Foreign companies are required to submit to the MOF a Zakat Contribution exemption letter provided by the KTA to demonstrate they are not liable to Zakat contributions and declaration obligations.

creation of the company. However, no obligation is in place for a company to inform the KTA or MOF of a change in the legal ownership structure of the company.

128. Zakat Law establishes that any stock company that provides incorrect statements or abstains from submitting its statements related to Zakat, with the intent of evading its contributions, is subject to a fine up to KWD 5 000 (EUR 16 008) and payment of its late contributions, in addition to imprisonment for up to three years of its representative (Zakat Law, Art. 1). The Ministry of Finance is responsible for the oversight and enforcement of reporting obligations related to Zakat (Zakat Law, Art. 2). The Income Tax Law does not establish a similar sanction framework, except for the possibility to make a tax assessment through estimation, which in most cases would mean a higher taxation than when the taxpayer provides the requested information (see paragraph 253).

### **Anti-money laundering framework**

129. Legal ownership information is also to be gathered by reporting institutions pursuant to the AML framework. AML-obliged persons are required to identify customers and verify the customer's identity using reliable, independent source documents, data or information as part of their Customer Due Diligence (CDD) measures (AML Law, Art. 5; AML Regulation, Art. 5/2/a). The AML framework requires that AML-obliged persons take reasonable measures to verify the identity as well as "understanding the ownership structure" of the customer (AMLR, Art. 5/2/d). No further information or details are provided on the ownership structure requirement or its procedural aspect. Thus the current framework does not guarantee the availability of legal ownership information.

### **Companies that ceased to exist**

130. The Company Law provides that a company ceases to exist due to a termination proclamation by the managers of the company or the chairman of the board of directors (CL, Art. 277). Kuwait has indicated that the Commercial Registry of MCI keeps whatever identity and legal ownership information it has for five years in case of termination or liquidation of a company. The implementation in practice of the record-keeping obligation of the MCI will be considered in Phase 2.

131. KDIPA does not impose record-keeping obligations on investment entities that have ceased to exist. While it is legally empowered to impose obligations for the maintenance of any data related to investment entities for an indefinite period, currently there is no record retention obligation or habitual practice in place.

132. The CMA Law imposes a five-year minimum period (from the date of preparation of a record or until a dispute between the licensed person and a client is settled) for the KCC to keep records on the shareholders register or the central depository system for securities (CMA Law, Art. 68). Kuwait has indicated that in practice, the records are kept by the KCC for a ten-year period.

133. Ownership information for companies that ceased to exist also remains available on the register at the Tax and Liabilities Department of the KTA, albeit this information may not be complete nor up to date. Kuwait has indicated that ownership information must be kept indefinitely by the KTA, but no legal provision has been provided in this regard.

134. The availability of ownership information of dissolved bodies in Kuwait is ensured by the obligation for the KCC to maintain records for a five-year period.

### **Foreign companies**

135. The presence of foreign companies in Kuwait is strictly regulated. Different approaches are used by foreign persons to conduct business in Kuwait.

136. Foreign companies often operate projects in Kuwait through JVCs, which are formed under a contract between two or more persons, are not subject to restrictions on foreign participation and have no legal personality in Kuwait. JVCs are not by themselves liable to tax, however the persons forming a JVC are subject to income tax to the extent of their foreign ownership (see A.1.3).

137. A foreign company may also operate in Kuwait through an agency agreement. Resident agents must be Kuwaiti nationals or a legal person with ownership of at least 51% by Kuwaiti nationals, registered in the Commercial Registry. Agency agreements are regulated by the Commercial Code and the Regulation of Commercial Agencies.

138. The agency agreement between the foreign company (i.e. the principal) and the resident agent must be registered with the Commercial Agencies Department at MCI. The agreement must include the name of the principal and its nationality, set out the authorities and responsibilities of each party and detail the services included in the scope of the agreement. Under an agency agreement, the business is carried out in the name of the resident agent. Resident agents are not designated as AML-obliged persons.

139. While the agency agreement registered at the MCI is required to include the identification of the foreign company and its nationality, there is no requirement for the legal ownership information of the represented

company to be included in the agreement or any other documentation. Thus, it is not established that ownership information related to agency agreements is available in all cases.

**140. Kuwait should ensure that legal ownership information on foreign companies having sufficient nexus with Kuwait is available in line with the standard.**

141. Kuwait does not recognise the concept of permanent establishment through branches in its domestic legal framework. Kuwait has not provided information or legal provisions on the availability of ownership information of non-natural persons that control domestic entities for the identification of potential foreign shareholders or the legal ownership of foreign companies that operate in Kuwait through JVCs or agency agreements.

142. The implementation of the legal framework and the availability of legal ownership information on companies in practice, as well as the supervisory measures and their adequacy, will be examined during the Phase 2 review (see Annex 1).

### **Summary of legal requirements**

143. In summary, the requirements on legal ownership information in Kuwait detailed over the previous pages include the following provisions:

- Company Law requirements: while stock companies must register at the Commercial Registry upon their incorporation and renew their registration at least once in a five-year period,<sup>16</sup> there are no legal obligations for the companies to notify the registry when a change to legal ownership occurs. Stock companies are also required to hold a shareholders register with the KCC, which must be notified to update legal ownership information in the KCC shareholder register.
- Specific economic sectors have additional requirements: (i) insurance companies must provide legal ownership information when applying to the IRU for a licence, however there is no obligation to notify the IRU in case of modification to the company's legal ownership; (ii) listed companies are required to inform the CMA of changes to their ownership structure, however such obligation is limited by specific thresholds; and (iii) investment entities are required to provide legal information to KDIPA and update it in case of changes, ensuring the availability of legal ownership information of investment entities on all cases, however there is no mandatory retention period.

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16. The Commercial Register Law establishes that an incorporated body must renew its registration, which has a four-year duration, within one year of the expiration.

- Tax legislation requirements: ITL and Zakat Law require some initial legal ownership information to be available at registration, however no obligation is in place for companies to inform the KTA or MOF of changes in their legal ownership structures in all cases.
- AML legislation: AML-obliged persons must “understand the ownership structure” of their clients, which does not amount to guarantee the availability of legal ownership information

144. The disclosure requirements imposed by the Company Law, specifically in relation to the KCC, ensure that the legal ownership information of stock companies is available at the moment of incorporation of companies and when changes are made to their legal ownership. While specific legislation on insurance companies and listed companies do not require companies to notify changes to legal ownership, the legislation for investment entities does ensure the availability of information in all cases, although without a mandatory retention period. Finally, tax legislation requirements also fail to oblige the notification of changes to legal ownership to the KTA or MOF.

### **Implementation and enforcement of the obligation on availability of legal ownership information in practice**

145. Stock companies that violate ownership disclosure requirements of the CMA Law, which include providing information on any changes to the information held at the Shareholders Registry, are liable to penalties between KWD 1 000 (EUR 3 201) and KWD 100 000 (EUR 320 163). The CMA is empowered by the legal framework to perform on-site inspections to ensure compliance with the provisions of the CMA Law (CMA Regulation, Module 3, Art. 2-2). Additional sanctions are also applicable in the insurance sector (paragraph 105) and in relation to foreign investment entities that fail to amend ownership data in the Investment Registry (paragraph 114).

146. While the concept of inactive companies is not set in the Company Law, in practice a company that does not provide financial statements during a three-year period is considered inactive. An inactive company is unable to renew its licence, eventually resulting in the company not being able to operate in Kuwait (see paragraph 149). This is a measure taken in practice and no legal provision formally establishes this practice. Inactive companies are not removed from the Commercial Registry, thus retaining their corporate personality. The supervision of inactive companies and its adequacy in practice will be examined during the Phase 2 review (see Annex 1).

147. Kuwait reports that as of July 2022, 6 202 incorporated bodies registered with KTA are considered inactive, out of which 1 532 are liable to income tax due to foreign ownership. As Kuwait has indicated that there

are 9 120 domestic companies and partnerships and 3 211 with foreign ownership in the jurisdiction, the rate of inactive companies in Kuwait is substantial, with over 68% of domestic companies and partnerships and over 47% of foreign companies and partnerships considered inactive. Kuwait should take actions to reduce the large number of inactive companies and reduce the risk they pose to the availability of information (see Annex 1). The availability of information on these companies in practice will be analysed during the Phase 2 review (see Annex 1).

148. Furthermore, the Company Law regulates the dissolution of incorporated bodies, establishing that a body is dissolved if it fails to issue financial statements for a period of three consecutive years (CL, Art. 266/7). However, Kuwait has informed that, in addition to the failure to issue financial statements, the following additional steps must take place before the dissolution is confirmed, the body is prevented from operating in Kuwait and removed from the Commercial Registry:

- The body has not renewed its licence, which has a four-year duration.
- A one-year period has elapsed from the expiration of the licence.

149. A dissolved body may be reinstated by its legal owners through a request submitted to the Status Reconciliation Committee. Kuwait has indicated that the reinstatement procedure is regulated by executive regulations to the Company Law. Kuwait has not provided such executive regulations,<sup>17</sup> thus the reinstatement procedure of dissolved bodies is not currently assessable. As such, it is unclear whether the reinstatement procedure allows dissolved bodies to be reinstated after a five-year period, which may result in the unavailability of legal ownership information for reinstated companies. **Kuwait should ensure that legal ownership information remains available after the reinstatement of dissolved bodies, in line with the standard.**

150. The implementation of the legal framework and the availability of legal ownership information on companies in practice, as well as the supervisory measures and their adequacy, will be examined during the Phase 2 review.

### *Availability of beneficial ownership information*

151. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. In Kuwait, this aspect of the standard is governed by the AML legal framework, albeit there are

17. Kuwait referred to Bankruptcy Law No. 71 of 2020 and its regulations, but the framework does not regulate the reinstatement procedure of dissolved bodies.

several shortcomings in the framework. There are no requirements on beneficial ownership information in the Company Law and tax legislation, which are therefore not covered in this section. The AML legislation and related regulations are analysed below.

### Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax and Zakat Law	AML Law	Direct Investment Promotion Authority Law	Capital Markets Authority Law	Insurance Regulatory Unit Law
Private Shareholding Company	None	None	Some	None	None	None
Public Shareholding Company	None	None	Some	None	None	None
Foreign companies (tax resident) <sup>18</sup>	None	None	All	None	None	None

152. The main issues identified in the AML framework relate to: (i) the incomplete scope of the AML framework; (ii) the absence of adequate definitions and guidance in the AML legislation to identify the beneficial owners of legal entities and arrangements, in particular the imposition of an ineffectively high control threshold of 50% for the identification of beneficial owners of companies in regulations; and (iii) the absence of a specified update frequency for AML-obliged persons to carry out ongoing customer due diligence, except for banks and for exchange companies.

### Scope of the persons subject to the AML framework

153. Beneficial ownership information is only available pursuant to the AML framework but there is no requirement for all relevant legal entities to engage with an AML-obliged person, such as financial institutions, accountants and lawyers, having the obligation to hold adequate, accurate and up-to-date beneficial ownership information on their customers. Although all companies must have an auditor, the scope of AML-obliged persons does not include auditors. The KCC is also not designated as an AML-obliged person.

154. In addition to financial institutions (detailed in A.3), the following professions are AML-obliged persons as the legislation includes them in the concept of Designated Non-Financial Businesses and Professions (DNFBPs):

18. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obliged service provider that is relevant for the purposes of EOIR. (Terms of Reference A.1.1 Footnote 9).



- lawyers, independent legal professionals and accountants, when they prepare, execute or conduct transactions for customers in relation to the following activities:
  - purchase or sale of real estate
  - management of a customer's funds, including securities, bank accounts, and other assets
  - establishment, operation, or management of legal persons or legal arrangements and the organisation of related subscriptions
  - buying and selling of legal persons
- company and Trust Service Providers when they prepare for or carry out transactions for a customer concerning any of the following activities:
  - acting as a formation agent of legal persons
  - acting as or arranging for another person to act as a director, secretary of a company, or partner in a partnership or in a similar position with respect to other legal persons
  - providing a registered office, business address, or accommodation, correspondence or administrative address for a legal person or legal arrangement
  - acting as or arranging for another person to act as trustee or an equivalent function for a trust fund or any other legal arrangement
  - acting as, or arranging for another person to act as, a nominee shareholder
- real estate agents and Companies operating with precious metals.

155. Beneficial ownership information is available with financial institutions and/or DNFBPs if and when a legal person establishes a relationship with such an AML-obliged person. The only existing obligations relate to the opening of a bank account<sup>19</sup> by (i) PSCs and PRSCs at the time of incorporation to prove that all incorporators have deposited the value of the shares acquired (CL, Art. 127 and 235); (ii) licensed insurance companies to deposit guarantees in a bank (IRU Law, Art. 30); (iii) for public subscription to a PLS and PSC (CL, Art. 66 and 129); and (iv) partners of an LLC for the distribution of their contributions in line with incorporation requirements

19. The bank accounts must be held with local banks in Kuwait, with the exception of the bank account required for the subscription to PSCs at the time of their incorporation, which may also be held with foreign branches of Kuwaiti banks or their representative abroad after the approval of CBK.

(CL, Art. 97). The obligation for some forms of legal entities to hold a bank account only relate to the moment of incorporation or public subscription.

156. There is no requirement for all forms of companies to engage the services of a DNFBP or a financial institution at all stages of their lives. For example, there is no requirement to use the services of a member of a legal profession during the life of the company. Therefore, the scope of the AML legislation does not necessarily cover all Kuwaiti companies.

157. Whilst in practice the vast majority of companies will come in contact with AML-obliged persons, there is no legal requirement to ensure that accurate, adequate and up-to-date beneficial ownership information is available in all cases as required by the standard. **Kuwait is recommended to ensure that beneficial ownership information is available for all companies in accordance with the standard.**

### **Definition and methodology for identifying beneficial owners**

158. The term beneficial owner is defined in the AML law to mean any natural person who ultimately owns or exercises direct or indirect control over a customer or the person on whose behalf a transaction is being conducted. It also includes those persons who ultimately exercise ultimate control over a legal person or legal arrangement (AML Law, Art. 1).

159. The general definition of beneficial owner is in line with the standard.

160. AML regulations were issued only for banks, exchange companies, insurance companies, precious stones dealers and real estate brokers. The regulations issued by the Central Bank of Kuwait (CBK) for banks and exchange companies and by MCI for insurance companies are of relevance to exchange of information for tax purposes.

161. The CBK regulation for banks requires financial institutions to identify the natural person who owns, possesses or controls, directly or indirectly, more than 50% of a legal entity, as well as the natural person who controls the management of a legal person (CBK Regulation, Art. 6/4). The CBK regulation for banks requires the identification of a natural person who controls the management of a legal person, interpreted as the natural person that makes overall decisions on the management of a legal person and therefore effectively controls it. Thus the regulation captures persons who may have control over the company through means other than ownership. However, the identification of a senior managing official is not established.

162. On the other hand, the regulations on exchange companies and insurance companies require the identification of the natural person who owns, possesses or controls, directly or indirectly, more than 50% of a legal

entity, as well as the natural person who is responsible for the management of the entity. The CBK regulation for exchange companies and the MCI regulation for insurance companies require the identification of a natural person who is responsible for the management of the legal person, interpreted as the senior manager official. Thus, while these regulations require the identification of a senior managing official, they do not require the identification of persons who may control the company through means other than ownership.

163. A threshold of 50% is not in line with the standard,<sup>20</sup> as it results in natural persons with a substantial control over a legal entity not being considered and identified as beneficial owners. As a result, information on beneficial owners for all relevant legal entities in Kuwait may not be available in line with the standard in all cases. Furthermore, the methodologies for banks, exchange companies and insurance companies contain distinct gaps related to the identification of relevant persons. While the methodology for banks does not require the identification of a senior managing official, the regulations for exchange companies and insurance companies do not capture persons who may have control over the company through means other than ownership. Finally, the identification of a senior managing official by exchange companies and insurance companies is not limited to cases when no individual meets the definition of beneficial owner; this goes beyond the standard and therefore is in accordance with the standard.

**164. Kuwait should ensure that the methods of identification of beneficial owners of companies are in line with the standard.**

### **Customer due diligence requirements**

165. As referred to in section A.3 on banking information, the AML-obliged persons are required to identify customers and verify the customer's identity and beneficial owner using reliable, independent source documents, data or information as part of their CDD measures (AML Law, Art. 5).

166. This obligation entails identification of the beneficial owners and taking of reasonable measures to verify their identity as well as understanding the ownership structure of the customer (AML Regulation, Art. 5/2/d). The Regulations detail what those sources can be for customers (a Kuwaiti civil card or a passport, see A.3), but the same is not detailed for beneficial owners. While one can assume that the AML-obliged persons would apply the same for customers and beneficial owners, this is not explicitly set in Regulations. Kuwait should explicitly provide information on the sources

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20. See also FATF Guidance on Transparency and Beneficial Ownership (2014), referring to a 25% threshold, available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

for the identification of beneficial owners that may be used by AML-obliged persons (see Annex 1).

167. Financial institutions and DNFBPs are also required to carry out ongoing due diligence on all business relationships in accordance with the risk profile of the customer (AML Law, Art. 5/2/c). The CDD process includes verifying that any changes are consistent with the customer's data, activities and risk profile. All documents, data and information collected under the CDD process must be kept up to date by undertaking reviews of existing records, in particular for higher risk customers, on an ongoing basis to ensure that the information collected is updated and relevant (AML Law, Art. 5/11). In particular, banks are required to identify and verify the identity of the customer and the beneficial owner whenever doubts exist about the veracity or adequacy of previously obtained customer identification data (AML Law, Art. 5/3 and CBK Regulation, Art. 4). While specific update frequencies are established for banks and exchange companies – once a year for high-risk customers, once every two years for medium-risk customers and once every three years for low-risk customers – no specified frequency for updating CDD is established for any DNFBPs, possibly leading to situations where the available beneficial ownership information is not up to date. **Kuwait should ensure that adequate, accurate and up-to-date beneficial ownership information for companies is available in all cases.**

168. The AML framework allows for a simplified CDD regime for low-risk customers of banks. The simplified CDD measures must be consistent with risk factors and ensure the ability of financial institutions to verify the customer identity and the beneficial owner after the establishment of the business relationship. In addition, the update of customer data is still required, however it may take place at longer intervals in comparison to the standard frequencies (previous paragraph). The simplified CDD regime may be extended to a limited range of individuals and institutions, including government entities, financial institutions subject to AML requirements and listed companies subject to disclosure requirements (CBK Regulation, Art. 11).

169. AML-obliged persons may rely on third parties to perform some elements of CDD (i.e. outsourcing CDD checks) if the arrangement is approved by the supervisory authority. The ultimate responsibility for customer identification and verification remains with the financial institutions or DNFBPs that have obtained the approval of the supervisory authority to rely on the third party (AMLR, Art. 15). The following conditions must be met:

- The service providers must immediately obtain all information as required under the CDD requirements.
- The service providers are satisfied that copies of identification data and other documents relating to CDD measures will be made available from the third party upon request and without delay.

- The service providers are satisfied that the third party is regulated, supervised or monitored for, and has measures in place for, compliance with the requirements set out in the AML law.

170. The AML framework does not establish the possibility of AML-obliged persons in Kuwait accepting CDD information from third party introducers.

171. The legislation allows financial institutions to delay verifying the identity of a customer or beneficial owner until after establishing the business relationship according to cases determined by the regulatory and supervisory entities (AML Law, Art. 5/4). The CBK instructions define the following requirements to be met by financial institutions for a delayed verification. The AML-obliged person must:

- complete the verification process as soon as reasonably possible
- have clear essential need to not interrupt normal conduct of business
- perform effective control of ML/FT risks.

172. When the identity verification process is postponed, banks are required to include additional risk management procedures, such as a limitation on the number, type and value of transactions that may be performed by the customer. The AML Law establishes that financial institutions must refrain from opening an account, starting a business relationship, or conducting a transaction, if compliance with CDD cannot be achieved, and in such cases, the financial institutions should end the business relationship (AML Law, Art. 5/5).

173. The AML-obliged persons must keep the following records and documents and make them available to AML authorities (AML Law, Art. 11):

- Records obtained through the CDD process, including documents on the identity and beneficial owners of customers, account files and business correspondence, for at least five years after the business relationship has ended or a transaction has been carried out.
- Risk assessment document and any underlying information for a period of five years from the date it was carried out or updated.

174. The obligation of AML-obliged persons to maintain records and documents for a five-year period established by the AML legislation applies to all customers, including companies that have ceased to exist.

## Enforcement measures and oversight

175. AML-obliged persons that fail to comply with beneficial ownership information obligations are subject to a range of sanctions, including fines up to KWD 500 000 (EUR 1 600 816), prohibition to practice the activity and withdrawing of licence (AML Law, Art. 15). The CBK, CMA, MCI and the Kuwait Association of Lawyers are empowered to supervise and monitor compliance with the AML framework of the following relevant AML-obliged persons (AML Regulation, Art. 1/5):

- CBK: banks, exchange companies and finance companies
- CMA: investment companies, securities brokerage companies, financial brokerage companies, underwriters, asset managers, mutual funds and custodian companies
- MCI: insurance companies, exchange organisations and accountants
- Kuwait Association of Lawyers: lawyers.

176. The supervisory entities are empowered to perform on-site examinations and to compel AML-obliged persons to provide any information and copies of documents and files however and wherever stored, including documents held outside their buildings (AML Law, Art. 14).

177. AML-obliged persons that present false statements of facts or conceal facts that should be disclosed may also be punished by a fine between KWD 5 000 (EUR 16 008) and KWD 500 000 (EUR 1 600 816) and imprisonment for up to three years (AML Law, Art. 35). Finally, a Court may prohibit the perpetrator of any offence from engaging in or continuing to carry out any business or profession that provides an opportunity to commit such offence (AML Law, Art. 38).

178. The implementation of the legal framework and the supervisory measures and their adequacy will be examined in greater detail in the Phase 2 review (see Annex 1).

## *Nominees*

179. The holding of shares of a company as a nominee is not prohibited by any legislation in Kuwait. The extent to which nominee arrangements can be used in Kuwait to circumvent restrictions on the legal ownership of Kuwaiti entities by foreign persons (see paragraph 47) will be analysed during the Phase 2 review.

180. The AML legislation includes Company and Trust Service Providers which act as, or arrange for another person to act as, a nominee shareholder (AML Law, Art. 1) (see paragraph 154). As DNFBPs, Company and Trust Service Providers are required to identify customers and verify the

customer's identity and beneficial owner(s) (see paragraph 165). However, Kuwait's legal framework makes no reference to other individuals or legal entities operating as nominees.

181. As a result, nominees not providing such services in a professional capacity are not required to maintain ownership and identity information on their nominator. Therefore, it is uncertain that Kuwait's legal framework makes available the information on the nominator and beneficial owner of a nominee arrangement established with any person which is not a Company and Trust Service Provider.

182. In addition, the Company Law does not regulate or address the disclosure of nominee status to companies, the KCC or other institutions. Kuwait has provided no information or legal provisions on the regulation of nominee arrangements. As a result, it is not established that the legal framework of Kuwait ensures in all cases the availability of the identity information of the nominator and the beneficial owner of a legal person acting as nominator.

**183. Kuwait is recommended to ensure that accurate identity information on the nominators and their beneficial owners is available where nominees act as the legal owners on behalf of any other persons.**

#### *Availability of ownership information in EOIR practice*

184. The availability of legal and beneficial ownership information on companies in EOIR practice will be examined during the Phase 2 review.

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

185. Kuwaiti legislation does not allow the use of bearer shares. Kuwaiti entities may not issue bearer instruments.

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

186. Partnerships are governed by the same law as companies, i.e. the Company Law, and the definition of the term "company" set out in Article 3 of the Company Law also applies to partnerships (see paragraph 78). The Kuwaiti legal framework differentiates between the concept of "shareholders", applied to PSCs and PRSCs, and "partners" that is applied to the following five distinct partnerships:

- General Partnership Companies (**GPC**), defined in Article 33 of the Company Law, are established between two or more persons that are personally and jointly liable with all their assets for all obligations of the partnership.

- Limited Partnership Companies (**LPC**), defined in Article 56 of the Company Law, include two categories of partners: (i) General Partners that are jointly liable for all obligations of the company and must be of Kuwaiti nationality; and (ii) Limited Partners that are only liable for the obligations of the company at the limit of its capital contribution. LPCs must have at least one general partner and one limited partner.
- Partnerships Limited by Shares (**PLS**), defined in Article 60 of the Company Law, must also include general partners and limited partners. However, a PLS is required to have a minimum of five partners, including at least three limited partners, with its capital divided into shares.
- Joint Venture Companies (**JVC**), defined in Article 76 of the Company Law, are contracted between two or more persons, being restricted to the relationship between the partners, having no effect in respect of third parties. They have no legal personality and any relation with a third party is considered to be directly with the partners of the JVC.
- Limited Liability Companies (**LLC**), defined in Article 92 of the Company Law, are associations of a maximum number of 50 partners. Each partner is liable only to the extent of its membership interest in the capital. LLCs cannot undertake insurance or banking activities or the investment of funds for the account of third parties.

187. The Kuwait legislation establishes that Kuwaiti partners must own at least 51% of the capital of GPCs, LPCs, PLSs and LLCs (CL, Arts. 38, 57 and 66). JVCs are not subject to limitations on foreign ownership.

188. All partnership types, with the exception of JVCs, have a minimum capital of KWD 1 000 (EUR 3 201) (Ministerial Decision 234/2015). As at July 2022, there are 4 594 GPCs, 2 903 LPCs and 65 885 LLCs registered in Kuwait. Kuwait has not provided information on the number of PLSs or JVCs in the country, or the total number of partnerships.

### *Identity information*

189. The following table shows a summary of the legal requirements to maintain membership information in respect of partnerships.



### Partnerships covered by legislation regulating membership information<sup>21</sup>

Type	Company Law	Tax and Zakat Law	AML Law
General Partnership Company	All	Some	Some
Limited Partnership Company	All	Some	Some
Partnership Limited by Shares	All	Some	Some
Joint Venture Company	None	None	None
Limited Liability Company	All	Some	Some
Relevant Foreign partnerships	None	None	Some

190. All partnerships in Kuwait are established through a company contract, which must include the name of the partnership, the name of all partners, the membership interest of each partner and special provisions regarding the distribution of profits and liquidation proceeds. The company contract is submitted at the Commercial Registry as part of the registration requirements (with the exception of JVCs, see paragraph 193). The Commercial Register Law establishes that incorporated bodies must renew their registration, which has a four-year duration, within one year of the expiration (Commercial Register Law, Art. 5). This obligation applies to all partnerships with the exception of JVCs and foreign partnerships.

191. The company contract of LPCs and PLSs must include the nationality and domicile of all partners. The company contract of LLCs must include the appointment of an auditor that may access the LLC's books, registers and documents.

192. All partnerships formed under Kuwaiti law, with the exception of JVCs, must provide some membership identity information to the KTA, as the ITR establishes that all incorporated bodies are committed to register at the KTA within 30 days of starting its activity (ITR, Art. 12). However, there is no obligation for partnerships to inform the KTA of changes in its membership identity. Thus, this information is not updated in all cases (see paragraph 124).

193. All partnership types, with the exception of JVCs, are required to be registered at the Commercial Registry. The transfer of membership interests in GPCs, LPCs and LLCs are only considered effective upon a notification to the Commercial Register (CL, Art. 40 and 57 and Ministerial

21. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. “Some” means that an entity will be covered by these requirements if certain conditions are met.

Resolution 287/2016, Art. 59). LLCs are also required to record the transfer of membership interests in a written document (CL, Art. 99) and to hold a register of partners in its headquarters including the name, nationality, place of residence and number of shares of each partner (Ministerial Resolution 287/2016, Art. 64).

194. The transfer of membership interests of PLSs must be notified to the Commercial Register (CL, Art. 63),<sup>22</sup> however PLSs must also notify the KCC of any changes to the data recorded in the Shareholders Registry, including membership information (Ministerial Resolution 287/2016, Art. 39). The change in membership interest is only considered effective upon the notification to both the Commercial Register and the KCC. With the exception of PLSs, other forms of partnerships are not required to register at the KCC.

195. The identity information provided by partnerships to the Commercial Register is kept by MCI for an unspecified period. While the Company Law does not establish a specific period for the retention of data, Kuwait has indicated that the identity information provided is kept permanently. In addition, the information provided by PLSs to the KCC is kept for a five-year period (see paragraph 131).

196. The contract of a JVC must specify the rights and obligations of the partners and the manner in which the profits and losses are distributed among them (CL, Art. 77). However, JVCs are not required to register their company contract in the Commercial Register (CL, Art. 23). A JVC is restricted to the relationship between the partners, having no effect in respect of third parties. JVCs are transparent for tax purposes and taxes are directly levied on its partners. If a JVC is established between Kuwaitis and foreign persons, the tax liability of each partner will be separately determined in accordance with the rules described in A.1 (see paragraphs 34 to 43).

197. The legal framework presents significant gaps in relation to the identity information of JVCs, as they are not required to register their company contract in the Commercial Register at any moment. **Kuwait should ensure that identity information on all Kuwaiti partnerships is available in line with the standard.**

198. All partnerships are also subject to the customer due diligence obligations imposed on AML-obliged persons pursuant to the AML framework for legal persons, when they have a relationship with such a person (see paragraph 129).

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22. The Company Law establishes that LPCs (CL, Art. 57) and PLSs (CL, Art. 63) are subject to the provisions applicable to GPCs in respect of registration in the Commercial Registry.

199. The legal framework of Kuwait makes no mention of foreign partnerships operating in Kuwait nor establishes any requirement for foreign partnerships to provide information on their partners. Kuwait has provided no information on potential tax requirements or obligations imposed on relevant foreign partnerships, i.e. when they have income, deductions or credits for tax purposes in Kuwait, when they carry on business there or if they are required to hold a tax card (see paragraph 122). **Kuwait should ensure that identity information on foreign partnerships having sufficient nexus with Kuwait is available in line with the standard.**

### *Beneficial Ownership*

200. The following table shows a summary of the legal requirements to maintain beneficial ownership information in respect of partnerships:

#### Partnerships covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	AML Law
General Partnership Company	None	None	Some
Limited Partnership Company	None	None	Some
Partnership Limited by Shares	None	None	Some
Limited Liability Company	None	None	Some
Joint Venture Company	None	None	None
Foreign partnerships	None	None	Some

201. The obligation incumbent upon AML-obliged persons to identify their customers and their customers' beneficial owners before entering into the business relationship (AML Law, Art. 5) applies in the same way whether the client is a company or a partnership, with the same definition (see section A.1.1). Similarly, AML-obliged persons must maintain records and documents for a five-year period in relation to partnership customers, including those that have ceased to exist. As for all entities, the process of determining beneficial ownership should, under the standard, take account of the features of the entities' various forms and structures.<sup>23</sup> The absence of methodology for identifying the beneficial owners of companies (as described in paragraphs 158 to 164) is also true of partnerships. There is no indication of the means by which the beneficial owners of partnerships are to be determined and the 50% ownership threshold would not be adequate considering the structure of some partnerships.

23. See paragraphs 16 and 17 of the Interpretive Note to FATF Recommendation 24.

202. The shortcomings of the AML framework identified in section A.1.1 also apply here. While a bank account is required for public subscription to a PLS (CL, Art. 66) and the partners of an LLC must have a bank account for incorporation requirements (CL, Art. 97), there is no requirement for all forms of partnerships to engage the services of a DNFBP or a financial institution at all stages of their lives. Therefore, the scope of the AML legislation does not necessarily cover all Kuwaiti partnerships. **Kuwait should ensure that beneficial ownership information on all Kuwaiti partnerships is available in line with the standard.**

203. Partnerships are subject to the oversight and enforcement provisions imposed on reporting institutions pursuant to the AML framework (Section A.1.1).

#### *Availability of partnership information in EOIR practice*

204. The implementation of the legal framework and the availability of information on partnerships in practice, as well as the supervisory measures, in practice will be examined during the Phase 2 review.

#### **A.1.4. Trusts and waqfs**

205. The concept of common law trusts is not recognised under Kuwait's legislation. However, the concept of *waqf* originating from Islamic Law is recognised. *Waqfs* are limited to specific purposes.

#### *Foreign trusts*

206. Even though the concept of trusts does not exist in Kuwait, there is no legal provision in Kuwait that would prevent a person from acting as a trustee or administrator of a trust formed under foreign law. The availability of identity information related to trusts with a trustee or administrator in Kuwait depends on whether these persons are AML-obliged persons.

207. The AML legislation identifies lawyers, independent legal professionals and accountants involved in the establishment, operation, or management of legal arrangements and the organisation of related subscriptions as AML-obliged persons. Trust Service Providers, which are not defined in the law, are also identified as DNFBP when performing the following activities for their clients (i.e. on a professional basis):

- providing a registered office, business address, or accommodation, correspondence or administrative address for a legal arrangement
- acting as or arranging for another person to act as trustee or an equivalent function for a trust fund or any other legal arrangement

- any other activity or profession stipulated by AML executive regulations.

208. While Trust Service Providers are AML-obliged persons, non-professional Kuwaiti trustees are not covered by the AML legislation and have no obligation to identify all parties to the trust they manage, in contravention with the standard.

209. The general definition of beneficial owner as analysed in section A.1.1 applies to trusts:

any natural person who ultimately owns or exercises direct or indirect control over a customer or the person on whose behalf a transaction is being conducted. It also includes those persons who ultimately exercise ultimate control over a legal person or legal arrangement.

210. In relation to legal arrangements, banks are required to identify the person acting on behalf of the customer, the custodian, the beneficiary or any other person entrusted with these functions to understand the equity and control structure of the arrangement and to reach the ultimate person in possession or in control of the customer (CBK Regulation, Art. 6/4). The requirements relating to identity and beneficial ownership of legal arrangements are not in line with the standard. While the “persons acting on behalf of the customer” can be interpreted as covering the trustees, there is no requirement for the settlor, protectors (if any) and any other natural person exercising ultimate effective control over the arrangement to be identified.

211. Legal arrangement includes trusts. The law does not set any methodology nor provide any guidance on what information AML-obliged persons should obtain on which participants to a trust, for instance when and how to look through participants to identify the relevant natural persons. Kuwait has indicated that in practice the CBK Regulation obligates financial institutions to look through non-natural persons to identify the beneficial owner(s).

212. The CBK circular for banks on AML recognises arrangements that manage the assets of third parties as a *customer risk factor* to be considered for the application of enhanced CDD measures, which result in an increase in the degree and nature of monitoring of business relationships (CBK Regulation, Arts. 5/2). There are no circulars or regulations applicable to other AML-obliged persons.

213. **Kuwait should ensure the availability of identity and beneficial ownership information on foreign trusts and similar legal arrangements administered in Kuwait or with a Kuwaiti-resident trustee in line with the standard.** In addition the practical aspects of these gaps will be assessed in the Phase 2 review (see Annex 1).

## *Waqfs*

214. Kuwaiti legislation allows for the formation of *waqfs*, which allow the separation of control and ownership of an asset. *Waqfs* can own shares and hold bank accounts in their own names. The Kuwait *Awqaf* Public Foundation (KAPF) regulates and supervises *waqfs*, under the Ministry of *Awqaf* and Islamic Affairs, pursuant to Decree 257/1993 on Establishing Kuwait *Awqaf* Public Foundation. The *Awqaf* Affairs Council is the supervisory authority of *waqf* affairs.

215. In essence, *waqfs* are contracts formed under Sharia Law pursuing general acts of benevolence. In Kuwait, *waqfs* are constituted by a *Waqif* (settlor), an *Al Mawqoof Aleih* (beneficiary), the *Al Mawqoof* (entrusted asset) and the *Nazir* (trustee). The settlor may be a natural person or a legal person. It is possible that the settlor appoints itself as the trustee of the *waqf*.

216. In Kuwait, *waqfs* can take the form of charitable *waqfs*, familial *waqfs* and joint *waqfs*:

- Charitable *waqf*, which establishes a charitable body as beneficiary.
- Familial *waqf*, which establishes specific natural persons or their posterity as beneficiaries. There is no requirement for the beneficiaries to be related to the settlor. The settlor may stipulate that in case all beneficiaries and successors are deceased, the familial *waqf* may become a charitable *waqf*.
- Joint *waqf*, which is a combination of both familial and charitable *waqf*.

217. In Kuwait, a *waqf* may be established in perpetuity or for a determined period. When a *waqf* of limited duration expires, the *waqf* assets are returned to the settlor or its successors. A *waqf* may also be dissolved if all beneficiaries are deceased. *Waqfs* may also be altered or revoked in Kuwait.

218. The trustee is bound by the conditions established by the settlor. However, they may be disregarded under some circumstances, including when they become contradictory to the beneficiaries' interests.

219. The KAPF acts as trustee of a charitable *waqf* if it is appointed as such by the settlor, if the settlor is a mosque or in case no trustee has been originally appointed (KAPF Regulation, Art. 3). It is empowered to manage the funds within the limits of the conditions of the settlor (KAPF Regulation, Art. 2). The KAPF may also be appointed as a co-trustee of a *waqf*. In this case, it must abide by the settlor conditions and the provisions of an agreement concluded with the co-trustee. The co-trustee must submit to the

KAPF the original copies of all documents and information of the *waqf*'s assets (Awqaf Circular 11/2013).

220. Assets in a *waqf* are often real estate or other assets with a certain level of perpetuity. The assets generally become inalienable, and the proceeds are spent for the benefit of the beneficiaries or for charitable purpose. The perpetuity of *waqf* means that the asset's proceeds fall either to the benefit of a string of beneficiaries or a (general) charitable purpose. Where the (string of) beneficiaries are no longer alive, the revenues of the assets of the *waqf* will be allocated to a charitable body as close as possible to the initial purpose.

221. Kuwait provided no legislation requiring the identification of all relevant persons related to a *waqf*. **Kuwait should ensure that identity ownership information on waqfs is available in line with the standard.**

222. Kuwait provides no regulatory guidance on how to identify the beneficial owners of *waqfs*. **Kuwait should ensure that the methods of identification of beneficial owners of waqfs secure that adequate, accurate and up-to-date beneficial ownership information is available in all cases.**

### *Oversight and enforcement*

223. Trustees are not AML-obliged persons *per se*, so the AML provisions will only apply when the trustee of a foreign trust is otherwise an AML-obliged person or engages an AML-obliged person in Kuwait, in which case the oversight and enforcement regime established by the AML legal framework – as well as the five-year record-keeping obligation established by the AML legislation (see paragraph 173) – would apply.

224. Kuwait has not provided legal provisions on the oversight and enforcement of (foreign) trusts and *waqfs*.

### *Availability of trust and waqf information in EOIR practice*

225. The implementation of the legal framework and the availability of information on trusts and *waqfs* in practice will be examined during the Phase 2 review.

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

226. The foundations in Kuwait must be run in the public interest and do not constitute relevant entities for the 2016 Terms of Reference.

227. Public interest foundations do not fall within the scope of the evaluation of the terms of reference if they meet the following criteria:

- The foundation must have a non-profit activity/be in the public interest/ have no commercial purpose.
- The foundation has no identifiable beneficiaries.
- The foundation does not distribute to its members/founders. All of its assets and liabilities are transferred to a public body or the State upon dissolution.
- The assignment of assets to the foundation is irreversible.
- The foundation may be exempt from tax if certain conditions are met.
- The foundation's constitution is subject to the government's approval and oversight.

228. In Kuwait, foundations must pursue a non-profit activity towards a public interest. In practice, foundations take the form of clubs and public welfare societies. Natural persons and legal entities are able to allocate funds for charitable purposes, without the intention to realise profits, for an indefinite period.

229. The constitution of foundations must be in accordance with a model statute from the Ministry of Social Affairs. The statute of the foundation must provide the donors and other sources of its funds (Foundation Model, Art. 2). The allocation may be determined by a will. The foundation must deposit all its funds in a bank and notify the Ministry of Social Affairs (Foundation Model, Art. 7). The funds of the foundation may not be spent for purposes other than the charitable objectives for which it was established and it may not be spent outside Kuwait without the approval of the Ministry of Social Affairs (Foundation Model, Art. 8).

230. The founders of the foundation and their heirs have no claim on its funds. The foundations make no distribution to their members. Members of foundations whose membership are revoked are not entitled to the refund of any fees, subscriptions, donations or grants made to the foundation.

231. The annual budget and final account must be prepared by the board of directors in advance of the financial year and be approved by an auditor (Foundation Model, Art. 9). All records, files and documents – including the books of accounts of revenues, expenses and donations supported by documentation – are kept at the foundation's headquarters (Foundation Law, Art. 23 and Foundation Model, Art. 21). The management board must provide a closing statement of the year as well as a draft budget of



the upcoming year within one month from the end of the fiscal year to the Ministry of Social Affairs. The Ministry is empowered to review books and records of all foundations (Foundation Law, Art. 21).

232. The funds of the foundation, after its liquidation, are transferred to the Ministry of Social Affairs to determine the entity to which these funds will go (Foundation Model, Art. 25).

## A.2. Accounting records

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

233. Kuwaiti legislation generally requires the availability of accounting records in respect of legal persons and legal arrangements, albeit with deficiencies. The obligations are laid down in Company Law, Audit Profession Law and tax legislation – regarding income tax and Zakat contributions. Specific legislations on insurance companies, direct investment entities licensed by the Kuwait Direct Investment Promotion Authority (KDIPA) and securities exchange establish additional accounting records obligations.

234. The Income Tax Law, Zakat law and Company Law require legal entities to have their accounting records audited on an annual basis. Although the laws ensure the availability of accounting information and underlying records for legal persons and legal arrangements with the exception of *waqfs* (see below), no retention period requirement is provided by the legislation.

235. There is however a requirement for auditors to keep the audited accounting records for a ten-year period and to provide any requested information to regulatory authorities. All legal entities in Kuwait whether or not subject to income tax or Zakat, except for taxpayers with an annual income under KWD 5 250 (EUR 16 808), must have audited accounts submitted to KTA on an annual basis. However, it is uncertain if the Audit Profession Law requires auditors to maintain underlying documents, as the legislation makes no clear reference to it.

236. In addition, the legal framework of Kuwait does not establish a time limitation for the reinstatement of dissolved incorporated bodies.<sup>24</sup> Thus, the reinstatement of dissolved bodies after a ten-year period would result in the unavailability of accounting records for reinstated companies.

237. Finally, Kuwait's legal framework does not require *waqfs* to make accounting records and underlying documentation available in all cases.

24. The report uses the term “incorporated body” to refer to companies and partnerships, in line with Kuwait's Income Tax legislation.

While *waqfs* that include the KAPF in its trusteeship structure as a trustee or co-trustee are required to make annual financial statements, there is no similar obligation for *waqfs* under distinct trusteeship arrangements.

238. The conclusions are as follows:

#### Legal and Regulatory Framework: in place, but needs improvement

Deficiencies identified/Underlying factor	Recommendations
Kuwait does not require <i>waqfs</i> to maintain accounting records and underlying documentation that allow for the preparation of financial statements in all cases. Although annual financial statements are required when the Kuwait Awqaf Public Foundation is a trustee or co-trustee of a <i>waqf</i> , no similar obligation is in place for <i>waqfs</i> under a distinct trusteeship structure.	Kuwait should ensure that accounting information records and underlying documentation of <i>waqfs</i> are available and within the possession or control of a person in Kuwait for a minimum period of five years.
The legal framework of Kuwait does not explicitly establish an obligation for underlying documentation of accounting records to be maintained by legal entities. While the Audit Profession Law requires auditors to maintain the accounting records of clients, there is no similar explicit obligation in relation to underlying documentation.	Kuwait should clearly establish a requirement for underlying accounting documentation to be available for a minimum five-year period in line with the standard.
Kuwait has no legislation regulating the reinstatement procedure for dissolved bodies. While Kuwait has indicated that the procedure is regulated by executive regulations to the Company Law, no legal provisions were provided by Kuwait in this regard. The lack of a time limit for the reinstatement of dissolved bodies may lead to the unavailability of accounting records.	Kuwait should ensure that accounting records remain available after the reinstatement of dissolved bodies, in line with the standard.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

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

239. The various legal regimes implemented through distinct legal provisions are analysed below.

##### *Tax Law and Zakat*

240. The Income Tax Law and Zakat Law establish record and book-keeping requirements for the purposes of tax assessments. However, the Income Tax Law and Zakat Law do not establish a specific retention period for entities to keep accounting records available.

### Accounting obligations under tax laws

241. The income tax legislation requires all incorporated bodies – companies and partnerships, including those which are not liable to income taxation (for instance those subject to Zakat contribution) – to submit audited reports with their annual tax returns, except taxpayers with income in a fiscal year inferior to KWD 5 250 (EUR 16 808) (ITL, Art. 8), i.e. small businesses. The audited reports must include the following accounting information and underlying documentation (ITR, Art. 13):

- Public Budgets and Closing Accounts of the taxable period
- list of assets, including purchase date, value, depreciation rate applied, recent acquisitions and disposals
- list of sub-contractors, including a certificate of the last payment made to each sub-contractor indicating the work carried out during the taxable period
- the end of term stock list with amount and value
- copies of contracts, including the amount of revenues and expenditures incurred
- trail balance with the totals and balances used for preparing the closing accounts and the annual tax return
- certificate of the final payment issued by the owner of a project.

242. Specific obligations apply to particular economic sectors. Insurance companies are required to provide a detailed statement with documents and the related terms and conditions of their contractual insurance operations (see also paragraph 275). Similarly, investment fund managers, investment trustees and portfolio management companies must provide a statement including all dividends distributed in relation to shares maintained or managed for a company, as well as any profits resulting from managing the investment funds or portfolio.

243. The income tax legislation further requires entities subject to income tax to keep underlying documents, in addition to a general journal, a stock list, a general ledger book, an expenditure analysis book and a record of all amounts received or disbursed per project (ITR, Art. 15). The obligation is limited to “every taxpayer subject to the provisions of the Decree” and therefore does not apply to entities that are not liable to income taxation. The legislation does not establish a minimum record-retention period for such documents.

244. Tax assessments are determined in accordance with international accounting standards applicable in Kuwait (ITR, Art. 3). Ministerial Resolution 18/1900 of MCI requests companies and partnerships to utilise

the International Financial Reporting Standard. Bodies subject to income taxation must include in their accounting records all items of incomings, deductions and other items affecting their income (ILT, Art. 9).

245. Finally, the legislation requires ministries, public authorities and institutions, companies, associations and individual institutions to report to the Tax Administration all concluded contracts, agreements and transactions with an incorporated body. The report must include the name of all entities involved and the terms and conditions of the contract (ITR, Art. 16). This allows for cross-checking the documents provided by the entities.

246. In addition to requirements imposed by the income tax law, accounting obligations are also set by the Zakat Law. The Zakat contribution is levied on stock companies which are exempt from income taxation. Companies with combined ownership of Kuwaiti/GCC nationals and foreign nationals are also subject to Zakat in relation to the profits attributable to Kuwaiti/GCC nationals.

247. The Zakat Law requires that these companies submit a yearly audited financial statement as a Zakat declaration demonstrating a contribution of 1% of annual net profit together with the above-mentioned annual report submitted for income tax purposes (Zakat Law, Art. 1). Presumably one should keep accounting records to demonstrate its profit and accuracy of the financial statement, but no supporting explanations have been provided.

248. The accounting records obligations imposed by the Income Tax Law ensure that Kuwait meets the standard in relation to the availability of accounting records for all foreign companies and partnerships, foreign trusts and similar foreign legal arrangements.

249. The legal framework of Kuwait does not require *waqfs* to make available accounting records and underlying documentation in all cases. Although KAPF is obliged to prepare annual financial accounts of *waqfs* when KAPF itself is a trustee or co-trustee of the *waqf* (Royal Order on Islamic Endowments) and to provide financial reports to its fellow co-trustees (Awqaf Circular 11/2013), no similar requirement is in place for *waqfs* established under a different trustee structure. Thus there is no legal requirement to ensure the availability of accounting records of *waqfs* in all cases, such as when a natural person is the sole trustee of the *waqf*.

**250. Kuwait should ensure that accounting information records and underlying documentation of *waqfs* are available and within the possession or control of a person in Kuwait for a minimum period of five years.**

### **Implementation and enforcement of accounting obligations under tax law**

251. Kuwait has informed that the Tax Liability and Planning Department at the MOF is empowered to monitor compliance with accounting records obligations under the tax laws.

252. Kuwait indicated that from 1 July 2018 to 30 June 2021, 1 900 companies with foreign ownership and 2 148 domestic companies submitted their accounting records to the KTA. The statistics on compliance and inspection presented by Kuwait reflect a low level of compliance to the accounting obligations under tax law, as MOF indicated that there is currently a total of 9 120 domestic companies and partnerships and 3 211 with foreign ownership in the jurisdiction. Thus, only 4 048 companies have submitted accounting records in the three-year period out of a total of 12 331 indicated by MOF. In addition, it is not clear if the companies have submitted accounting records annually or at least once during the three years. The number of domestic and foreign companies inspected by MOF in the three-year period is also low. From 1 July 2018 to 30 June 2021, an average of 700 companies with foreign ownership and 1 700 local companies were inspected per year.

253. The income tax legislation empowers the KTA to assess taxes by virtue of estimation whenever it faces difficulties in performing an assessment of the tax on basis of the actual financial results of the taxpayer. The estimation assessment is based on previous records and other information available to KTA. From 1 July 2018 to 30 June 2021, an average of 400 companies with foreign ownership and 200 local companies had their assessment done through estimation per year. The following scenarios lead to an assessment by estimation:

- Taxpayer fails to submit the Tax Declaration.
- Taxpayer fails to provide information, books, records and documents requested by the Tax Administration.
- Taxpayer fails to provide underlying documentation, or presents underlying documentation that is notably incomplete or that does not correspond to the accounts and other records.

254. Kuwait indicated that estimated tax assessments often result in higher tax charges than would result from a proper assessment of the accounting records of the taxpayer. As such, companies are encouraged by this provision to voluntarily submit their accounting records and underlying documentation. In addition, registered entities which delay or fail to submit annual tax returns are subject to a penalty of 1% of the tax due for every 30 days of non-compliance (ITL, Art. 8 and ITR, Art. 34).

255. Sanctions are also set by the Zakat legislation, which imposes fines up to KWD 5 000 (EUR 16 008) for stock companies that fail to provide a Zakat declaration together with their annual report, in addition to imprisonment for up to three years of its representative (Zakat Law, Art. 1). Kuwait has provided no data on the level of compliance or supervision measures related to the Zakat contribution.

256. As 8 283 domestic and foreign companies have not submitted accounting records between 1 July 2018 and 30 June 2021, the imposition of tax assessments by estimation to an average of 600 companies per year indicates that current supervisory measures may be inadequate. The implementation of the legal framework and the availability of accounting information in practice, as well as the supervisory measures and their adequacy, will be examined during the Phase 2 review (see Annex 1).

### *Company Law*

257. The Company Law refers to accounting records obligations in relation to stock companies (PSCs and PRSCs) and partnerships (GPCs, LPCs, PLSs and LLCs) irrespective of whether they are subject to income tax. However, no accounting records obligations are imposed on JVCs as each member of the JVC has to keep its own accounting records.

258. The Company Law establishes extensive accounting record obligations to stock companies. The board of directors of a stock company is required to prepare an annual report for the financial year that has ended. The legislation establishes that *executive regulations shall provide for further details in this regard* (CL, Art. 221). Kuwait has not provided executive regulations in this regard.

259. The board of directors of a stock company is also required to convene the annual ordinary general meeting within three months of the end of the financial year. The following documents and reports must be presented during the meeting (CL, Art. 211):

- the financial statements of the company
- the board of directors' report on the company's activities and its financial position for the last financial year
- the auditor's report regarding the financial statements of the company.

260. Shareholders of stock companies must receive these documents at least seven days prior to the ordinary shareholders' meeting (CL, Art. 178). Holding companies – which may be established in the form of a stock company or a LLC – are required to prepare at the end of each financial year a consolidated balance sheet and statement of profits and losses supplemented by explanatory notes and established data (CL, Art. 247).

261. LLCs are also required to appoint at least one auditor to audit the accounts of the company (CL, Art. 109). The legislation establishes that *executive regulations shall provide for the records and books that shall be prepared at the company's main office as well as the information to be contained therein* (CL, Art. 110). Kuwait has not provided executive regulations in this regard.

262. The annual general meeting of a LLC must take place within three months of the end of the financial year. The following documents and reports must be presented during the meeting (CL, Art. 114):

- the report of the manager on the company's activities and the financial position for the last financial year and the report of the supervisory board
- the auditor's report on the financial statements of the company
- the company's financial statements.

263. Partners of a LLC are empowered to inspect the accounts of the company and all its documents, records and books at the company's main office.

264. While PLSs are required to appoint an auditor (CL, Art. 72), the CL has no similar obligation in relation to GPCs and LPCs. Non-managing partners of GPCs, LPCs and PLSs are entitled to review the company's books and documents, to obtain any necessary information and to request further information not available (CL, Art. 47, 59 and 69). The same right is extended to LLCs (CL, Art. 107).

265. The Company Law establishes that an incorporated body must be dissolved if it fails to issue financial statements for a period of three consecutive years (CL, Art. 266/7).

### **Audit profession law**

266. The Income Tax Law and the Company Law require legal entities to have their accounting records audited on an annual basis, with the exception of small businesses under tax law (see paragraph 241) and GPCs and LPCs under company law (see paragraph 264). The Audit Profession Law establishes an obligation for auditors to keep records, files and worksheets related to the auditing of annual financial statements and other reporting obligations. The records can be kept in a physical or electronic form. The records must be kept for a period of at least ten years (i) from the date of engagement, even if the auditor ceases to practice the profession or (ii) from the final verdict issued in a lawsuit involving the records (Audit Profession Law, Art. 14, Paragraph 11).

267. The legislation also requires auditors to provide any information requested by regulatory authorities regarding the audited accounts of their clients in line with the legal requirements in Kuwait (Audit Profession Law, Art. 14, Paragraph 12). Finally, auditors must be established in Kuwait, registered in the Department of Audit of the MCI and are required to notify the regulator of any change or amendment to their commercial address (Audit Profession Law, Art. 14, Paragraph 4).

268. Stock companies are required to have one or more independent auditors, which may at any time access the books, registers and documents, as well as request any additional details deemed necessary. If unable to exercise these rights, the auditor must report it in writing to the board of directors, which has to submit the report to the ordinary general meeting, MCI and CMA (CL, Art. 227 to 229).

269. Auditors are required to submit a report on the company's financial statements to the annual ordinary general meeting. The report must indicate whether the financial statements reflect the company's balance sheet and results of the company for the year and whether the data contained in the board of directors' report are consistent with the company's books and documents. The report must focus on the following details (CL, Art. 230):

- whether the auditor obtained the information necessary for doing his/her work satisfactorily
- whether the balance sheet and the profit and loss account conform to the facts, follows all legal requirements and clearly reflect the actual financial position of the company
- whether the company maintains proper accounts
- whether the inventory undertaken by the company is in accordance with accepted practices
- whether the data in the report of the board of directors is in conformity with the company's books
- whether there have been violations of the provisions of the law or the company contract during the financial year and whether these violations still exist, to the extent such information is made available to the auditor.

270. An auditor considered to have violated any of the provisions of the Audit Profession Law may be subject to one of the following disciplinary penalties (Audit Profession Law, Art. 20):

- warning
- a fine between KWD 500 (EUR 1 600) and KWD 5 000 (EUR 16 008)



- suspension from practicing the profession for up to three years
- cancellation of professional registration from the auditor's register.

271. As the Company Law and the Income Tax Law require legal entities to have their accounting records audited on an annual basis, the obligation for auditors to maintain the records ensures the availability of accounting records (as detailed in paragraph 241) for a ten-year period from the engagement or from the termination of a lawsuit involving the record.

272. However, the legal framework of Kuwait does not establish an obligation for legal entities to keep underlying documentation for a minimum five-year period. **Kuwait should clearly establish a requirement for underlying accounting documentation to be available for a minimum five-year period in line with the standard.**

273. The establishment of penalties that may result in the permanent prohibition of the auditor from practising the profession represents a proper enforcement mechanism. Finally, the requirement for the auditor to be established in Kuwait ensures that a person within the jurisdiction of Kuwait has possession or control of the records.

### **Obligations on specific economic sectors**

274. Accounting record obligations are also established by Insurance Regulatory Unit Law (IRU Law), Capital Markets Authority Law (CMA Law) and the Kuwait Direct Investment Promotion Authority Law (KDIPA Law).

275. Entities under IRU supervision are required to maintain complete records of the transactions of all local and international operations (IRU Executive Regulations, Art. 150). Branches of foreign insurance companies licensed to operate in Kuwait must submit to the IRU detailed financial statements of the budget and the income and expenditure account, profits and losses account of each branch in Kuwait as well as the head office (IRU Law, Art. 61). The IRU Law establishes a fine between KWD 5 000 (EUR 16 008) and KWD 10 000 (EUR 32 016) for persons that do not make books and documents available (IRU Law, Art. 76).

276. The CMA law establishes accounting records obligations to corporate entities that operate with securities exchange and related activities. Persons licensed to engage in securities by the CMA must submit periodic reports on all their activities, including annual report of the audited financial statements (CMA Law, Art. 65 and CMA Bylaw Module 12, Art. 1-15). Licensed persons are required to prepare and maintain regular books and records, as well as detailed and accurate accounts that reflect transactions or transfers of assets. Accounting documents are subject to inspection and auditing by the CMA (CMA Law, Arts. 66 and 68).

277. The CMA is empowered to decline, suspend or revoke a licence if the person operating with securities fails to meet the standard of the CMA or violates a provision of the CMA Law, which may result in the suspension or revoking of licence of a person that fails to keep accounting records (CMA Law, Art. 67/2 and 3). Licensed persons ruled to have failed to submit a statement or submitted an incorrect statement may be prohibited from exercising voting rights for up to three years (CMA Law, Art. 146/11).

278. Finally, the KDIPA law establishes that all licensed direct investment entities are required to maintain regular accounts supervised by at least one auditor (KDIPA Law, Art. 18). Non-compliance with the provisions of the KDIPA law may be sanctioned through written warnings, the withdrawal of incentives and exemptions or through temporary administrative detention (KDIPA Law, Art. 32).

### **Enforcement of Company law requirements**

279. The first control over the accounting records of entities is the one performed by auditors, as mentioned in the previous section.

280. In addition, Kuwait has informed that if a body does not provide financial statements during a three-year period, it is considered inactive and unable to renew its licence, resulting in the body not being able to operate in Kuwait. This is a measure taken in practice and no legal provision formally establishes this practice. An inactive body that, in addition to not providing financial statements during a three-year period, remains for one year with an expired licence is dissolved (see paragraph 148).

### *Incorporated bodies that ceased to exist and retention period*

281. The Audit Profession Law establishes an obligation for auditors to keep records from their clients for a ten-year period from the date of engagement with a client. The ten-year period covers the three-year period without financial statements that triggers an incorporated body being considered inactive in Kuwait.

282. In addition, the Company Law provides that the managers or directors of companies undergoing liquidation (see paragraph 130) are required to provide the liquidator with the accounts, records, documents and assets of the company. In case the managers or directors fail to provide such documents, the liquidator may request an order forcing them to do so.

283. In accordance to the liquidation procedure of the Company Law (paragraphs 130 to 133), the financial position of incorporated bodies is ascertained by the liquidator based on documents provided by the body. The liquidator keeps the books required to record the liquidation during the

procedure (CL, Art. 286). The liquidator is requested to discuss and approve the balance sheet of the last financial year, the auditor's report and the annual report on the liquidation proceedings at an ordinary general meeting (CL, Art. 289). The final liquidation accounts are submitted by the liquidator and the liquidation is formally realised with the approval of the accounts by the general meeting.

284. The books and documents relating to the liquidation of incorporated bodies must be kept for a ten-year period from the date of deletion of the company or partnership registration from the Commercial Registry. The books and documents are kept in the place specified by the shareholders, partners or the court, depending on the procedure undertaken to appoint the liquidator (CL, Art. 293). Kuwait has indicated that it is common for the documents to be kept at the archives of the MCI.

285. Accounting records of bodies considered inactive in Kuwait, which do not undergo the liquidation procedure (see paragraph 283), are maintained by auditors for ten years. The accounting records of dissolved bodies that are formally liquidated are maintained for a ten-year period by the auditors and by appointed liquidators following the liquidation procedure. However, it is unclear whether the reinstatement procedure allows dissolved bodies to be reinstated after the ten-year period, which would result in the unavailability of accounting records for reinstated bodies.

286. Kuwait has indicated that the reinstatement procedure is regulated by executive regulations to the Company Law, however the executive regulations have not been provided and therefore the reinstatement procedure is not currently assessable. **Kuwait should ensure that accounting records remain available after the reinstatement of dissolved bodies, in line with the standard.**

### ***Availability of accounting information in EOIR practice***

287. The implementation of the legal framework and the availability of accounting information in practice, as well as the enforcement and oversight of legal requirements, will be examined during the Phase 2 review.

## **A.3. Banking information**

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

288. The AML framework, through the AML law and the CBK regulations on AML for banks, provides for the availability of information on bank account holders in Kuwait and the transactions conducted in those accounts.

289. Identity information and beneficial ownership information is collected and verified by banks as part of their AML obligations. Nonetheless, the issues identified in section A.1.1 also affect the availability of beneficial ownership information in respect of account holders. Although the anti-money laundering framework provides for the identification of beneficial owners of bank account holders in Kuwait and a general definition of beneficial owner in line with the standard, the absence of regulatory guidance to identify the beneficial owners for domestic and foreign companies and partnerships, foreign trusts, foreign foundations and *waqfs* in the regulations, coupled with a 50% control threshold established for legal persons means that the information on beneficial owners of bank accounts may not be available in line with the standard in all cases. Kuwait should ensure that the definitions and methods of identification of beneficial owners of bank accounts are in line with the standard; that beneficial ownership information is available for bank accounts held in Kuwait by domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements, foreign foundations and *waqfs*.

290. The conclusions are as follows:

#### Legal and Regulatory Framework: in place, but needs improvement

Deficiencies identified/Underlying factor	Recommendations
Although the anti-money laundering framework provides for the identification of beneficial owners of bank account holders in Kuwait and a general definition of beneficial owner in line with the standard, the absence of a regulatory guidance to identify the beneficial owners for domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements, foreign foundations and <i>waqfs</i> in the regulations, coupled with a 50% control threshold established for legal persons means that the information on beneficial owners of bank accounts may not be available in line with the standard in all cases.	Kuwait should ensure that the methods of identification of beneficial owners of bank accounts are in line with the standard; that beneficial ownership information is available for bank accounts held in Kuwait by domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements, foreign foundations and <i>waqfs</i> .
The Company Law does not provide details on the records that must be kept upon the liquidation of a company. In case a bank ceases to exist, it is uncertain that CDD information collected by a bank on its clients is required to be retained.	Kuwait should ensure the availability of banking information when a bank ceases to exist or to operate in Kuwait for at least five years.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

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

291. The availability of banking information is regulated in Kuwait based on requirements in the AML law, the Central Bank Law and the Central Bank regulation on banks, as set out below. Kuwait counts 11 foreign banks, 5 conventional banks, 5 Islamic banks and 1 specialised bank, all of which are subject to the Central Bank's regulation on banks.

#### *Availability of banking information*

292. Element A.3.1 requires that banking information, including records pertaining to the accounts and all related financial and transactional information, is available for all account-holders.

293. The AML guidance issued by CBK to banks (CBK Regulation) establishes that banks may not open or maintain accounts for account-holders of unknown identity or with a fictitious name. Banks are required to identify and verify the identity of the customer and the beneficial owner in the following circumstances (AML Law, Art. 5/3 and CBK Regulation, Art. 4):

- before or during the course of opening an account or establishing a business relationship with a customer
- before carrying out a transaction above KWD 3 000 (EUR 9 604) or its equivalent in foreign currency, with a walk-in customer with whom it is not in an established business relationship, whether conducted as a single transaction or several transactions that appear to be linked
- before carrying out a domestic or cross-border wire transfer for a customer
- whenever there is a suspicion of money laundering or terrorism financing
- whenever doubts exist about the veracity or adequacy of previously obtained customer identification data.

294. The identification of the customer by the bank is carried out through the submission of the following identification documents (CBK Regulation, Art. 5/3):

- civil card for citizens and residents of Kuwait
- passport or travel document for natural persons not residing in Kuwait
- documents evidencing incorporation of the institution or company and that it is entitled to exercise business according to the documents issued by the concerned authorities

- in the case of non-resident companies and establishments, certificates of incorporation from the state in which they were incorporated or established and documented by the competent authorities in Kuwait
- official authorisation according to legal documents issued for the person acting on behalf of the entity in dealing with the bank, to be verified and a copy thereof maintained.

295. Banks are required to gather and maintain customer information throughout the course of the business relationship. Documents, data, or information collected under the CDD process should be kept up to date and relevant by undertaking regular reviews of existing records at appropriate times as determined by the bank. Banks are required to update CDD information once a year for high-risk customers, once every two years for medium-risk customers and once every three years for low-risk customers (CBK Regulation, Art. 1/3/e).

### **Retention period requirements**

296. The AML Law establishes that all AML-obliged persons must keep the following records and documents and make them available to competent authorities (AML Law, Art. 11 together with CBK Regulation, Art. 22):

- All records obtained through CDD, including copies of documents evidencing the identities of customers and beneficial owners, account files and business correspondence, for at least five years after the business relationship has ended or a transaction with a customer who does not have an established business relationship with the bank has been carried out.
- Records of transactions, both domestic and international, attempted or executed for at least five years following the attempt or execution of the transaction. The records must be sufficiently detailed to allow the reconstruction of each individual transaction.
- Records of transaction reports and related documents shared with the Kuwait Financial Intelligence Unit (KFIU) for at least five years after the date the report was issued.
- The risk assessment required by the legislation (AML Law, Art. 4) and any underlying information for a period of five years from the date the assessment was carried out or updated.

297. Local banks are required to be set up in the form of stock companies (CBK Law, Art. 56), while the operation of foreign banks' branches is regulated by CBK (CBK Instruction 2/BS/IBS/323/2014). The Company Law

imposes a ten-year retention period for the books and documents relating to the liquidation of a company, counting from the date of deletion of the company registration from the Commercial Registry (CL, Art. 293). This applies to both local banks that undergo liquidation (see paragraph 134 and 284) and branches of foreign banks that cease to operate in Kuwait. The Company Law does not provide further details on the books and documents that must be kept upon the liquidation of a company, thus it is uncertain that all banking information, including CDD information collected by a bank on its clients, is required to be retained in case the bank ceases to exist. **Kuwait should ensure the availability of banking information when a bank ceases to exist or to operate in Kuwait for at least five years.**

### *Beneficial ownership information in respect of account holders*

298. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders.

299. While the general definition of beneficial ownership in the law is generally in line with the standard, the guidance on the identification of beneficial owners of bank accounts is not in line with the standard, as explained below.

300. CBK Regulation establishes that banks must take all necessary measures to determine the beneficial owners of their account-holders. The regulation initially establishes that the beneficiary of accounts held by natural persons can be ascertained through a signed affidavit at the time of opening the account stating that the natural person identified as the customer is the actual beneficiary of the account (CBK Regulation, Art. 6/1). Banks may also request other sources of information if deemed necessary by the institution. While the CBK Regulation specifies such sources of information for customers (see paragraph 294), the same is not detailed for beneficial owners. While one can assume that the AML-obliged persons would apply the same for customers and beneficial owners, it would be preferable that this be explicitly set in Regulations (see Annex 1).

301. If the bank determines that the customer is acting on behalf of one or more beneficial owners, the instructions require the bank to verify the identity of beneficial owners through relevant information or data obtained from an approved source (CBK Regulation, Art. 6/2).

302. Banks are not required to identify and verify the identity of shareholders and beneficial owners of companies listed on a stock exchange, provided that the company is subject to adequate disclosure requirements to ensure transparency of beneficial ownership. In such case, the banks are only required to obtain the identification documents previously mentioned (paragraph 294) (CBK Regulation, Art. 6/3).

303. In the case of legal entities which are not listed on a stock exchange and of legal arrangements, banks are required to proceed as follows (CBK Regulation, Art. 6/4):

If the customer is a legal person or legal arrangement, banks should be required to take the appropriate measures to understand the equity and control structure for such customers, to reach the ultimate person in possession or in control of the customer as follows:

a) For legal persons: verify the identity of each natural person that:

i) Possesses or directly or indirectly controls interest of over 50% of a legal person;

ii) Controls the management of a legal person.

b) For legal arrangements, banks shall verify the identity of the person acting on behalf of the customer, the custodian, the beneficiary or any other person entrusted with these functions.

304. The identity requirements of persons related to arrangements are not in line with the standard. While the “persons acting on behalf of the customer” can be interpreted as covering the trustees, there is no requirement for the settlor, protectors (if any) and any other natural person exercising ultimate effective control over the arrangement to be identified.

305. Banks are also required to carry out ongoing due diligence on all business relationships in accordance with the risk profile of the customer (AML Law, Art. 5/2/c, see paragraph 295).

306. The high control threshold of 50% and the absence of a clear approach in the regulations (see paragraphs 160 to 164) to identify the beneficial owners in domestic and foreign companies and partnerships, foreign trusts, foreign foundations and waqfs holding a bank account in Kuwait is not in line with the standard. **Kuwait should ensure that the methods of identification of beneficial owners of bank accounts are in line with the standard; that beneficial ownership information is available for bank accounts held in Kuwait by domestic and foreign companies and partnerships, foreign trusts and similar legal arrangements, foreign foundations and waqfs.**

### *Oversight and enforcement*

307. The AML Law establishes that financial institutions must terminate business relationships or refrain from opening accounts, starting business relationships or conducting transactions if the institution is unable to verify



the identity of the customer or beneficial owner (AML Law, Art. 5/5), including for previously established customer relationships (CBK Regulation, Art. 14). In such event, the financial institution is recommended to file a report to the Kuwait FIU (CBK Regulation, Art. 8).

308. Financial institutions that fail to comply with beneficial ownership information obligations are subject to a range of sanctions, including fines up to KWD 500 000 (EUR 1 600 816), prohibition to practice the activity and withdrawing of licence (AML Law, Art. 15). As the supervisory entity of the banking system in Kuwait (CBK Law, Art. 15 and 71), the CBK is empowered to supervise and monitor compliance with the AML framework through on-site examinations, as well as compelling banks to provide any information and copies of documents and files however and wherever stored, including documents held outside their premises (AML Law, Art. 14).

309. The CBK may access the accounts, books, records, instruments and all documents deemed necessary for inspection, as well as request data and information necessary for the purposes of inspection (CBK Law, Art. 78). A member of the board of directors, manager, or official of the bank inspected that refuses to submit information and data or to present books, records, and instruments required for inspection purposes, or who gives information or data while knowing that it is untrue, is subject to a fine between KWD 100 (EUR 320) and KWD 225 (EUR 720) and imprisonment for up to three months, or either of these two penalties (CBK Law, Art. 79).

310. Banks that present false statements of facts or conceal facts that should be disclosed may also be punished by a fine between KWD 5 000 (EUR 16 008) and KWD 500 000 (EUR 1 600 816) and imprisonment for up to three years (AML Law, Art. 35). Finally, a Court may prohibit the perpetrator of any offence from engaging in or continuing to carry out any business or profession that provides an opportunity to commit such offence (AML Law, Art. 38).

311. The implementation and enforcement of the legal framework will be examined during the Phase 2 review.

### *Availability of banking information in EOIR practice*

312. The availability of banking information for EOIR purposes in practice will be examined during the Phase 2 review.



## Part B: Access to information

313. 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).

314. There is no legislation explicitly providing for access powers for EOI purposes.

315. Absent specific access powers provided for EOI purposes, the Kuwaiti competent authority relies on access powers in the Income Tax Law, which provides access to documents and information in the possession of taxpayers or third parties. However, the access powers are related to domestic tax assessments and are limited to such purposes. The use of these powers entails limitations due to the combination of a domestic tax interest condition and the restricted scope of the Kuwaiti tax system. As the access powers enclosed in the Kuwaiti Income Tax Law are only available in relation to taxpayers subject to income tax, the competent authority is unable to access information on natural persons, incorporated bodies<sup>25</sup> not liable to tax as they are not taxpayers,<sup>26</sup> or to access any information which is not within its domestic tax interest even if held by a taxpayer.

25. The report uses the term “incorporated body” to refer to companies and partnerships, in line with Kuwait’s Income Tax legislation.

26. Exempt incorporated bodies are required to submit tax declarations, despite being exempt from income tax.

316. As sanctions apply for breaching the confidentiality in the AML and banking legislation, but no sanction applies in case of refusal to provide information to the competent authority for EOI matters, it is unlikely that AML-obliged persons would disclose information covered by confidentiality obligations absent a clear obligation to provide information to the Kuwaiti competent authority for EOIR purposes. Access to beneficial ownership information is available for certain governmental authorities within the AML framework. However, the Ministry of Finance – the competent authority for EOI in Kuwait – is not included in the list of authorities with access powers to beneficial ownership information under the AML legislation. Thus the current legislation does not provide for the gathering of BO information for EOI purposes and does not conform to the standard.

317. Similarly, the Central Bank of Kuwait is prevented from disclosing any information regarding the affairs of a bank or its customers. There is no specific access power granted to the competent authority to lift bank secrecy. Again, Kuwait indicated that it would be able to exchange encrypted banking information due to the application of its DTCs and the Multilateral Convention, but the competent authority has not yet tested this theory in practice as Kuwait is yet to receive a request for bank information. In addition, Kuwait is a party to 17 DTCs which are not covered by the Multilateral Convention and do not include an express provision for exchanging bank information or for exchanging information absent a domestic tax interest.

318. The Attorney General is required to participate in the validation of information to be exchanged in relation to criminal tax matters. However, the lack of a clear procedure or expected timeline for the involvement of the Attorney General may result in delays or restrictions to the effective exchange of information. Kuwait is recommended to clarify the procedural rules concerning exchange of information on criminal tax matters.

319. Kuwait considers that it is able to gather information in the absence of domestic tax interest due to the direct applicability of its DTCs and the Multilateral Convention. However, international treaties are at the same hierarchical level as ordinary laws and Emir Decrees. Therefore international treaties do not prevail over domestic law. In addition, DTCs and the Multilateral Convention do not provide for access powers, which can only be provided by domestic law.

320. The Kuwaiti competent authority indicated it is able to obtain any information held by other governmental authorities to address EOI requests based on the ratifying legislation that incorporated the specific international treaty related to the information request to Kuwait's legal framework, with the exception of information covered by legal restrictions, absent a domestic tax interest and information subject to bank secrecy. Kuwait has not provided legislation in this regard.

321. The scope of professional secrecy for lawyers, accountants and other legal professions in Kuwait is unclear and could impede access to information.

322. The presence of fundamental deficiencies in the legal and regulatory framework of Kuwait may widely prevent exchange of information. The legal framework is not in place.

323. The conclusions are as follows:

### Legal and Regulatory Framework: Not in place

Deficiencies identified/Underlying factor	Recommendations
There is no express access power legislation for EOI purposes. Although the Income Tax Law authorises the tax administration to obtain information that forms the basis of a tax obligation in Kuwait, this power does not apply when the information holder is another public authority or is not a Kuwaiti taxpayer, thus excluding all natural persons and legal entities fully owned by nationals of Kuwait and Gulf Co-operation Council countries. In addition, absent a clear obligation to provide information for EOIR purposes, it is unlikely that AML-obliged persons would disclose information covered by confidentiality obligations under the AML legislation as they would be subject to sanctions.	Kuwait should ensure that the competent authority has the power to obtain and provide information for EOI purposes from any person within their territorial jurisdiction who is in possession or control of such information.
Kuwaiti tax authorities do not have access to information held by persons subject to bank secrecy.	Kuwait should ensure the competent authority has the power to obtain and exchange banking information.
The lack of a clear procedure or expected timeline on the involvement of the Attorney General for the exchange of information on criminal tax matters may result in delays or restrictions to effective exchange of information.	Kuwait should consider clarifying the procedural rules concerning exchange of information on criminal tax matters to avoid any delay or restriction to the effective exchange of information.
There is no penalty available to ensure access to information for exchange purposes likely to be requested under exchange of information agreements.	Kuwait should ensure its access powers are supported by adequate penalties for failure to provide information necessary to comply with its EOI obligations.
The scope of professional secrecy for lawyers, accountants and other legal professions in Kuwait is unclear and could impede access to information.	Kuwait should ensure that the scope of professional secrecy is in line with the international standard.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

**B.1.1. Ownership, identity and banking information and  
B.1.2. Accounting records**

*Accessing information generally*

324. Under the Multilateral Convention and the DTCs concluded by Kuwait, the competent authority for the exchange of information is the Minister of Finance or his/her authorised representative. The Minister of Finance delegated this power to the Undersecretary of the Ministry of Finance by virtue of Administrative Resolution No. 875 of 2013. The Undersecretary in turn authorised the Assistant Undersecretary for Financial and Taxes Affairs to discharge EOI-related competent authority functions.

325. The competent authority has limited powers of access to information due to the limited scope of the Kuwaiti tax law. The access powers established by Article 10 of ITL and Article 45 of ITR exclusively refer to taxpayers of income tax, thus excluding all natural persons and legal entities fully owned by nationals of Kuwait and GCC countries (exempt incorporated bodies). This excludes a large portion of relevant persons, in contradiction to the standard.

326. The access powers apply to records and books (ITL, Art. 10):

The taxpayer's records and books shall, upon the request of the director, be made available for inspection by the director and his personnel when necessary for the purpose of carrying out the provisions of this decree.

327. The access powers apply to the taxpayer or a third-party information holder (ITR, Art. 45):

Staff of the Tax Administration may access all documents, papers, files and any other information related to tax assessment and in the possession of the taxpayer, his agent, another person or body. For whatever reason, information may not be concealed from the Tax Administration.

328. In case Kuwait wants to obtain ownership, identity or accounting information of a legal entity or arrangement, which is *required* to be maintained by any person or government authority in the jurisdiction, Kuwait indicated that the Ministry of Finance would submit a request for the information to the information holder. Kuwait has provided no further information on the procedural aspect of the request or a legal provision which obliges these persons to provide such information.

329. In case Kuwait wants to obtain information from a person that is *not required* to keep the information but has actual possession, control or is able to obtain the information, Kuwait considers that such information can be gathered from another government authority, in case the information has been previously obtained by the authority.

330. Kuwait has indicated that the competent authority is empowered to collect any information held by another government agency – with the exception of information covered by legal restrictions – based on the specific ratifying legislation that incorporated the particular international treaty to Kuwait’s legal framework. Kuwait has provided a sample ratifying legislation, but it makes no reference to such power.

331. If the ownership, identity or accounting information has not been previously obtained by another governmental authority, the Kuwaiti authorities indicate that information may only be gathered through a court order, but the authorities have not explained the legal basis of this statement.

332. There is no clear provision that ensures the tax administration is able to obtain information when the information holder is not liable to income tax in Kuwait or is another Kuwaiti public authority.

**333. Kuwait should ensure that the competent authority has the legal basis to obtain information from all entities and natural persons for EOI purposes regardless of their tax status in Kuwait and from other public authorities.**

### *Accessing beneficial ownership information*

334. Beneficial ownership information on legal entities and arrangements and bank accounts may be available under the AML/legal and regulatory framework providing for customer due diligence on clients of AML-obliged persons.

335. AML-obliged persons are required to maintain records, including documents evidencing the identities of customers and beneficial owners, and ensure that such records and underlying information is made available to “competent authorities” (AML Law, Art. 11) – an exception applies to lawyers, independent legal professionals and accountants due to professional secrecy provisions (AML Law, Art. 13).

336. Within the AML framework, “competent authorities” are defined as “all public authorities with designated responsibilities for combating money laundering or terrorism financing”. The term includes KFIU, the General Administration of Customs, the Ministry of Interior and supervisory authorities such as CBK, CMA and MCI. No reference is made to the Ministry of Finance or KTA as competent authorities for AML purposes (AML Law, Art. 1).

337. Accordingly, there is no express access powers for the competent authority to obtain beneficial ownership information available with AML-obliged persons. **Kuwait should ensure that the competent authority has the power to obtain and provide information for EOIR purposes from any person within their territorial jurisdiction who is in possession or control of such information.**

### *Accessing banking information*

338. Kuwait has no domestic legislation directly providing access to banking information for EOIR purposes. The Kuwaiti competent authority clarified that it can access banking information if a court order is issued for this purpose, but no supporting legal provision was provided.

339. Despite the lack of domestic access powers, Kuwait is confident that the competent authority can exchange banking information due to the direct application of DTCs and the Multilateral Convention. Kuwait considers that the competent authority may receive encrypted information from a banking institution through the Central Bank and provide it to its counterpart in the requesting jurisdiction. Thus, while not having right of access to the banking information, the competent authority indicated it would still be able to provide it directly to the partner jurisdiction. However, there is no provision legalising this practice and no legal provision that would allow the Central Bank to share such information with the competent authority.<sup>27</sup>

340. In addition, the competent authority is yet to provide banking information in response to an EOIR in practice, such that this interpretation could not be confirmed. As there is no legal provision lifting bank secrecy for EOIR purposes and no procedures legally established to lift bank secrecy, Kuwait's ability to exchange banking information in response to an EOIR request is not established – even when the underlying international agreement explicitly provides for the exchange of all types of information in line with Article 26(5) of the OECD Model Tax Convention (see also paragraph 394).

341. **Kuwait should ensure the competent authority has the power to obtain and exchange banking information.**

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27. On the opposite, the law sets a confidentiality duty on the officials of the Central Bank (Central Bank Law, art. 80, 82 and 85bis).



### *Accessing information in criminal tax matters*

342. Kuwait has indicated that the competent authority is required to correspond with the Attorney General office if a request is received to provide information for a criminal tax investigation in a partner jurisdiction. Kuwait has not provided supporting legal provisions in this regard.<sup>28</sup>

343. Kuwait's EOI Manual provides no information on the expected timeline of the validation of requests that involve the Attorney General office. Kuwait has indicated that the timeline would depend on the particular circumstances of the case and be defined by the Attorney General.

344. The lack of a clear procedure or expected timeline on the involvement of the Attorney General for the exchange of information on criminal tax matters may result in delays or restrictions to effective exchange of information. **Kuwait should consider clarifying the procedural rules concerning exchange of information on criminal tax matters to avoid any delay or restriction to the effective exchange of information.**

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

345. The concept of *domestic tax interest* describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The standard requires a jurisdiction to be able to use its information gathering powers, notwithstanding that it may not need the information for its tax purposes.

346. As mentioned under B.1.1, Kuwaiti tax legislation empowers the Tax Administration to access documents and information in the possession of a taxpayer or a third party only if the information is related to a domestic tax assessment (ITR, Art. 10 and 45).

347. Kuwait has no domestic legislation establishing access powers in relation to EOIR. Kuwait explained that it relies on the direct application of DTCs and the Multilateral Convention that are incorporated into the domestic legal framework through individual laws. However, international treaties are on the same hierarchical level as ordinary laws and Emir Decrees. In addition, DTCs and Multilateral Convention do not provide for access powers, which can only be provided by domestic law. In this respect, Kuwait has no legal provision explicitly extending its domestic access powers to gather information for EOI purposes, nor any supporting case law.

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28. Kuwait referred to Articles 10 and 11 of the Criminal Procedures and Trials Law No. 17 of 1960, which set an obligation of public authorities to co-operate with law enforcement authorities, but not the other way round.

348. Furthermore, Kuwait is a party to 17 DTCs which are not covered by the Multilateral Convention and do not include an explicit provision for exchanging information in the absence of domestic tax interest (see paragraph 397). Kuwait has not explained how it would be able to provide information in this case.

**349. Kuwait should ensure that the competent authority has the legal basis to obtain information for EOI purposes.**

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

350. The Tax Administration is empowered to access documents and information related to domestic tax assessments that are in the possession of the taxpayer or a third party. The tax legislation also states that such information may not be concealed from the Tax Administration for whatever reason (ITR, Art. 45). However, the tax legislation does not establish any form of penalty or sanction to effectively enforce the provision in case of non-compliance (except for the possibility to make a tax assessment through estimation, which in most cases would mean a higher taxation than when the taxpayer provides the requested information; see paragraph 253).

**351. Kuwait should ensure its access powers are supported by adequate penalties for failure to provide information necessary to comply with its EOI obligations.**

352. Tax Administration officials are empowered to make enquiries and inspect documents, however they do not have the power to seize documents. Kuwait has communicated that documents can only be seized through a decision from the Prosecution office enforced by police officials. As there is no legal basis for the seizure of documents to be utilised for EOI purposes absent a domestic tax interest in the information, it is unclear if Kuwait can utilise this procedure for EOI purposes under all circumstances. Although not strictly a requirement of the standard, the inability to use search and seizure for EOI may limit the access to the relevant information where the information holder is not co-operative as there is no financial sanction to encourage a compliant behavior of that person. The impact of this inability on the EOI in practice will be further explored during the Phase 2 review (see Annex 1).

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

353. Kuwait has provisions relating to banking and professional secrecy. Their possible impact on EOI is discussed below.

### *Bank secrecy*

354. The Central Bank Law (CBK Law Article 28, paragraph 1) recognises the principle of banking secrecy in Kuwait through the following provision:

Unless otherwise permitted by law, no member of the Board of Directors, manager, official or employee of the Central Bank shall disclose any information which relates to the affairs of the Bank or its customers or the affairs of other banks subject to the control of the Central Bank and to which he/she has access by reason of the duties of his/her office.

355. The CBK Law also establishes penalties for the disclosure of any information of a bank or its customers by a bank employee. Penalties for disclosure include imprisonment up to three months, a monetary fine of KWD 225 (EUR 720) and dismissal from service (CBK Law, Art. 85 bis).

356. Kuwait has no legal provision establishing the lifting of bank secrecy for domestic tax or EOI purposes. Kuwait considers that it can exchange banking information due to the provisions of its DTCs and the Multilateral Convention. Kuwait has not provided any legal or regulatory provision to support this understanding, or specific information on how the lifting of the bank secrecy would function. Kuwait is yet to receive an EOI request focused on banking information.

357. Absent legislation providing for access powers under domestic law, Kuwaiti tax authorities do not have access to information held by banks, fiduciary institutions and other institutions within the financial industry, for tax purposes. **Kuwait should ensure the competent authority has the power to obtain and exchange banking information.**

### *Professional secrecy*

358. In Kuwait, professional secrecy is extended to lawyers, accountants and other legal professions. These service providers are obliged to keep confidential all information disclosed by their client as part of a professional relationship. There is no provision in the tax legislation lifting the professional secrecy provisions. Kuwait has no provision regulating legal professional privilege in relation to EOI requests.

359. Lawyers, accountants and other legal professionals are not subject to reporting requirements on suspected transactions if the information was obtained in circumstances protected by professional secrecy (AML Law, Art. 12). While AML-regulated persons are required to provide information and documents upon request, legal professionals may refuse to comply based on professional secrecy (AML Law, Art. 13).

360. Lawyers in Kuwait are regulated by Law 42/1964 on the organisation of the legal profession. The law establishes that the revelation of a client's secrets is considered a violation of the essentials and the dignity of the profession, with penalties including formal notices, reprimands, suspension of the right to practice the profession for three years and the permanent exclusion of the lawyer from exercising the profession (Law 42/1964, Art. 35). The legislation does not provide details on the scope of professional secrecy or explicitly establishes exceptions to the prohibition to share client's information.

361. A court order is required to obtain information held by a lawyer which is considered to fit into the professional relationship between the lawyer and its client. Kuwait did not provide information on the exact scope of professional secrecy for lawyers, accountants and other legal professions.

362. In addition to professional secrecy provisions to lawyers, accountants and other legal professions, the Company Law also establishes that auditors are required to maintain the confidentiality of data and information that is accessed by virtue of his/her work with companies. The data and information obtained concerning audited companies may not be disclosed during and after the auditor's engagement with a company. In case the auditor discloses any information despite such confidentiality provision, the auditor may be dismissed and subject to compensation claims (CL, Art. 231).

363. Absent legislation providing for access powers under domestic law, Kuwaiti tax authorities do not have access to information held by persons subject to professional secrecy. **Kuwait should ensure that the scope of professional secrecy is in line with the international standard.**

## 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.

364. The rights and safeguards applicable to individuals in Kuwait are compatible with effective information exchange. There is no requirement for the competent authority or Tax Administration to inform the taxpayers concerned of requests for information received from partner jurisdictions.

365. The conclusions are as follows:

### Legal and Regulatory Framework: In place

The rights and safeguards that apply to persons in Kuwait are compatible with effective exchange of information.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

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

##### *Notification*

366. Kuwaiti legislation does not require the competent authority or any other government body to inform the person concerned by a request for information received from a partner jurisdiction pursuant to the Multilateral Convention or a DTC. Therefore, no pre- or post-notification of the exchange of information is required in Kuwait.

367. In addition, as Kuwait relies on limited domestic powers to obtain the information requested, the legal and regulatory framework does not require the tax authorities to formally inform the information holder of the EOI nature of their request. Therefore, the risk that the person concerned is informed of the existence of the EOI request is limited.

##### *Appeal*

368. Kuwait does not have legal provisions regulating appeals linked to requests for information. However, the general right of appeal against administrative decisions may be used in response to EOI requests, as any person subject to an administrative decision in Kuwait can appeal against such decision before the issuing authority. In practice, the appellant must submit a letter of grievance to the issuing authority within a period of 60 days. In case the authority rejects the grievance, the person can appeal to the Administrative Court within 60 days from the date of rejection.

369. The Administrative Court may grant a suspensive effect to the appeal, effectively suspending the information request until a final decision on the challenge is made. The Administrative Court may analyse all aspects of the information request under appeal, including the assessment made by the EOI unit of the foreseeable relevance of the information requested.

370. There is no case of an appeal in practice against an EOI request in Kuwait. However, this issue should be considered in practice under the Phase 2 assessment.

371. In conclusion, the rights of taxpayers in Kuwait do not hinder or unduly delay exchange of information requests from partner jurisdictions.

## Part C: Exchange of information

372. Sections C.1 to C.5 evaluate the effectiveness of Kuwait's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Kuwait's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Kuwait's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Kuwait can 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.

373. The exchange network of Kuwait comprises 79 Double Taxation Conventions (DTC) and the Multilateral Convention that entered into force in Kuwait as of 1 December 2018. Kuwait did not sign any Tax Information Exchange Agreements. The total number of EOI relationships is 162 (145 through the Multilateral Convention and 17 DTCs with jurisdictions that have not signed the Multilateral Convention). The Assistant Undersecretary for Financial and Taxes Affairs acts as the Competent Authority for exchange matters.

374. Kuwait is a party to 17 DTCs<sup>29</sup> that do not include paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention and that are not covered by the Multilateral Convention. Accordingly, Kuwait is restricted in sourcing and exchanging information absent a domestic tax interest (Paragraph 4) and is not able to exchange banking information (Paragraph 5) with these 17 partner jurisdictions.

29. Algeria, Bangladesh, Belarus, Djibouti, Ethiopia, Iran, Kyrgyzstan, Lao PDR, Sri Lanka, Sudan, Syria, Tajikistan, Uzbekistan, Venezuela, Viet Nam, Yemen and Zimbabwe.

375. A combined total of six DTCs and protocols<sup>30</sup> signed by Kuwait are not in effect as at July 2022. The six instruments have been concluded with jurisdictions that are covered by the Multilateral Convention.

### Legal and Regulatory Framework: Not in place

Deficiencies identified/Underlying factor	Recommendations
Kuwait competent authority's access powers and enforcement measures for exchange of information purposes are not explicitly provided by law especially in cases where there is no domestic tax interest in the requested information and in case the information is held by persons subject to bank or professional secrecy. In addition, the required involvement of the Attorney General for the exchange of information in criminal tax matters may restrict or cause significant delays in the competent authority's response capacity.	Kuwait should ensure it can access and exchange information for civil and criminal tax purposes in accordance with the standard, regardless of a domestic tax interest or secrecy provisions.
While Kuwait is a signatory to the Multilateral Convention as of 1 December 2018, 17 DTCs are not in line with the EOIR standard and not otherwise covered by the Multilateral Convention.	Kuwait should ensure that it can exchange information in line with the EOIR standard with all its EOI partners.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

#### **C.1.1. Standard of foreseeable relevance**

376. 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. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted broadly, including the possibility of group requests. It does not extend, however, as to allow for “fishing expeditions”.

377. The treaty network of Kuwait comprises 79 DTCs, out of which 64 provide for the exchange of information that is “necessary” instead of using the term “foreseeable relevance” as contained in Article 26(1) of the current OECD Model Tax Convention.<sup>31</sup> The Multilateral Convention – which is

30. DTCs with Luxembourg (2007), Mauritania (2009) and Senegal (2007) and protocols with Luxembourg (2021), Switzerland (2019) and South Africa (2021).

31. The 15 DTCs mentioning “foreseeable relevance” being with Armenia, Cyprus, Denmark, Hong Kong (China), India, Ireland, Japan, Lebanon, Lithuania, Luxembourg, Mexico, Portugal, Slovenia, Spain and Switzerland.



compliant with the standard – is in force in respect to 48 of the 64 partner jurisdictions that exchange under the term “necessary”.

378. As regards the remaining 16 DTCs that use the term “necessary”, the Commentary on Article 26 of the OECD Model Tax Convention recognises that the standard of “foreseeable relevance” can be met when alternative terms are used in an agreement, such as “necessary” or “relevant”. Kuwait has confirmed that it interprets these terms according to the standard of foreseeable relevance that is consistent with the scope of Article 26(1) of the OECD Model Tax Convention. As a result, these agreements also meet the standard of foreseeable relevance.

### *Foreseeable relevance and clarifications*

379. Kuwait’s EOI Manual states that the EOI request must demonstrate that the requested information is foreseeably relevant for the application of the tax law of the requesting jurisdiction. Kuwait expects the following to be provided:

- The identity of the person concerned, including its full name and address or any other information that may be required, such as a bank account number.
- To the extent known, the identity of the person thought to be in possession or control of the requested information, including its name and address. Kuwait considers that any document or fact that establishes and determines the relationship between the person concerned and the information holder constitutes sufficient evidence.
- The tax period under investigation and the tax period in respect of which the information is requested.
- The information requested, including its nature and the form in which it should be provided.

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Note by the Republic of Türkiye: 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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye 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 Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

- The purpose the requesting jurisdiction aims to achieve and whether this purpose is purely administrative or may involve criminal responsibility, as Kuwait has a distinct procedure involving the Attorney General office if the information requested is to be used in a criminal investigation (paragraph 401).
- The reasons for believing that the requested information is held in Kuwait or is in the possession or control of a person within its jurisdiction.
- A statement that the request is in conformity with the law and administrative practice of the requesting jurisdiction.
- A statement that the requesting jurisdiction has exhausted all domestic means available to obtain the information, except those that would give rise to disproportionate difficulties.

380. The EOI Manual refers to the commentary on Article 26 the OECD Model Tax Convention in a single stance (e.g. in a footnote when addressing how names may be misspelled and other information can demonstrate the foreseeable relevance). The consistency of Kuwait's interpretation of the foreseeable standard with the OECD Model Tax Convention in all cases will be assessed in the Phase 2 review.

381. While Kuwait has requested additional information from partners to ascertain the foreseeable relevance of requests received, it has never declined an EOI request based on lack of foreseeable relevance. In accordance with its EOI Manual, if a request is considered unclear or incomplete, Kuwait seeks clarification or additional information from the requesting jurisdiction within 45 days.

### *Group requests*

382. The EOIR standard includes a reference to group requests in line with paragraph 5.2 of the Commentary on the OECD Model Tax Convention. Additionally, the foreseeable relevance of a group request should be sufficiently demonstrated, and it should also be demonstrated that the requested information would assist in determining compliance by the taxpayers in the group.

383. Kuwait's EOI agreements do not contain language prohibiting group requests. In order to deal with group requests, the EOI Manual determines that the requesting jurisdiction must:

- provide a detailed description of the group
- give specific facts and circumstances that have led to the request

- provide an explanation of the applicable law
- present the reason to believe that the taxpayers in the group have been non-compliant with the law, supported by a clear factual basis
- in case a third party has contributed to the non-compliance of the taxpayers in the group, provide the identification of such party and the particular circumstances.

384. The requirement for identification information to be provided to demonstrate the foreseeable relevance of individual and bulk requests does not apply to group requests, as the EOI Manual provides a distinct set of requirements in relation to the foreseeable relevance of group requests.

385. The conditions set by the EOI Manual reproduce the ones in paragraph 5.2 of the Commentary on the OECD Model Tax Convention.

386. The process for responding to group requests is the same as for any other request for information. Kuwait is yet to receive a group request from its partner jurisdictions.

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

387. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the EOIR standard envisages that EOI mechanisms will provide for exchange of information in respect of all persons and Article 26(1) of the OECD Model Tax Convention states that "[t]he exchange of information is not restricted by Articles 1 and 2"; Article 1 defines the personal scope of the convention, while Article 2 defines the taxes covered. Article 5(1) of the Multilateral Convention states that "the requested State shall provide the applicant State with any information [...] which concerns particular persons or transactions".

388. Kuwait has 42 DTCs that do not explicitly provide that the EOI provision is not restricted by Article 1 of the Model Tax Convention.<sup>32</sup> However, 28 of the 42 jurisdictions are signatories to the Multilateral Convention,

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32. Albania, Algeria, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brunei, Croatia, Czech Republic, Djibouti, Ethiopia, Georgia, Germany, Hungary, Iran, Italy, Japan, Jordan, Korea, Kyrgyzstan, Lao PDR, Lebanon, North Macedonia, Malaysia, Mauritania, Philippines, Poland, Romania, Russia, Senegal, Singapore, South Africa, Sudan, Syria, Thailand, Tunisia, United Kingdom, Uzbekistan, Venezuela, Viet Nam, Yemen and Zimbabwe.

which directly provides for EOI in respect of all persons.<sup>33</sup> The 14 other DTCs provide for the exchange of information as is necessary for carrying out the provisions of the domestic laws of the Contracting States, or similar language.

389. These treaties are not restrictive per se. However, as the Kuwaiti tax system exempts from tax obligations all natural persons that reside in Kuwait, it has recognised that – despite being empowered to exchange information of natural persons under its treaty network – it faces challenges and practical difficulties to obtain information on natural persons because of the limitation in access powers noted in section B.1.

**390. Kuwait should ensure that it can exchange information in line with the EOIR standard with all its EOI partners.**

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

391. Exchange of information mechanisms should not permit the requested jurisdiction to decline to supply information solely because the information is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Article 26(5) of the OECD Model Tax Convention explicitly covers the exchanges of all types of information. Also, the Multilateral Convention enables exchanges in accordance with this standard.

392. As previously identified in section B.1, Kuwait has no domestic legislation providing the competent authority with access powers regarding banking information. Kuwait indicated that the competent authority is able to exchange banking information due to the direct application of DTCs and the Multilateral Convention. Kuwait did not provide any legal provision to sustain this understanding or any specific information on the procedural lifting of the bank secrecy for EOI purposes. In practice, Kuwait is yet to receive an EOI request for information held by a bank to demonstrate the feasibility of this interpretation.

393. Kuwait's ability to exchange banking information in response to an EOI request is not demonstrated – even when the underlying international agreement explicitly stipulates for the exchange of all types of information in line with Article 26(5) of the OECD Model Tax Convention.

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33. The exceptions being Algeria, Belarus, Djibouti, Ethiopia, Iran, Kyrgyzstan, Lao PDR, Sudan, Syria, Uzbekistan, Venezuela, Viet Nam, Yemen and Zimbabwe.

394. As at July 2022, Kuwait has agreements with 17 jurisdictions<sup>34</sup> that are not signatories to the Multilateral Convention and whose DTC does not contain a provision corresponding to Article 26(5) of the OECD Model Tax Convention. Considering that Kuwait does not have an access law with respect to EOI, and to the extent it relies on the EOI provision of the DTCs to access and exchange information, Kuwait would not be able to exchange information held by banks under these DTCs.

395. **Kuwait should ensure it can access and exchange information for tax purposes in accordance with the standard, regardless of secrecy provisions.**

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

396. EOI partners must use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction. Such obligation is explicitly contained in Article 26(4) of the OECD Model Tax Convention. Exchanges of information absent of the “domestic tax interest” are also possible under the Multilateral Convention.

397. The Kuwaiti competent authority relies on access powers which are limited to the purposes of domestic tax assessment. Kuwait has no legal provision extending its domestic access powers to gather information for EOI purposes. Kuwait indicated it is able to gather information in the absence of domestic tax interest due to the direct applicability of DTCs and the Multilateral Convention. However, as set out in section B.1.4, Kuwait competent authority’s access powers and enforcement measures for exchange of information purposes are not explicitly provided by law, especially in cases where there is no domestic tax interest in the requested information. **Kuwait should ensure it can access and exchange information for tax purposes in accordance with the standard, regardless of a domestic tax interest.**

398. In the case of Kuwait’s EOI partners that are not signatories to the Multilateral Convention and whose underlying DTCs do not include a provision corresponding to Article 26(4) of the OECD Model Tax Convention, Kuwait is restricted in sourcing the information domestically absent of a domestic tax interest. Kuwait has not explained how it would be able to provide information in this case.

399. As the absence of such provision affects the ability of Kuwait to exchange information, **it is recommended that Kuwait ensure that it can exchange information in line with the EOIR standard with all its EOI**

34. Algeria, Bangladesh, Belarus, Djibouti, Ethiopia, Iran, Kyrgyzstan, Lao PDR, Sri Lanka, Sudan, Syria, Tajikistan, Uzbekistan, Venezuela, Viet Nam, Yemen and Zimbabwe.

**partners.** As at July 2022, this concretely applies to 17 DTCs which do not contain a provision corresponding to Article 26(4) of the OECD Model Tax Convention and are not covered by the Multilateral Convention.<sup>35</sup>

### ***C.1.5 and C.1.6. Civil and criminal tax matters***

400. Kuwait's network of agreements provides for exchange in both civil and criminal matters, with no dual criminality restriction.

401. Kuwait has received only requests related to civil tax matters. If a request is received to provide information for a criminal investigation in a partner jurisdiction, the Ministry of Finance will correspond with the Attorney General office.

402. The involvement of the Attorney General office on the validation of information in response to inbound requests related to criminal investigations in the requesting jurisdiction may restrict or cause significant delays in the competent authority's response capacity. Kuwait's EOI Manual provides no information on the expected timeline of the validation of requests that involve the Attorney General office. **Kuwait should ensure it can access and exchange information for both civil and criminal tax purposes in accordance with the standard.**

403. The practical implementation of such measure and its impact on Kuwait's ability to reply to EOI requests within the proper timeline will be assessed in the Phase 2 review (see Annex 1).

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

404. The tax agreements concluded by Kuwait do not contain any stipulations concerning the provision of information in a form specifically requested by a contracting party to satisfy its evidentiary or other legal requirements to the extent allowable under the laws of the requested Party. However, there is nothing to prevent the Kuwaiti authorities from providing information in the form requested, provided that it is consistent with their administrative practice.

### ***C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law***

405. The Kuwaiti Constitution regulates the process for treaty ratification. Treaties are concluded through an Emir Decree and are communicated to the National Assembly for ratification. After the ratification and official

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35. See previous footnote.

publication, the treaty has force of law. International treaties are considered to be on the same hierarchical level as ordinary laws and Emir Decrees. Kuwait has provided a list of enacted laws for each DTC in effect.

406. In practice, the Tax Liability and Planning Department of the Ministry of Finance negotiates and concludes DTCs. The Legal Department of the Ministry of Foreign Affairs and the Department of Legal Advice and Legislation of the Council of Ministers perform legal reviews of the DTCs. The Ministry of Foreign Affairs notifies the Chamber of Ministers once the legal review is completed and the treaty is sent to the Foreign Affairs Committee of the National Assembly for approval. An Emir Decree is published after the approval by the National Assembly providing force of law to the treaty. The process is finalised by Kuwait notifying its treaty partner of the completion of the domestic ratification procedure.

407. The Multilateral Convention is in force in Kuwait as of 1 December 2018. Regarding the 79 DTCs signed by Kuwait, three are not yet in force as at July 2022. These are DTCs with Luxembourg (signed on 11 December 2007), Mauritania (signed on 27 December 2009) and Senegal (signed on 9 April 2007). In the interim, exchange of information with Luxembourg and Senegal may take place under the Multilateral Convention and will be possible shortly with Mauritania (see Annex 2).

408. Kuwait indicated that the average time for the ratification and entry into force of a treaty is from six months to one year. However, three DTCs and three protocols signed by Kuwait have not yet entered into force. Of these, two<sup>36</sup> were signed last year, one was signed three years ago<sup>37</sup> and three were signed in 2009 or earlier.<sup>38</sup>

409. The instruments signed with Luxembourg and Switzerland have been ratified by the partner jurisdictions and currently await ratification by Kuwait. Kuwait has indicated that the DTCs signed with Mauritania and Senegal have been ratified by Kuwait and currently await ratification from the partner jurisdictions. Finally, the protocol signed with South Africa still awaits ratification from both signatories.

410. Kuwait should ensure that it takes all steps necessary for its part to bring its signed EOI agreements into force expeditiously (see Annex 1).

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36. Protocols with Luxembourg (2021) and South Africa (2021).

37. Protocol with Switzerland (2019).

38. DTCs with Luxembourg (2007), Mauritania (2009) and Senegal (2007).

### EOI mechanisms

<b>Total EOI relationships, including bilateral and multilateral or regional mechanisms</b>	<b>162</b>
In force	162
In line with the standard	145
Not in line with the standard	17
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0
<b>Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms</b>	<b>17*</b>
In force	17
In line with the standard	0
Not in line with the standard	17
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0

\*Algeria, Bangladesh, Belarus, Djibouti, Ethiopia, Iran, Kyrgyzstan, Lao PDR, Sri Lanka, Sudan, Syria, Tajikistan, Uzbekistan, Venezuela, Viet Nam, Yemen and Zimbabwe

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

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

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

412. Kuwait is a party to 79 DTCs and is a signatory to the Multilateral Convention, which is applicable in Kuwait since December 2018. The total number of EOI relationships is 162 (145 through the Multilateral Convention and 17 DTCs with jurisdictions that have not signed the Multilateral Convention).

413. With the Multilateral Convention in force, Kuwait has a large network of information exchange mechanisms. Nevertheless, the analysis of Kuwait's EOI instruments made in section C.1 above shows that Kuwait



is not able to exchange important types of information (e.g. banking information, information on individual and exempt companies) in line with the standard with any of its partners. **Kuwait should ensure that it removes the limitations in its domestic law to give full effect to the terms of its EOI arrangements.**

414. There was no peer input indicating that Kuwait had refused to negotiate or sign an EOI instrument. Kuwait is currently negotiating a DTC protocol. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Kuwait should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

415. The conclusions are as follows:

### Legal and Regulatory Framework: Not in place

Deficiencies identified/Underlying factor	Recommendations
Kuwait, due to its domestic law limitations, including confidentiality of bank and professional secrecy, and a domestic tax interest requirement, cannot exchange information with all its partners in accordance with the international standard under any of its agreements.	Kuwait should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with all its relevant partners.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

### C.3. Confidentiality

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

416. All of the arrangements for the exchange of information concluded by Kuwait provide for the confidentiality of information exchanged and limit the disclosure and use of information received.

417. Kuwaiti domestic law contains several confidentiality obligations but four exceptions apply to information received from EOI partners: (i) the Emir has full access and disclosure rights on tax information, (ii) a Minister can authorise disclosure of information by written statement, (iii) a court or a Public Prosecutor can authorise disclosure, (iv) KFIU can request information. These exceptions may result in information received being disclosed to persons not authorised by the EOI agreements.

418. The conclusions are as follows:

**Legal and Regulatory Framework: Not in place**

Deficiencies identified/Underlying factor	Recommendations
Confidentiality provisions in Kuwait's domestic law are not consistent with the standard as information received may be disclosed to persons not authorised by the EOI agreements.	Kuwait should ensure that disclosure of information received pursuant to its agreements is consistent with the standard.
Although the Income Tax Law imposes monetary sanctions on the unauthorised disclosure of confidential information, the sanction is not explicitly extended to disclosure of exchanged information. In addition, the quantum of monetary sanctions may not be dissuasive.	Kuwait should ensure that adequate sanctions apply to the unauthorised disclosure of confidential information received under an EOI agreement.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

***C.3.1. Information received: disclosure, use and safeguards***

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

***EOI agreements***

420. All the EOI arrangements concluded by Kuwait require the confidentiality of information exchanged and limit the disclosure and use of information received. Kuwait's DTCs and the Multilateral Convention establish that any information received shall be treated as secret in the same manner as information obtained under its domestic laws.

421. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the

EOI agreement provides that the information may be used for such other purposes under the laws of both contracting parties and the competent authority supplying the information authorises the use of information for purposes other than tax purposes. Kuwait reported that there were no requests in which the requesting partner sought Kuwait's consent to utilise the information for non-tax purposes and similarly Kuwait did not request its partners to use information received for non-tax purposes.

422. Information received by Kuwait under an EOI agreement is treated with the same confidentiality rules as information obtained under Kuwaiti domestic laws and in line with the requirements of the EOI agreement under which the information is provided.

### *Domestic legislation*

423. The tax law of Kuwait provides that domestic tax declarations are confidential and cannot be disclosed for examination or inspection outside of the ranks of the Tax Administration. The disclosure of tax information without the consent of the taxpayer to persons or authorities not involved in the assessment, collection, enforcement or prosecution of taxes is therefore unlawful in Kuwait. More generally, the Civil Service Decree Law prohibits civil service employees from disclosing or providing to third parties any information on confidential activities, also after cessation of office position. Civil service employees are also prohibited from retaining documents (original or copies) related to their work, even if the documents relate to a task personally entrusted to the employee (Civil Service Decree Law, Art. 25/6).

424. Several exceptions apply to these confidentiality obligations.

425. First, the tax legislation establishes an exception for the person of the Emir, who can examine and disclose confidential information from domestic tax declarations (ITL, Art. 11). Kuwait has indicated that the Emir's access powers are limited to information from a domestic nature and do not extend to information received from EOI partners. However, as Kuwait does not have a law on EOI and has not provided a legal provision on this issue, it is uncertain if the Emir may access information exchanged under an EOI arrangement in practice.

426. Second, the Civil Service Decree Law provides that a written statement by a Minister can authorise an employee to disclose confidential information (Civil Service Decree Law, Art. 25/5). No further information, explanations, conditions or restrictions have been provided during the present review. This exception is therefore very broad.

427. Third, Kuwait has stated that information received under an EOI agreement can be disclosed if a court order is issued to release such

communications, in accordance with the Criminal Procedures and Trials Law of 1960 and the Law on Evidence in Civil and Commercial Matters of 1980. The legislation establishes that all public authorities are required to abide to orders provided by judges or a Public Prosecutor.

428. Fourth, information requested by KFIU to combat money laundering and terrorism financing crimes (AML Law, Art. 18).

429. There is no provision in the legal framework of Kuwait establishing an exception to these disclosure possibilities or additional requirements for the release of information exchanged under an international agreement.

430. As the EOI instruments do not prevail over domestic legislation in Kuwait (see paragraph 31), the absence of specific protection in law in favour of exchanged information do not meet the standard. **Kuwait should ensure that disclosure of information received pursuant to its agreements is consistent with the standard.**

### *Safeguards in place*

431. The EOI Manual determines that EOI staff may only disclose to tax officials the information necessary from the request received and not the letter itself. The same precaution is employed when requesting information from other government agencies and third parties to enable them to answer the request.

432. The confidentiality provisions apply to both information received from and information sent to jurisdictions under an EOI agreement. All information received or sent as part of an EOI request is confidential and stored securely. All documents and correspondence carry a watermark stating the following:

CONFIDENTIAL – THIS INFORMATION IS FURNISHED  
UNDER THE PROVISIONS OF A TAX TREATY AND ITS USE  
AND DISCLOSURE ARE GOVERNED BY THE PROVISIONS  
OF SUCH TAX TREATY.

433. The watermark indicating the confidentiality of the material is not included in all pages of the documents or correspondence related to EOI requests. The inclusion of a confidentiality watermark in all pages of EOI-related documents and correspondence reduces the risk of unauthorised disclosure of confidential information. Kuwait is recommended to ensure that there are sufficient safeguards in place to keep the confidentiality of all EOI documents (see Annex 1).

434. The access to EOI files is monitored and documented. Only the competent authority and officers of the EOI unit may access physical and

electronic EOI information, documents or correspondence. Access to electronic files is granted based on a role-based approach. The same security level applies to hard copies. A “clean desk” policy is in place, which prohibits officers from leaving confidential EOI communication on their desks and requires that all information and documents not in use be properly filed away. Hard copies are destroyed when no longer needed in application of the official disposal policy. It is unclear if a register is kept of all staff members that accessed or worked with physical documents. Kuwait has provided no information on the revoking of access to electronic files when an official ceases to work in the EOI unit.

435. The EOI office is restricted and can only be accessed by officials of the unit, while other tax officials may only enter with prior permission from the head of the EOI unit (i.e. the Controller of the International Treaties Division). The EOI office is equipped with biometric devices, magnetic entry cards and a CCTV system to control and monitor access to the office.

436. Potential confidentiality breaches of electronic EOI information are monitored by the IT security system of MOF. As a breach is identified, initial efforts are directed at identifying its source and interrupting the breach. A response team identifies the systems impacted, evaluates the data breach and decides on control measures. After the breach has been contained, members of staff registered in a log system that records staff with access to disclosed information are investigated by the legal committee of KTA. Kuwait does not have a system covering the breach of electronic information received from outside sources.

437. In case of illegal access or disclosure of physical documents, the member of staff that identified or suspects that a breach occurred is required to report the issue to his/her head of section, which launches a formal investigation into the incident.

438. If a confidentiality breach is confirmed by the internal investigation of the KTA, the head of the security department is required to communicate the findings to the head of the legal section, who is responsible for communicating the breach to the competent authorities of all affected partner jurisdictions. Kuwait has not detected any case of disclosure of EOI information in the period between 1 July 2018 to 30 June 2021.

439. Access to EOI files is restricted to the competent authorities and officers of the EOI unit. Although taxpayers or other persons affected by the request have no access to the EOI file, a court decision may grant access to the EOI file to interested persons.

440. The practical implementation of these confidentiality measures will be assessed in the Phase 2 review (see Annex 1).

### *Enforcement and sanctions*

441. The tax law of Kuwait provides that domestic tax declarations are confidential and cannot be disclosed for examination or inspection outside of the ranks of the Tax Administration. Any unauthorised disclosure is punishable by a fine up to KWD 113 (EUR 361).

442. More generally, Government employees that breach confidentiality obligations are subject to disciplinary actions including written warnings, censure, salary deductions, demotion of position and dismissal from public service, without prejudice to further penal or civil sanctions. In case the breach occurred due to a written order issued by a superior officer, such officer is held responsible for the breach (Civil Service Decree Law, Arts. 27 and 28).

443. The legislation on Combatting Information Technology Crimes (CITC Law) establishes sanctions of imprisonment and fine for a public official that illegally accesses a computer system or an information network and discloses confidential personal information. The penalty includes up to three years of imprisonment and/or a fine between KWD 10 000 (EUR 32 016) and KWD 300 000 (EUR 960 489) (CITC Law, Arts. 3 and 11).

444. Kuwait also sanctions the illegal access of an information network by a public official with the intention of obtaining confidential government data or information. If the access results in the publication of confidential government data or information, the penalty includes up to ten years of imprisonment and/or a fine between KWD 5 000 (EUR 16 008) and KWD 20 000 (EUR 64 032) (CITC Law, Arts. 4 and 11).

445. The Income Tax Law establishes sanctions for the disclosure of domestic tax declarations by the KTA staff, however there is no provision explicitly extending this obligation to exchanged information. In addition, the sanctions are of a low value and may not have the dissuasive effect intended. Furthermore, the Civil Service Decree Law is limited to administrative sanctions through disciplinary actions.

446. On the other hand, the CITC Law establishes a sanction regime based on monetary fines and imprisonment in case public officials unlawfully disclose confidential information through the use of computer systems or information network.

447. The Income Tax Law of Kuwait does not explicitly state that the disclosure of exchanged information is sanctioned in the same manner as domestic tax declarations. While the CITC Law establishes a proper sanction regime in case of disclosure by public officials, the legislation is limited by its exclusive scope on computer systems and information technology. Thus, it is not demonstrated that Kuwait is able to properly sanction the disclosure of unauthorised information by public officials in all cases where this would be against the EOI treaty provisions (and the standard).

448. In addition, the sanctions on disclosure of information established by the Income Tax Law and the administrative sanctions of the Civil Service Decree Law appear insufficient to prevent unauthorised disclosure. A review of the sanctions imposed on public officials in case of unlawful disclosures would be necessary to ensure its effectiveness as deterrent.

449. **Kuwait should ensure that adequate sanctions apply to the unauthorised disclosure of confidential information received under an EOI agreement.**

### **C.3.2. Confidentiality of other information**

450. The confidentiality provisions in Kuwait's EOI agreements and domestic laws do not draw a distinction between information received in response to requests and information forming part of the requests themselves. The EOI Manual establishes that information contained in the correspondence between the competent authority of Kuwait and the foreign jurisdiction is confidential. Kuwait confirmed that all other information, such as background documents, communications between the requesting and requested jurisdictions and within the tax authorities, is treated confidentially.

#### **Confidentiality in practice**

451. The practical implementation of confidentiality provisions will be assessed in the Phase 2 review.

## **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.

452. The standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other legitimate secret arises.

453. Kuwait's EOI instruments provide that the parties are not obliged to exchange information which would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy (*ordre public*), in a manner consistent with Article 26(3)(c) of the OECD Model Tax Convention.

454. Professional secrecy for lawyers, accountants and other legal professionals ensures that information disclosed as part of a professional relationship is kept confidential. The legislation regulating legal professions

does not provide details on the scope of professional secrecy or explicitly establishes exceptions to the prohibition to share a client's information. Information considered to be covered by the attorney-client privilege may only be disclosed through a court order. Kuwait has no specific provision regulating legal professional privilege in relation to EOI requests.

455. Kuwait did not provide information on the exact scope of professional secrecy. Further information on the practical limitations of professional secrecy is required to ensure the ability of the competent authority to access information for EOI purposes in line with the standard. Kuwait should ensure that the extent of professional secrecy in its domestic legal framework does not impede the exchange of information under its EOI agreements.

456. Out of the six requests for information received from 1 July 2018 to 30 June 2021, Kuwait had no information request related to trade secrets or attorney-client privilege. Kuwait has not provided an example of difficulties experienced in responding to an EOI request due to the application of rights and safeguards.

457. The conclusions are as follows:

#### Legal and Regulatory Framework: In place, but needs improvement

Deficiencies identified/Underlying factor	Recommendations
There are some uncertainties as to whether professional secrecy provisions in Kuwait's domestic laws would impede the effective exchange of information under its international agreements.	Kuwait should ensure that the extent of professional secrecy in its domestic legal framework does not impede the exchange of information under its EOI agreements.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

### 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.

458. Kuwait's EOI Manual sets a period of 45 days for the analysis of inbound requests to determine if additional information must be requested to the partner jurisdiction. This may lead to difficulties in Kuwait's competent authority's ability to provide an initial reply to the requesting jurisdiction as set in the EOIR standard and Kuwait's EOI Manual.



459. The implementation of this aspect of the standard is primarily based on practice and will be assessed in the Phase 2 of the review with a new review period.

### Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

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

460. For EOI to be effective, it must take place within a time frame that allows the requesting tax authorities to make good use of the information. If the response is received too late, the information may no longer be of use to the requesting authority. This aspect is particularly important in the context of international co-operation.

461. The EOI Manual establishes that unless a different timeframe is established in the EOI agreement, Kuwaiti's competent authorities must issue a status update, an interim reply or a final reply to the requesting jurisdiction within 90 days.

462. Kuwait has limited EOIR experience. Initial statistics provided suggest that Kuwait is responsive and timely in providing information.<sup>39</sup> Kuwait has received six requests for information from 1 July 2018 to 30 June 2021, as well as three spontaneous exchanges. A full evaluation of the timeliness of responses for requests for information, involves issues of practice that will be dealt with in the Phase 2 review of Kuwait.

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

##### *Organisation of the competent authority*

463. The Minister of Finance is the competent authority in Kuwait. The Minister of Finance has delegated this authority to the Undersecretary of the Ministry of Finance. The Assistant Undersecretary for Financial and Taxes Affairs is authorised to discharge the functions of the competent authority.

39. No peer input was requested by the Global Forum Secretariat in preparation of this report, as the review of Kuwait was launched as a phased review due to the limited experience of the jurisdictions and the present report is a Phase 1 report.

The EOI Unit within the International Treaties department of the Directorate for Tax Liability and Planning is in charge of processing EOI requests.

464. The details of the delegated competent authorities are published on the secure site of the Global Forum and direct communication is done to treaty partners who are not Global Forum members. The website of the Kuwaiti Ministry of Finance<sup>40</sup> also includes the details of the competent authority.

### *Resources and training*

465. The EOI unit includes seven permanent staff with background in business administration, banking and finance. The staff of the EOI unit is dedicated on a full-time basis to EOIR and Automatic Exchange of Information. The unit is responsible for:

- logging requests received or to be sent to other jurisdictions
- researching and obtaining information for EOI requests from other jurisdictions
- validating EOI requests from Kuwait prior to approval by the competent authority.

466. Members of the EOI unit took part in training workshops and seminars conducted by the Global Forum from 1 July 2018 to 30 June 2021, focusing on beneficial ownership, effective use of exchanged data and establishing and running an EOI unit.

### *Incoming requests*

467. The procedure for incoming requests is included in the EOI Manual, which is followed by the EOI Unit. When the office of the Undersecretary of the Minister of Finance receives an EOI request, it acknowledges receipt and direct it to the head of the EOI unit through a secure electronic system. The request is lodged with the EOI unit in the day of being received, registered in the EOI database and assigned a case reference number.

468. The physical copy of the request is stored in a designated EOI room and the digital version in the IT system. All documents related to the request carry a stamp or watermark clearly stating that the disclosure of treaty-protected information is governed by the provisions of such treaty (see however paragraph 433). An acknowledgement of receipt is sent to the requesting jurisdiction within seven days of receiving the inbound request.

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40. Kuwait Minister of Finance – [www.mof.gov.kw](http://www.mof.gov.kw).

469. The EOI unit checks whether the request is valid, complete and in conformance with the international agreement underpinning the request. The validation procedure includes confirming if the request fulfils the conditions of the applicable EOI agreement, including its foreseeable relevance, and ensuring sufficient information is provided to properly process the request. In case the validation concludes that the information provided is insufficient or unclear, a notification is sent to the requesting jurisdiction asking for more details to allow the inbound request to be properly addressed. The notification is sent within 45 days of receiving the request.

470. After checking a request for validity and completeness, the EOI unit may decide not to process the request in case the necessary requirements are not met. The following scenarios and timelines are established by the EOI manual:

- If the EOI unit concludes that a request does not match the necessary requirements, a notification is sent to the requesting jurisdiction within 45 days of receiving the request.
- In case the decision not to process the request has been made after receiving additional information from the requesting jurisdiction, the notification is sent within 14 days of receiving the previous communication.
- In case the requesting jurisdiction has not answered a request for more details within 90 days, the requesting jurisdiction is further notified that the request cannot be processed as Kuwait lacks the necessary information.

471. The head of the EOI unit decides on whether the request is valid and assigns an EOI officer to the case who is responsible for gathering the information required to answer the request. The head of the unit sets a reminder to monitor the progress of the EOI officer in charge on the 45<sup>th</sup> day of receiving the request, to ensure it is able to reply to the inbound request within 90 days.

472. In case the information is expected to be already in possession of the Tax Administration, the head of the EOI unit contacts the proper department of the Tax Administration with a request for the necessary information. The communication between the EOI unit and the Tax Administration is electronic and confidential.

473. If the information requested is held by another government agency or third party, the competent authority requests through a letter that the information is provided by the agency or third party. In case it is necessary to directly contact the taxpayer to obtain the information requested, the requesting jurisdiction must be previously informed.

474. The reply to an inbound request is expected take place within 90 days of its receipt, either with a status update, interim reply or a final reply with the information requested. The competent authority reviews the draft response prepared by the EOI officer in charge and confirms that the information requested by the other jurisdiction has been provided. The EOI officer in charge archives a copy of the response together with the documents gathered.

475. The EOI Manual establishes a 45-day period for the Kuwaiti competent authority to notify the requesting jurisdiction that further information is needed to allow a request to be processed if Kuwait determines that the information originally provided in the request is insufficient. The 45-day period established may be excessive to check whether the request is valid, complete and in conformance with the international agreement underpinning the request. As Kuwait's EOI Manual set a 90-day period for the competent authority to provide an initial reply to the requesting jurisdiction, a period of 45 days for the initial analysis of the request may be disproportionate and may lead to significant delays in replying to inbound requests.

476. In practice, Kuwait often faces difficulties in obtaining information requested by partner jurisdictions. As Kuwait does not impose personal income tax, it faces practical challenges to obtain information on natural persons (see element B.1). In regard to corporate entities, data search for information is problematic as most information is stored in physical files and a research into a specific taxpayer often proves to be time consuming.

477. The practical implementation of the EOI Manual will be assessed in the Phase 2 review (see Annex 1).

### *Outgoing requests*

478. For outgoing requests, the EOI Manual establishes that a tax auditor starts the process by sending a written request to the EOI Unit. An official of the EOI unit is assigned to draft the outbound EOI request in line with a template. In case the tax auditor initiates the drafting of the request, the EOI unit carries out a review. If the information provided by the tax auditor is not complete, the EOI unit contacts the tax auditor to request additional information.

479. The EOI Manual provides that the request must be drafted in a clear manner and in the native language of the requested partner or in English. The outbound request includes any supporting document related to the request. The request is signed by the competent authority and sent to the competent authority of the partner jurisdiction. The EOI official updates the database with the action taken and next review date.

480. The competent authority tracks the progress of the request through regular contact with the competent authority of the requested jurisdiction. In case the request has not been acknowledged within 14 days, the competent authority contacts its counterpart in the requested jurisdiction. If the requested jurisdiction does not provide the requested information or a status update within 90 days of receiving the request, the Kuwaiti competent authority sends further notifications to the requested jurisdiction.

481. The procedure for outgoing requests set by the EOI Manual reflects the establishment of appropriate organisational processes and resources to ensure the quality of requests sent to partner jurisdictions. While Kuwait has only issued one outgoing request in the period between 1 July 2018 to 30 June 2021, its procedural guidance provides the platform for further issuance of EOI requests by the jurisdiction and is in line with the standard.

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

482. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. No factor or issue other than those identified in section B.1 of this report has been identified that would act as an unreasonable, disproportionate or unduly restrictive condition for EOI in Kuwait.



## 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, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1.1:** Kuwait should take actions to reduce the large number of inactive companies and reduce the risk they pose to the availability of information (paragraph 147).
- **Element A.1.1:** Kuwait should explicitly provide information on the sources for the identification of beneficial owners that may be used by AML-obliged persons (paragraph 166).
- **Element A.3:** Kuwait should explicitly provide information on the sources for the identification of beneficial owners of bank accounts that may be used by financial institutions (paragraph 300).
- **Element C.1:** Kuwait should ensure that it takes all steps necessary for its part to bring its signed EOI agreements into force expeditiously (paragraph 410)
- **Element C.2:** Kuwait should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 414).
- **Element C.3.1:** Kuwait should ensure that there are sufficient safeguards in place to keep the confidentiality of all EOI documents (paragraph 433).

In addition, the Global Forum may identify aspects of the legal and regulatory framework that require follow-up in Phase 2. A non-exhaustive list of these aspects is reproduced below for convenience.

- **Element A.1.1:** The availability of legal ownership information on companies in practice, as well as the supervisory measures and their adequacy (paragraph 142).
- **Element A.1.1:** The supervision of inactive companies and its adequacy in practice (paragraph 146).
- **Element A.1.1:** The availability of information on inactive companies in practice (paragraph 147).
- **Element A.1.1:** The implementation of the legal framework on beneficial ownership and the adequacy of supervisory measures (paragraph 178).
- **Element A.1.4:** The availability of identity and beneficial ownership information on foreign trusts and similar legal arrangements administered in Kuwait or with a Kuwaiti-resident trustee (paragraph 213).
- **Element A.2.1:** The implementation of the legal framework and the availability of accounting information in practice, as well as the supervisory measures and their adequacy (paragraph 256).
- **Element B.1.4:** The impact of the absence of powers to seize documents for EOI purposes (paragraph 352).
- **Element C.1.5 and C.1.6:** The involvement of the Attorney General office on the provision of information in relation to criminal tax matters and its impact on Kuwait's ability to reply to EOI requests (paragraph 403).
- **Element C.3:** The practical implementation of confidentiality measures (paragraph 440).
- **Element C.5.2:** The practical implementation of the EOI Manual (paragraph 477).



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

### Bilateral international agreements for the exchange of information

	<b>EOI partner</b>	<b>Type of agreement</b>	<b>Signature</b>	<b>Entry into force</b>
1	Albania	DTC	4 April 2010	24 June 2013
2	Algeria	DTC	20 April 2008	18 January 2016
3	Armenia	DTC	3 November 2009	12 April 2013
4	Austria	DTC	13 June 2002	1 March 2004
5	Azerbaijan	DTC	10 February 2009	18 April 2012
6	Bangladesh	DTC	19 February 2014	27 August 2018
7	Belarus	DTC	10 July 2001	27 March 2002
8	Belgium	DTC	10 March 1990	29 October 2000
9	Bosnia and Herzegovina	DTC	28 October 2008	11 February 2016
10	Brunei Darussalam	DTC	13 April 2009	2 June 2011
		Protocol to DTC	11 October 2016	27 October 2018
11	Bulgaria	DTC	29 October 2002	23 February 2004
12	Canada	DTC	28 January 2002	1 January 2003
13	China (People’s Republic of)	DTC	25 December 1989	20 July 1990
14	Croatia	DTC	29 May 2001	9 January 2003
15	Cyprus	DTC	5 October 2010	25 October 2013
16	Czech Republic	DTC	5 June 2001	3 March 2004
17	Denmark	DTC	22 June 2010	2 October 2013
18	Djibouti	DTC	29 March 2010	15 February 2014
19	Ethiopia	DTC	14 September 1996	7 March 1999

	EOI partner	Type of agreement	Signature	Entry into force
20	France	DTC	7 February 1982	1 September 1983
		Protocol to DTC I	27 September 1989	1 July 1991
		Protocol to DTC II	27 January 1994	1 March 1995
21	Georgia	DTC	13 October 2009	14 April 2013
22	Germany	DTC	18 May 1999	2 August 2000
23	Greece	DTC	2 March 2003	20 April 2005
24	Hong Kong (China)	DTC	13 May 2010	24 July 2013
25	Hungary	DTC	17 January 1994	1 January 1995
		Protocol to DTC	9 December 2001	1 January 2003
26	India	DTC	15 June 2006	17 October 2007
		Protocol to DTC	15 January 2017	26 March 2018
27	Indonesia	DTC	23 April 1997	11 December 1998
28	Iran	DTC	16 January 2008	12 February 2011
29	Ireland	DTC	23 November 2010	12 August 2013
30	Italy	DTC	17 December 1987	11 January 1992
		Protocol to DTC	17 March 1998	1 January 2001
31	Japan	DTC	17 February 2010	14 June 2013
32	Jordan	DTC	21 May 2001	23 March 2002
33	Kenya	DTC	12 November 2013	24 June 2015
34	Korea	DTC	5 December 1998	13 June 2000
		Protocol to DTC	2 October 2007	27 December 2010
35	Kyrgyzstan	DTC	13 December 2015	1 January 2018
36	Lao People's Democratic Republic	DTC	5 August 2008	31 March 2011
37	Latvia	DTC	9 November 2009	25 April 2013
38	Lebanon	DTC	21 January 2001	20 March 2002
39	Lithuania	DTC	18 April 2013	8 September 2017
40	Luxembourg	DTC	11 December 2007	Not in force
		Protocol to DTC	25 March 2021	Not in force

	<b>EOI partner</b>	<b>Type of agreement</b>	<b>Signature</b>	<b>Entry into force</b>
41	Malaysia	DTC	5 February 2003	29 May 2007
		Protocol to DTC	25 October 2010	6 August 2013
42	Malta	DTC	24 July 2002	18 March 2004
43	Mauritania	DTC	27 December 2009	Not in force
44	Mauritius	DTC	24 March 1997	11 September 1998
45	Mexico	DTC	27 October 2009	18 June 2013
46	Moldova	DTC	15 March 2010	21 June 2013
47	Montenegro	DTC	2 April 2002	1 January 2004
48	Morocco	DTC	15 June 2002	15 July 2006
49	Netherlands	DTC	29 May 2001	23 April 2002
50	North Macedonia	DTC	20 March 2012	17 February 2015
51	Pakistan	DTC	30 June 1998	3 September 2000
52	Philippines	DTC	3 November 2009	22 April 2013
53	Poland	DTC	16 November 1996	25 April 200
54	Portugal	DTC	23 February 2010	4 December 2013
55	Romania	DTC	26 July 1992	1 January 1995
56	Russia	DTC	9 February 1999	2 January 2003
57	Senegal	DTC	9 April 2007	Not in force
58	Serbia	DTC	2 April 2002	8 May 2003
59	Seychelles	DTC	5 February 2008	29 April 2021
60	Singapore	DTC	21 February 2002	2 July 2003
61	Slovak Republic	DTC	13 November 2012	21 April 2014
62	Slovenia	DTC	11 January 2010	17 May 2013
63	South Africa	DTC	17 February 2004	25 April 2006
		Protocol to DTC	1 April 2021	Not in force
64	Spain	DTC	26 May 2008	18 July 2013
65	Sri Lanka	DTC	5 February 2002	23 February 2004
66	Sudan	DTC	4 July 2001	6 September 2004
67	Switzerland	DTC	16 February 1999	31 May 2000
		Protocol to DTC	6 November 2019	Not in force
68	Syrian Arab Republic	DTC	9 December 1997	4 July 2001

	EOI partner	Type of agreement	Signature	Entry into force
69	Tajikistan	DTC	23 June 2013	24 July 2014
70	Thailand	DTC	29 July 2003	25 April 2006
71	Tunisia	DTC	18 April 2000	20 March 2002
72	Türkiye	DTC	6 October 1997	13 December 1999
		Protocol to DTC	14 September 2017	10 November 2021
73	Ukraine	DTC	20 January 2003	22 February 2004
74	United Kingdom	DTC	14 February 2000	1 January 2001
75	Uzbekistan	DTC	19 January 2004	3 May 2006
76	Venezuela	DTC	30 April 2004	26 April 2006
77	Viet Nam	DTC	10 March 2009	11 February 2011
78	Yemen	DTC	30 September 2001	5 May 2013
79	Zimbabwe	DTC	13 May 2006	22 October 2008

## Convention on Mutual Administrative Assistance in Tax Matters (as 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 Multilateral Convention).<sup>41</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 original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the 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 Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by Kuwait on 5 May 2017 and entered into force on 1 December 2018. Kuwait can exchange information with all other Parties to the Multilateral Convention.

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

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Burkina Faso, Gabon, Honduras, Madagascar, Mauritania (entry into force on 1 August 2022), Papua New Guinea, Philippines, Rwanda, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).<sup>42</sup>

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42. Since the United States is a Party to the original Convention but only a signatory to its Protocol, the Convention does not apply between the United States and Parties to the amended Convention that are not OECD or Council of Europe members, which is the case for Kuwait.

## Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the Methodology for peer reviews and non-member reviews, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 30 July 2022, Kuwait's responses to the EOIR questionnaire, and inputs from partner jurisdictions.

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 2	Ms Nancy Tremblay, Director, Specialised Audit	Not applicable	30 July 2022	7 November 2022
Phase 1	Support Division, Canada Revenue Agency, Canada; Ms Graça Pires, Senior Tax Advisor, Portuguese Tax and Customs Authority, Portugal; and Mr Henrique Alencar from the Global Forum Secretariat			

## List of laws, regulations and other materials received

### *Constitution of Kuwait*

#### *Laws*

- Law 32 concerning the currency, the Central Bank of Kuwait and the regulation of banking, 30 June 1968
- Law 7, Capital Markets Authority Law, 28 February 2010
- Law 125 in Respect of Regulating Insurance, 28 August 2019
- Law 116, Kuwait Direct Investment Promotion Authority Law, 16 June 2013
- Law 106, Anti-Money Laundering and Combating the Financing of Terrorism, 8 May 2013

- Law 15 amending provisions of Law 1 of 2016 on the Promulgation of the Company Law, 23 April 2017
- Law 111 in Respect of Commercial Shops Licenses, 22 May 2013
- Law 2 on amending some provisions of Kuwait Income Tax Decree 3 of 1955 and the Executive Bylaw Issued by the Ministerial order 29 of 2008, 3 February 2008
- Law 46 regarding Zakat and Contribution of Public and Closed Shareholding Companies in the State's Budget, 27 November 2006
- Law 19 on National Labour Support and Encouraging them to work in Non-Governmental Bodies, 2000
- Law 63 on Combating Information Technology Crimes, 7 July 2015
- Law 14 on amending some provisions of Law 24 of 1962 regarding Clubs and the Public Utility Societies, 16 May 1994
- Law 24 on Clubs and Public Welfare Societies, 6 August 1962
- Law 103 regarding The Practice of Auditing Profession, 2019
- Law 23 on the Kuwait Income Tax Law in the Designated Area, 1961
- Law 68 Concerning the Promulgating of The Commerce Law, 1980
- Law 42 with regard to The Organisation of the Legal Profession Before The Courts, 1964

### ***Regulations***

- Decree 257 on Establishing the Kuwait Awqaf Public Foundation, 13 November 1993
- Kuwait Awqaf Public Foundation Financial Regulations, November 1996
- Circular 11 Regarding the Regulations and Provisions of the Co-Trusteeship, 2013
- Instruction 26 concerning external auditors, Kuwaiti Banks Committee, 13 November 1994
- Instruction to Foreign Banks Operating in the State of Kuwait No. 2/BS/IBS/323/2014 on the rules, regulations and controls for license and operation of foreign bank's branches in Kuwait
- Instruction for Local Banks No. 2/BS/IBS/308/2013 on Money Laundering and Financing of Terrorism, Central Bank of Kuwait, 23 July 2013

- Instruction No. 2/BS/IBS/432/2019 concerning Anti-Money Laundering and Combating the Financing of Terrorism, Central Bank of Kuwait, 2019
- Instructions for Exchange Companies No. 2/ES/457/2020 on Money Laundering and Financing of Terrorism, Central Bank of Kuwait, 9 June 2020
- Capital Markets Authority Bylaw Module 3, November 2015
- Capital Markets Authority Bylaw Module 13, November 2015
- Decision 74 of the Chambers of Ministers on the Charitable Donations System, 13 February 1999
- Decree Law 15 Regarding the Civil Service, 9 April 1979
- Decision 21 Regarding the Issue of the Executive Regulations for Law No. 125 of 2019 on the Regulation of Insurance, 16 March 2021
- Decision 34 Regarding the Investment Register, 9 December 2014
- Ministerial Decision 502 on issuance of the Executive Regulations implementing Law 116 of 2013 regarding the Promotion of Direct Investment in the State of Kuwait, 7 December 2014
- Ministerial Regulation 1532 on Establishing the Kuwait Financial Intelligence Unit, 9 December 2013
- Decision 37 on Executive Regulation for the Anti-Money Laundering and Combating Terrorism Financing Law 106 of 2013 and its amendments, 12 June 2013
- Ministerial decision 323 pertaining to establishing a system for concluding commercial and electronic contracts as per the requirements of combating money laundering and funding terrorism, 23 July 2019
- Ministerial decision 431 promulgating the regulations governing the work of institutions and companies operating in the field of the gold, precious metals, and gemstones trade with regard to combating money laundering and the financing of terrorism, 25 December 2016
- Ministerial regulation 409 concerning controls and instructions organising the business of exchange companies and institutions, 18 September 2013
- Ministerial decision 412 pertaining to the restrictions and directions regulating the actions of insurance companies, their agents and mediators, 22 September 2013



- Ministerial decision 430 promulgating the regulations governing the work of institutions and companies that practice the profession of real estate brokers and real estate offices with regards to combating money laundering and the financing of terrorism, 25 December 2016
- Ministerial decision 5 pertaining to the executive deeds pertaining to executing the decisions of the Security Council issued as per chapter seven of the United Nations Convention relating to terrorism and its funding, 2014
- Ministerial decision 48 Issuing the Model Statute for Charitable Organisations, 13 March 1999
- Royal Order implementing legal provisions related to Islamic Endowments, 5 April 1951

### ***Practical documentation***

- A Summary of Awqaf Regulations
- Awqaf Waqf 50 questions and answers
- 3<sup>rd</sup> Follow Up report, Mutual Evaluation Report for the State of Kuwait, MENAFATF

## Annex 4: Kuwait's response to the review report<sup>43</sup>

The State of Kuwait takes the opportunity to thank the Peer Review Group, the Secretariat and Assessment Team for their efforts, professionalism and valuable comments throughout the peer review process.

Kuwait agrees with the outcome of the report, which reflects the current situation to achieve the objective to meet the internationally agreed EOIR standard.

Kuwait has drafted the Exchange of Information law which will cover the main recommendations made in the report. The draft has been finalized to the EOI legal framework. In addition, Kuwait has drafted the exchange of information Manual which will cover the necessary procedure to implement EOI in accordance with the international standard.

Finally, as a committed jurisdiction, Kuwait considers the report as an opportunity for improvement and an incentive to ensure the continuous implementation of the internationally agreed EOIR standard, which will result in increased global tax compliance and transparency between all jurisdictions.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information  
on Request KUWAIT 2022 (Second Round, Phase 1)**

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 160 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.

This publication contains the 2022 Second Round Peer Review on the Exchange of Information on Request for Kuwait. It refers to Phase 1 only (Legal and Regulatory Framework).



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