

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**UNITED ARAB EMIRATES**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: United Arab Emirates 2012**

PHASE 1

June 2012  
(reflecting the legal and regulatory framework  
as at April 2012)

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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the Global Forum on an equal footing.

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

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

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

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

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





## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information for tax purposes in the United Arab Emirates (UAE). The international standard, which is set out in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.

2. The UAE, a federation of seven sovereign Emirates, is situated in the southeast of the Arabian Peninsula in Southwest Asia on the Arabian Gulf. It is one of the region’s most developed economies. It has a diversified economy, with the services and industry (including exploitation of oil and gas reserves) sectors contributing almost its entire gross domestic product. Federal laws apply to businesses operating in the UAE, while tailored legal regimes apply to entities operating in the Dubai International Financial Centre (DIFC) and other free zones. The DIFC is the only federal financial free zone in the UAE located in Dubai, however, there are about 37 other free zones located in different Emirates which focus on commercial and industrial activities. The report includes commentary on the legal and regulatory framework that applies in the UAE in general, in the DIFC and in all other free zones.

3. The UAE’s legal and regulatory framework for the maintenance of ownership and identity information by companies and partnerships is largely in place. Identity and ownership information consistent with the international standard is available for relevant entities in the DIFC and other free zones, however, ownership information on foreign companies having their main offices, main activities or effective management in the DIFC and other free zones is not fully ensured. Information on the settlors, trustees and beneficiaries of trusts (including foreign trusts) in the DIFC is ensured, but is not available in all instances for foreign trusts which have an administrator or trustee resident in the UAE or in the other free zones. Enforcement provisions are in place, except in some free zones, to ensure the availability of ownership and identity information for relevant entities.

4. Complete and reliable accounting records must be maintained by companies, most partnerships and foundations. Accounting records to correctly explain transactions, to enable entities' financial position to be determined with reasonable accuracy at any time and to allow financial statements to be prepared must be maintained by almost all entities in the DIFC. However, incomplete obligations to maintain accounting records exist for foreign companies operating in the free zones and there are no accounting obligations applicable where a foreign trust has an administrator or trustee resident in the UAE or one of the other free zones. Explicit provisions to keep underlying documents are not however in place for any entities in the free zones. All relevant entities in the UAE and free zones, except general partnerships and limited partnerships in the DIFC, are obliged to retain accounting records for at least five years.

5. In respect of banks and other financial institutions, the Central Bank Law and related anti-money laundering regulations and binding circulars ensure the availability of information on customers and transactions in line with the international standard.

6. The Ministry of Finance has been mandated to implement the exchange of information provisions in the UAE's international agreements. To obtain information, the competent authority in the Ministry of Finance relies on the access powers of other government entities, primarily the Central Bank, the Ministry of Economy, the Attorney General, the Securities and Commodities Authority, the Dubai International Financial Centre (DIFC) Authority, the DIFC Financial Services Authority and the free zones' authorities. However, governing laws and regulations do not indicate that these authorities can obtain and provide information for the purpose of responding to international requests for information in tax matters. Therefore, it is recommended that the UAE introduce express statutory provisions empowering the Ministry of Finance to obtain and provide information consistent with the standard in order to respond to EOI requests. In addition, the wide scope of legal professional privilege in the domestic laws of the UAE has the potential to hinder effective exchange of information.

7. The UAE has a broad network of 60 signed double tax conventions (DTCs) allowing for exchange of information for tax purposes with most relevant partners. The UAE's network of DTCs covers the Gulf Co-operation Council countries and important economic partners. Most of the provisions in these agreements are in line with the international standard. However, due to limitations in the competent authority's powers to access information, the UAE cannot comply with the terms of its DTCs and cannot effectively exchange information consistent with the standard.

8. As elements which are crucial to achieving effective exchange of information are not yet in place in the UAE, it is recommended that the

UAE does not move to a Phase 2 review until it has acted on the recommendations contained in the Summary of Determinations and Underlying Recommendations to improve its legal and regulatory framework. A follow-up report on the steps undertaken by the UAE to answer the recommendations made in this report should be provided to the Peer Review Group within six months after the adoption of this report. In addition, the UAE should provide a detailed written report to the Peer Review Group within 12 months of the adoption of this report.



## Introduction

### Information and methodology used for the peer review of the United Arab Emirates

9. This assessment of the legal and regulatory framework of the United Arab Emirates (the UAE) was based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes*, and was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*.<sup>1</sup> The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at April 2012, other materials supplied by the UAE, information supplied by partner jurisdictions and information available in the public domain.

10. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses the UAE’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened. A summary of the findings against those elements is set out at the end of this report.

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1. See *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information for Tax Purposes* (full text available at [www.oecd.org/dataoecd/37/42/44824681.pdf](http://www.oecd.org/dataoecd/37/42/44824681.pdf)) and *Methodology for Peer Reviews and Non-Member Reviews* (full text available at [www.oecd.org/dataoecd/37/41/44824721.pdf](http://www.oecd.org/dataoecd/37/41/44824721.pdf)).

11. The assessment was conducted by two expert assessors and a representative of the Global Forum Secretariat: Mr Daniel Ruffi, Deputy Head of Mutual Administrative Legal Assistance, Division for International Affairs, Swiss Federal Tax Administration, Berne, Switzerland; Ms Idris Fidela Clarke, Director, Financial Services Regulatory Commission, Saint Kitts and Nevis; and Mr Sanjeev Sharma from the Global Forum Secretariat.

## Overview of the United Arab Emirates

12. The UAE is a federation of seven politically independent and sovereign Emirates (Abu Dhabi, Ajman, Fujairah, Sharjah, Dubai, Ras al-Khaimah and Umm al-Qaiwain) situated in the southeast of the Arabian Peninsula in Southwest Asia on the Arabian Gulf, bordering Oman and Saudi Arabia and sharing maritime borders with Iraq, Kuwait, Bahrain, Qatar and Iran. The total area of the UAE is 83 600 square kilometres. More than 80% of its total 5 148 664 population are expatriates. The capital is Abu Dhabi. The currency of the UAE is the Emirati Dirham (AED): AED 1 = EUR 0.19 as at 15 July 2011.<sup>2</sup>

13. With a gross domestic product (GDP) in 2010 of USD 302 billion (estimated) and GDP per capita of USD 53 363,<sup>3</sup> the UAE is one of the most developed economies in the Middle East and North Africa (MENA) region.<sup>4</sup> 47.6 % of GDP comes from services. 0.9% is from agriculture and industry represents 51.5% of GDP. Its oil reserves represent 7% of the world proved oil reserves. One third of the UAE's GDP comes from oil and gas. In 2009, the UAE's main trading partners (exports) were; India, the Islamic Republic of Iran, Iraq, Switzerland and the European Union. Its main trading partners (imports) in 2009 were; the European Union, India, China, the United States and Japan.<sup>5</sup>

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2. [www.xe.com](http://www.xe.com), accessed 15 July 2011.

3. IMF World Economic Outlook database, September 2011, [www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx](http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx), accessed 27 September 2011 and CIA, The World Fact book, <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html>, accessed 23 November 2011.

4. The UAE had the highest level of assets in the banking sector of any MENA country in 2010 (Union of Arab Banks report, March 2011). In 2011 the Financial Stability Board (FSB) announced that the UAE is “one of the jurisdictions already demonstrating sufficiently strong adheres to regulatory and supervisory standards on co-operation and information exchange.”

5. World Trade Organization, UAE Profile, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=AE>, accessed 27 September 2011.

14. The UAE has enjoyed economic benefits and industrial growth partly as a result of its flourishing free zones. As at September 2011, there were 38 free zones throughout the UAE<sup>6</sup> and many others are being developed. The major advantage of setting up a business in a free zone is that it entitles foreign investors to: (i) 100% foreign ownership of the enterprise; (ii) 100% import and export tax exemptions; (iii) 100% repatriation of capital and profits; (iv) no corporate taxes for 15 years, renewable for an additional 15 years; (v) no personal income taxes; and (vi) assistance with labour recruitment, and additional support services, such as sponsorship and housing. Criminal and some other federal laws apply to the free zones but each free zone authority has the power to establish its own regulations, including regulations on commercial entities and matters.

15. The UAE is a founding member of the Co-operation Council for the Arab States of the Gulf, and a member of the League of Arab States. It is also a member of the United Nations, the Organisation of the Islamic Conference, the Organisation of the Petroleum Exporting Countries (OPEC) and the World Trade Organization. The UAE has developed a relationship with the Organisation for Economic Co-operation and Development (OECD). The UAE committed to the international standards for transparency and exchange of information and became a member of the Global Forum in September 2009.

## General information on legal system and the taxation system

### *Legal system*

16. The UAE was constituted as a federation under a provisional written Constitution in 1971, which became permanent in 1996. The President is the head of state and is supported by a Vice-President and a Council of

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6. Dubai Airport Free Zone, Masdar City, Jebel Ali Free Zone, Hamriyah Free Zone, Sharjah Airport International, Sharjah Hamriah Free Zone, Ras Al Khaimah FTZ, RAK Investment Authority, RAK Media Free Zone, Dubai Internet City, Dubai Media City, Abu Dhabi Ports Company, Abu Dhabi Airport Free Zone, Ahmed Bin Rashid Free Zone, Ajman Free Zone, Dubai Car and Automotive Free Zone, Dubai Academic City, Dubai Biotechnology and Research Park, Dubai Flower Centre, Dubai Gold and Diamond Park, Dubai Healthcare City, Dubai International Financial Centre, Dubai Knowledge Village, Dubai Logistics City, Dubai Industrial City, Dubai Technology and Media Free Zone, Dubai economic Zones World, Dubai Maritime City, Dubai Multi Commodity Centre, Dubai Outsource Zone, Dubai Silicon Oasis, Dubai Studio City, ENPARK, Fujairah Free Zone, Fujairah Creative City, Zones Corp, International Media Production Zone, Intl. Humanitarian City. See [www.uaefreezones.com](http://www.uaefreezones.com) and [www.dubaiqa.com/free-zones-uae.php](http://www.dubaiqa.com/free-zones-uae.php), accessed 30 September 2011.

Ministers. The constitution provides for the election of the President and his Deputy by the Supreme Council of the Union consisting of the Rulers of the seven Emirates. The Federal National Council represents the general Emirati people. It consists of 40 members drawn from all the Emirates and provides advice to the Council of Ministers, which passes legislation. Each Emirate has its own ruler. At present, the ruler of Abu Dhabi holds the position of President and the ruler of Dubai is the Vice-President and Prime Minister of the UAE.

17. The UAE operates under a civil law system and statutes are the primary source of law. The Dubai International Financial Centre (DIFC), the federal financial free zone, however, operates on the principles of common law. The Constitution is concerned solely with the relations between the Emirates, and does not prescribe a system of government. The UAE's laws consist of the Constitution, Federal Laws, Decrees, Emiri Laws and Emiri Decrees, and Ministerial decisions. The provisions of the Constitution prevail over any conflicting provisions in other legal instruments and decisions issued by the authorities of the Emirates. International treaties are ranked at a higher level than the domestic law and, in the event of any inconsistency between a treaty and domestic law, the treaty provisions prevail and authorities will act to remove the inconsistency by amending the domestic law. This principle has been recently confirmed by a Federal Supreme Court Ruling of 14 June 2011.

18. The Constitution provides for a federal court system, but acknowledges the right of each Emirate to maintain an independent legislative body and judicial authority. There is no doctrine of binding precedents and judgments of the higher courts are not binding on the lower courts. The court of original jurisdiction is the Court of First Instance, which amongst other matters decides tax-related cases. A first appeal, as of right, is permitted to the Court of Appeal, on issues of fact and law. A second appeal, on limited grounds, is permitted against a judgment of the Court of Appeal to the Federal Supreme Court. Currently, four Emirates, with the exception of the Emirates of Abu Dhabi, Dubai and Ras Al Khaimah, are part of the federal court system. From 2006, the Abu Dhabi courts also apply all federal laws, including the Civil Procedure Law and the Criminal Procedure Law. Federal laws that apply to all seven Emirates govern rules of evidence and court procedure.

19. The Islamic Sharia is a primary source of legislation in the Union. Sharia law is concerned with every aspect of life such as banking, contracts, politics, family and social issues, and it constitutes a complementary source of law. If a judge does not find relevant provisions in the Civil Code, he must pass judgment according to Sharia law. A system of Sharia courts exists in each Emirate. These courts deal predominantly with matters related to the



legal status of individuals (marriage and divorce) and succession and testamentary matters on the basis of Sharia law. They are administered locally by the Emirates in which they are located.

### ***System of taxation***

20. The Constitution provides that the UAE Federal Government has jurisdiction on finance and taxes, duties and fees (Art. 120). However, no federal tax laws have been promulgated to date. The Emirates of Abu Dhabi, Dubai, Ras Al Khaimah and Sharjah established corporate tax regimes by issuance of decrees in the late 1960s (before the Constitution was enacted).<sup>7</sup> These decrees very broadly deal with who are taxable persons, rates of taxes, administration *etc.* They provide for potential levy of income tax on all companies (including branches of foreign companies) operating in the respective Emirates. However, with the exception of some provisions related to upstream oil and gas companies and branches of foreign banks, these Decrees are not implemented and consequently tax is not levied on most companies in the UAE.

21. In Abu-Dhabi, Dubai, Ras Al Khaimah and Sharjah, branches of foreign banks are taxed at 20% of their taxable income which is earned or deemed to be earned in the particular Emirates. Corporate income tax is imposed on companies dealing in oil or oil exploration rights. In Fujairah, corporate income tax is imposed on companies engaged in the extraction, production or selling of petroleum products. In addition, these companies pay royalties on production to the Ruler. Personal incomes, including all forms of salary and capital gains wherever arising, are not subject to taxation in any of the Emirates. There are no withholding taxes. There are no consumption taxes or value-added tax in the UAE. Municipal taxes are levied in most Emirates on annual rental paid at 5% for residential premises and 10% for commercial premises. Other local taxes include a 5% tax on hotel services and entertainment.

22. The Ministry of Finance is authorised to negotiate and enter into bilateral treaties on the avoidance of double taxation (Ministerial Decree 196/03/1989). The Ministry also acts as the competent authority, exchanging information in accordance with the treaties. An international treaty signed by the duly authorised representative of the UAE (the Ministry of Finance) is binding after ratification by the Supreme Council.

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7. Abu Dhabi Income Tax Decree of 1965 (with amendments); Dubai Income Tax Decree of 1969 (with amendments); Ras Al Khaimah Income Tax Decree of 1969 (with amendments), and Sharjah Income Tax Decree of 1968 (with amendments).

## Overview of the financial sector and relevant professions

23. At the end of 2010, the UAE domestic financial sector<sup>8</sup> comprised: 23 financial companies; 21 investment companies; 23 domestic banks; 6 banks from Gulf Co-operation Council (GCC) States<sup>9</sup>; 22 foreign banks; and 102 representative offices of foreign banks. The total assets of banks operating in the UAE was AED 1 605 billion (EUR 335 billion).

24. Islamic financial business is allowed to be carried on in the UAE and the Dubai International Financial Centre (DIFC).<sup>10</sup> Islamic financial products and services are governed by Sharia law. Islamic financial institutions are also subject to federal/DIFC law and the commercial companies' law. As at June 2011, the number of Islamic banks operating in the UAE stands at eight (not including those conventional institutions operating Islamic “windows”), with some 260 branches. Deposits at Islamic banks in the UAE were AED 198 billion (EUR 37.6 billion) as at the end of 2010, which represents 18.7% of total deposits of the banking system. As at November 2011, the DIFC has 13 Islamic institutions. Deposits at Islamic institutions and at other institutions which operate Islamic windows in the DIFC amounted to AED 143 million (EUR 28 million).

25. The Central Bank is responsible for licensing and supervision of all financial institutions operating within the UAE, including Islamic financial institutions, except those institutions in the DIFC.<sup>11</sup> Certain categories of investment and securities business are licensed and supervised by the Securities and Commodities Authority (SCA), which has overall regulatory responsibility for the UAE's stock exchanges.<sup>12</sup>

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8. [www.centralbank.ae/en/pdf/reports/CBUAEAnnualReport2010Eng.pdf](http://www.centralbank.ae/en/pdf/reports/CBUAEAnnualReport2010Eng.pdf), accessed on 26 July 2011.

9. The GCC has six members: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE.

10. For the purposes of this review, the DIFC is discussed separately to the UAE, even though it is within the UAE. The DIFC has its own legal system, though some Federal Laws of the UAE do apply in the DIFC.

11. Financial institutions in the DIFC are regulated by the DIFC Financial Services Authority.

12. The UAE has two principal stock markets; the Abu Dhabi Securities Exchange (ADX) and the Dubai Financial Market (DFM). A third exchange, the Dubai Gold and Commodities Exchange (DGCX) allows trade in commodity derivatives, including futures and options.

26. The full range of service providers (lawyers<sup>13</sup>, accountants, auditors<sup>14</sup>, notaries<sup>15</sup>, company service providers *etc*) operate in the domestic sector, in the financial free zone, and in the commercial free zones; but the authorities were unable to provide the total number of each type of professional operating in the UAE. Service providers are registered by the Chamber of Commerce or the Ministry of Economy.<sup>16</sup> The designated supervisors are: the auditors' department within the Ministry of Economy for auditors who also provide accounting services; the Ministry of Justice for lawyers who also provide company services; the Planning and Development/Economic Department for all other services that are conducted by companies and partnerships; and the Ministry of Municipalities for all other services activities that are conducted through establishments/sole traders.

### ***The Dubai International Financial Centre (DIFC)***

27. The Dubai International Financial Centre (DIFC)<sup>17</sup> is the only federal financial free zone in the UAE. It has a common law legal framework and its own court system, which is different from that of the UAE in general. The DIFC has its own laws and regulations relating to civil and commercial matters, whilst federal criminal and administrative legislation and enforcement applies. Income and profit taxes have been set at a zero rate for a period of 50 years from the date of establishment of the DIFC (2004). The DIFC, being the only federal financial free zone, is distinct and separate from other free zones and entities in the DIFC are subject to licensing and supervision by the DIFC authorities, including the DFSA.

28. The DIFC has eight independent bodies: the DIFC Authority, the DIFC Financial Services Authority, the DIFC Judicial Authority, the Registrar of Companies, the Registrar of Real Property, the Registrar of Securities, the Anti-Money Laundering Commissioner (for designated non-financial professions and businesses) and the Data Protection Commissioner.

29. The Dubai Financial Services Authority (DFSA)<sup>18</sup> is the sole financial regulator in the DIFC. DIFC-incorporated companies are not permitted to provide services within the wider UAE. As at November 2011, there

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13. The legal profession is governed by Federal Law 23/1991, as amended by Federal Law 5/2002.

14. The auditing profession is governed by Federal Law 22/1995.

15. Notaries are governed by Federal Law 22/1991.

16. The Chamber of Commerce registers establishments/sole traders and limited liability companies, and the Ministry of Economy registers public and private joint stock companies, general partnerships and foreign companies.

17. For more information see [www.difc.ae/about](http://www.difc.ae/about).

18. [www.difc.ae/dubai-financial-services-authority](http://www.difc.ae/dubai-financial-services-authority).

were approximately 270 authorised financial services firms, or 335 when including ancillary service providers. The total assets of banking, investment and insurance intermediation firms reported at June 2011 were just under USD 19 billion (EUR 13.5 billion), with deposits of USD 9.5 billion (EUR 6.75 billion). In the DIFC, as at November 2011 there were 195 licensed credit or investment firms, 74 asset management firms, 12 firms providing custody, 19 insurance management firms and 6 trust service providers. There is a diverse mix of common and civil law trained lawyers working in private practice and/or in-house positions.

### *Anti-money laundering and customer due diligence*

30. The Anti-Money Laundering and Suspicious Cases Unit, located within the Central Bank, receive and analyse suspicious transaction reports from financial institutions and other financial, commercial and economic establishments. It makes this information available to law enforcement agencies and foreign counterpart agencies to facilitate their investigations.

31. Federal Law 4/2002 (the AML Law) applies to entities in the UAE, the DIFC and the free zones. Responsibility for supervision rests with the Central Bank with respect to banks, finance and investment companies, and with the Securities and Commodities Authority with respect to securities businesses. The DFSA regulates financial services providers' and ancillary service providers' compliance with AML obligations in the DIFC and now also has oversight over Designated Non Financial Businesses and Professions. The Ministry of Economy is responsible for supervision of audit firms' and insurance businesses' compliance with AML obligations. The assessment of the AML/CFT regime of the UAE was conducted by the Middle East and North African Financial Action Task Force (MENAFATF), with the mutual evaluation report issued on 9 April 2008.<sup>19</sup>

## **Recent developments**

32. The Insurance Authority Board recently promulgated Resolution 4/2010 concerning Takaful Insurance (the Takaful Regulations) which, for the first time in the UAE<sup>20</sup>, provides regulations for Islamic insurers (Takaful operators) distinct from the regulations governing conventional insurers.

33. The Minister of Finance is co-ordinating a program of amendments to the financial laws of the UAE, including amendments to the AML/CFT Law and to the Central Bank Law. Amongst other changes, the obligations in

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19. [www.fatf-gafi.org/dataoecd/47/55/41721938.pdf](http://www.fatf-gafi.org/dataoecd/47/55/41721938.pdf), accessed 17 July 2011.

20. Takaful reinsurance has been available in the DIFC for some time.

the AML/CFT Law will be extended to designated non-financial businesses and professions such as lawyers, accountants and company service providers (in many cases codifying obligations which currently exist in regulations/circulars/decisions/resolutions of various ministries and authorities). One of the amendments to the Central Bank Law will be explicit provisions concerning the sharing of information between the Central Bank and the Ministry of Finance. These bills have been submitted to the Minister of Finance and passage through the Council of Ministers is expected soon.

34. A proposal that the Ministry of Finance be granted the power to enter into Taxation Information Exchange Agreements is now with the Council of Ministers. In addition, a proposal is currently before the Council of Ministers to give full power to the Ministry of Finance to collect information from all entities in the UAE, including the DIFC and the free zones.



## Compliance with the Standards

### A. Availability of information

#### Overview

35. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of the UAE's legal and regulatory framework on availability of information.

36. The UAE provides for three specific legal regimes stated below for the creation and operation of entities. The regime applicable in the DIFC, the only federal financial free zone, is distinctly different from that of the other free zones in the UAE, which allow commercial and industrial activities. The DIFC has its own laws, court system and other supervisory authorities. Due to these reasons, the DIFC has been analysed separately from the other free zones. The legal and regulatory framework available in the UAE, the DIFC and a sample of the four largest free zones has been analysed separately in this report.

37. The legal and regulatory framework for the maintenance of ownership and identity information by relevant entities is largely in place, however, keeping of such information by foreign companies having their main offices

or main activities in the free zones is not fully ensured. The issuance of bearer shares is prohibited in the UAE, the DIFC and other free zones, except Rash Al Khaimah free zone. Appropriate legal mechanisms are in place in that free zone ensuring identification of owners of bearer shares. Trusts may be established under the laws applicable in the DIFC and full information is available on their settlors, trustees and beneficiaries. Identity and ownership information may not be consistently available however for foreign trusts which have an administrator or trustee resident in the UAE or in one of the other free zones. DFSA-authorized firms which provide trust services have to have complete information on settlors and beneficiaries. Enforcement provisions are in place, except in some free zones, ensuring the availability of identity and ownership information.

38. In respect of banks and other financial institutions, the Central Bank Law and related AML/CFT regulations and binding circulars ensure the availability of information on customers and transactions in line with the international standards.

39. The commercial laws and regulations issued by the authorities in the UAE, DIFC and free zones generally ensure the keeping and maintenance of accounting records to the standard in respect of relevant entities. However, incomplete obligations to maintain accounting records exist for entities in the Fujairah Free Zone and for foreign companies operating in the free zones, other than those engaged in financial services business and regulated by the DIFC Financial Services Authority. While accounting obligations are in place for all trusts created in the DIFC, there are no such obligations applicable where a foreign trust has an administrator or trustee resident in the UAE or one of the other free zones. Explicit requirements to keep underlying documents are not in place for entities in the DIFC and the other free zones. Those obliged to keep accounting records must retain the same for at least five years, however for general partnerships and limited partnerships in the DIFC and for some entities in the other free zones, the period of time for which accounting records must be retained has not been established in law.

## A.1. Ownership and identity information

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

40. The relevant entities and arrangements in the UAE are companies (ToR A.1.1), partnerships (ToR A.1.3), trusts (ToR A.1.4), and foundations (ToR A.1.5). Bearer shares cannot be issued in the UAE or DIFC or other free zones, except for international companies in the RAK free zone (ToR A.1.2). This section also deals with enforcement provisions to ensure compliance with the laws on the ownership of relevant entities (ToR A.1.6). The report



analyses provisions concerning relevant entities in two separate sections: firstly provisions applicable in the UAE are discussed and this is followed by discussion of the applicable regimes in the free zones, firstly the UAE's financial free zone, the Dubai International Financial Centre (DIFC), and then the four largest of the other free zones.

### ***Companies (ToR<sup>21</sup> A.1.1)***

41. The Commercial Companies Law (Federal Law 8/1984 – CCL) governs the formation and operation of corporate entities and partnerships in the UAE and also governs foreign companies having their main activities or their main office within the UAE (Art. 313). Companies established in the Dubai International Financial Centre (DIFC) and other free zones are governed by different regimes (discussed separately below).

### ***UAE 22***

42. The CCL defines a company as *a contract by which two or more persons undertake to participate in an economic venture, intended to make profits, either by providing a share of funds or effort and to divide the profits and losses arising from the project between them* (Art. 4). Three types of companies may be established in the UAE:

- ***public joint stock companies*** (Arts.64-214 CCL): This type of company has capital (at least AED 10 million (EUR 1.9 million)) divided into shares available for public subscription. Shareholders are liable for the debts of the company to the extent of the value of their shares. Listing of shares of these companies is regulated by the Securities and Commodities Authority (SCA). As at November 2011, the UAE had 157 public joint stock companies;
- ***private joint stock companies*** (Arts.215-217): Such a company must have at least three founding members and a minimum capital of AED 2 million (EUR 380 000). Private joint stock companies have the same features as public joint stock companies except one – the shares of private joint stock companies cannot be offered for public subscription. As at November 2011, the UAE had 147 private joint stock companies; and
- ***limited liability companies*** (Arts.218-255): In this type of company, shareholders (from two to fifty) are liable for the debts of the

21. *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.*

22. See separate analyses below concerning companies in the free zones.

company to the extent of the value of their shares. These companies must have a minimum capital of AED 150 000 (EUR 28 500) and may not carry on insurance, banking or investment business. They cannot issue negotiable stocks or securities and cannot seek public subscription for capital. As at November 2011, the UAE had 169 601 limited liability companies.

43. All companies incorporated in the UAE hold its nationality but this does not necessarily entitle them to privileges reserved to UAE nationals (Art. 3 CCL). All companies incorporated in the UAE must have their domicile in the UAE (Art. 2). Companies established in the UAE must have one or more UAE nationals holding at least 51% of the capital of the company (Art. 22). The requirement to have a UAE national holding at least a 51% interest in the company is however dispensed with when all shares of a UAE company are held by nationals from Gulf Co-operation Council (GCC) member countries.<sup>23</sup>

44. For companies operating in the fields of oil exploration, exploitation and electric power generation, gas production, water desalination and all associated activities such as transportation, distribution and so on, the provisions of the CCL do not apply, except as provided in their letters of incorporation and articles of association. Such companies also acquire UAE nationality (Art. 2). These “special purpose” companies are all UAE-incorporated and their sole business is to engage in infrastructure projects under contract with the government. Currently there are 40 such special purpose companies. Prior to entering into contracts with these companies, the government conducts due diligence on the companies and the UAE authorities advise that obtaining and checking all ownership information is part of the due diligence process. However, the issue of availability of ownership information on account of due diligence conducted by the government will be followed during Phase 2 review of the UAE.

### Information held by government authorities

45. All companies must register their Memoranda of Association and subsequent amendments in the Commercial Register (Art. 11 CCL), maintained by the Ministry of Economy. The company memorandum and any amendment to it must be authenticated by the competent authority<sup>24</sup> in the

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23. UAE Cabinet of Ministers’ Decision 4/2007.

24. Abu Dhabi Department of Economic Development, Dubai Department of Economic Development, Sharjah Department of Economic Development, Ras al-Khaimah Department of Economic Development, Fujairah Municipality, Fujairah Municipality, Ajman Municipality, Umm al-Qaiwain Department of Economic Development, Al Ain Department of Economic Development.

relevant Emirate or, for public joint stock companies, by the SCA (Art. 8). Companies are considered incorporated and may only perform their functions after registration (Art. 12).

46. The dissolution of a company is required to be declared by registering in the Commercial Register and publishing it in two local daily newspapers (Art. 290 CCL). The completion of liquidation of the company must also be registered in the Commercial Register and after completion of the liquidation the company is struck off the Commercial Register (Art. 310).

### Public joint stock companies

47. The memorandum and articles of association of a public joint stock company must contain particulars of the founder(s) name(s), place of residence, occupations and nationality (Art. 73 CCL). Information on the total capital, number of shares and value, and the kind of each share must be included. In respect of shares in kind (not paid for in cash), the memorandum and articles of association must note the names of the subscribers (Art. 73).

48. The application for incorporation needs to be submitted in the prescribed form together with the memorandum and articles of association. After approval by the competent authority (within 60 days) a decision to approve the company's incorporation is issued, published in the Official Gazette and communicated to the Ministry of Economy (Arts.74-76 CCL). The founder members must subscribe to a minimum of 20% and a maximum of 45% of the share capital of the company. Other members are required to submit an application during public subscription that contains information on their name and address, occupation, nationality and number of shares subscribed (Arts.78 to 80). The company is incorporated after subscription of all its shares and decision of the Minister (Arts.82 and 91). The company must also provide both the Ministry of Economy and the competent authority in the local Emirate, at the end of each financial year, the particulars recorded in the register of shares, together with any amendments thereto (Art. 161). This ensures availability of ownership information on public joint stock companies with government authorities, which is updated on an annual basis.

### Private joint stock companies

49. All provisions of the CCL concerning public stock joint companies, except those concerning public subscription to shares, apply equally to private joint stock companies (Art. 216).

## Limited liability companies

50. The founder members of a limited liability company must prepare a memorandum of association including, amongst other things, information on (Art. 224 CCL):

- the shares of each member and information on the contributors of shares in kind (if any);
- names of the members, their nationalities, places of residence and addresses;
- terms of distribution of profits and losses; and
- names and nationalities of the company's managers and board members.

51. When limited liability companies register in the Commercial Register, their memoranda and other documents indicating the distribution of shares among members must be submitted (Art. 225). In January each year, limited liability companies must also provide the particulars recorded in the register of members and any developments which have occurred (see below) to the Ministry and the competent authority in the relevant Emirate (Art. 229). This obligation ensures availability of information on the identity of members of such companies with the Ministry of Economy and Competent Authority on an annual basis.

## Financial markets legislation

52. The SCA Board of Directors Resolution 3/R/2000 outlines transparency rules for companies listed on either of the UAE markets (the ADX and the DFM). This Directors Resolution is binding on the entities it is issued to and any non-compliance is sanctionable. All listed securities must be approved by the SCA. Disclosure requirements are specified in Articles 3 to 7 and 36. As part of licensing, information on any individual or company owning 5% or more of the shares of a listed company must be disclosed. Further, any natural or legal person who owns 5% or more of the shares of the company must himself notify the relevant stock exchange. Further disclosure requirements apply when shareholdings reach 10% and 20% thresholds.

53. The UAE Central Bank is responsible for regulation and supervision of banking, finance and investment business. The Central Bank issues Resolutions of the Board of Directors and Circulars in this regard. Finance companies, investment banks, investment companies, banking and financial consultation companies and financial and monetary intermediaries are required to submit information on their ownership structures and on their founding members as part of their licensing applications. These

regulated entities must also maintain records relating to any changes in their ownership.<sup>25</sup>

54. Insurance business is regulated by Federal Law 6/2007 (Insurance Law). Entities seeking to provide insurance services (including branches of foreign insurers) must be registered with the Insurance Authority (Art. 24). Domestically, only public joint stock companies are permitted to carry on insurance business. These entities are subject to the provisions of the CCL, described previously. Branches of foreign companies are registered in the Foreign Companies Register and the Commercial Register (see further below). The Insurance Authority has extensive powers to obtain information from entities operating in the insurance sector (Arts.40-41).

### Information held by companies

55. The CCL prescribes requirements for companies formed in the UAE to keep and maintain information. The memorandum and articles of association of all companies contain identity information on the companies' founders (Arts.73 and 224).

56. Public joint stock companies are obliged to keep registers of shares containing the names, domiciles and nationalities of all shareholders and the paid up amount of the share value. The company must also provide both the Ministry of Economy and the competent authority in the local Emirate, at the end of each financial year, the particulars recorded in the register, together with any amendments thereto (Art. 161 CCL). These provisions equally apply to private joint stock companies (Art. 216). Further, transfer of ownership of shares in private joint stock companies is affected by confirming the transfer in writing in the share register maintained by the company and by marking the transfer on the share (Art. 162).

57. Limited liability companies are obliged to keep registers of members at their main offices, containing information on all members' names and surnames, domiciles, nationalities and professions, as well as the number and value of shares owned by each member and transactions carried out with regard to the shares indicating the date thereof (Art. 228 CCL). Transfers of shares are only valid when recorded in the register maintained by the company and in the Commercial Register (Art. 230). In January each year, limited liability companies are obliged to provide the Ministry of Economy and the

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25. Board of Directors Resolution 58/3/96 for finance companies; Central Bank Circular 21/2/88 for investment banks; Board of Directors Resolution No. 164/8/94 for investment companies, banking and financial consultation companies; and Board of Directors Resolutions 126/5/95 and 153/5/97 for financial and monetary intermediaries.

competent authority in the local Emirate particulars recorded in their members registers (Art. 229).

### Foreign companies

58. All foreign companies which seek to establish an office or a branch in the UAE are required to obtain a license from, and pay license fees to, the competent authority in the relevant Emirate<sup>26</sup> and also obtain registration from the Federal Ministry of Economy (MOE). The relevant licensing and registration obligations have been harmonised and can be found in the CCL and related Ministerial Decisions.<sup>27</sup> A foreign company must have a UAE national as an agent to provide necessary services to the company, such as representation for matters concerning government authorities, without taking on any financial responsibility or liability related to the business of the company.

59. The following information must first be submitted to the MOE as part of a prior approval process (Ministerial Decision 377/2010):

- an official certificate from the competent authority of the country where the company is incorporated indicating: name of establishment, date of incorporation, legal type, activity to be conducted, the names of all owners of the company and share capital;
- a true copy of the contract between the establishment and its UAE agent; and
- a true copy of the national identification document of the agent (if he is a natural person or sole proprietorship) or a copy of the agent's trade license and statement issued by the competent authority in which the agent is licensed indicating the names of all partners in the business (if the agent is a legal entity).

60. The company then approaches the competent authority in the relevant Emirate and obtains a license. After licensing, the foreign company, upon submission of proof of license, will be registered in the Foreign Companies Register and the Commercial Register, both maintained by the MOE (Arts.314 and 315 CCL). Registration must be renewed each year. The UAE authorities have advised that, as at November 2011, a total of 3 067 foreign companies were registered with the Ministry of Economy.

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26. See footnote 24 for the list of authorities.

27. See also the UAE Ministry of Economy's Customers Guide for Opening a Branch or Office of Facility Established Abroad or in the UAE Free Zones, available at [www.economy.ae](http://www.economy.ae).

61. Foreign companies are obliged to provide updates to the registration authority (the MOE) whenever submitted details change, which include information on owners (Ministerial Decision 377/2010).

62. In addition, Article 83 of the Central Bank Law provides for licensing of the branches of foreign banks by the UAE Central Bank. Details of licensed branches are entered in the register of banks maintained by the Central Bank.

### Anti-money laundering laws

63. Federal Law 4/2002 on the Criminalisation of Money Laundering (the AML law) provides that the government agencies concerned with the licensing and supervision of financial institutions or other financial, commercial and economic establishments are required to establish appropriate mechanisms to ensure obliged entities' compliance with AML/CFT obligations (Art. 11). Pursuant to the Federal Law, various ministries and authorities have issued binding and enforceable circulars, resolutions, decisions and regulations requiring entities<sup>28</sup> to undertake customer due diligence measures, notably including:

- AML Regulation 24/2000 issued by the Central Bank applicable to financial institutions;
- Ministry of Economy Circular of 16 July 2002 on AML procedures for auditors; and
- Ministry of Justice Circular 8/2010 for lawyers when providing specified financial services.<sup>29</sup>

64. In accordance with the AML law and the binding circulars, obliged entities must obtain all information and necessary documents to establish the full identity of their customers. With regard to customers which are companies, financial institutions must obtain the names and addresses of those shareholders of the company whose shareholding exceeds 5% (Art. 3.1

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28. All financial institutions operating in the country (including banks, money changers and finance companies, financial or monetary intermediary or any other establishment licensed by the Central Bank, whether publicly or privately owned), as well as all institutions in the securities and insurance sectors and lawyers when they are providing specified financial services.

29. These are: purchase or sale of properties; management of client funds, securities and other assets; management of bank accounts, saving accounts, or securities; organisation of contributions for formation, operation or management of companies; and formation, operation or management of corporate personalities or legal arrangements for the purchase or sale of commercial entities.

Central Bank AML Regulation). In respect of other legal persons, a copy of the trade licence, name and address of the account holder and names of all of the company's members (owners) must be obtained.

### Nominees

65. UAE law does not specifically provide for nominee ownership whereby one person holds shares in a company on behalf of one or more other persons. Nor does it specifically prohibit such activity. That said, SCA Decision 17R/2010 concerning AML and CFT Procedures requires institutions licensed to operate in the securities markets to ensure, when undertaking CDD, that their customers do not act for others (Art.4). Thus, nominee arrangements are not possible when it comes to ownership of shares traded in the stock market.

66. Article 19 of the CCL contains strict requirements for UAE companies to have majority ownership by UAE nationals. Federal Law 17/2004 (the Anti-Fronting Law) prohibits the use of "side agreements" with UAE nationals which had been used by some in order to get around the majority ownership requirements.

67. Article 5.4 of the Central Bank AML Regulations for banks requires them to identify the person on whose behalf another person may be conducting transactions. Similarly, Article 19(f) requires institutions to maintain records of "the identity of the persons making transactions in case they were other than the account holder(s) or beneficial owners".

68. Lawyers, when involved in providing financial services, are obliged to conduct CDD on their clients (Ministry of Justice Circular 8/2010, see above). Thus, when a lawyer in the UAE acts as a nominee, he is obliged to identify the person he represents.

### Conclusion

69. In conclusion, in the UAE, nominee arrangements are effectively prohibited with respect to shares traded in the stock market. Pursuant to the Anti-Fronting law, UAE nationals may not act as nominees for foreign nationals. Financial institutions must identify the persons behind any nominees who are their customers. Where a foreign national resident in the UAE is a lawyer and acts as a nominee (for activities not involving shares traded in the stock market) he must identify his client. Other foreign nationals in the UAE could act as nominees (for activities not involving securities) but the person for whom the nominee acts will be identified when the nominee comes into contact with a financial institution. This gap is very small as most nominee arrangements are prohibited; however, it is recommended that the UAE



monitor this to ensure it in no way interferes with the effective exchange of information in tax matters. This will be followed up in the UAE's Phase 2 review.

### *Companies in the free zones*

70. There are currently 38 free zones in the UAE and more are being developed.<sup>30</sup> These zones have specialised duty, tax and other exemptions. Only one, the Dubai International Financial Centre (DIFC) is a financial free zone. A common set of incentives are offered in these free zones, including; no restriction on foreign ownership, no corporate tax for a period of 15 years (renewable), unrestricted repatriation of capital and profit, no personal income tax, exemption from all import and export duties, no foreign exchange controls, and no restrictions on hiring foreign employees.

71. A free zone is established through a law passed by the Ruler of the respective Emirate. The provisions of the CCL are not applicable to companies established in the UAE's free zones, if such free zones have regulations containing special provisions regulating companies.

72. This report examines the legal and regulatory framework for the five largest free zones: the DIFC, the Jebel Ali Free Zone, the Dubai Airport Free Zone, the Fujairah Free Zone and the Ras Al Khaimah (RAK) Free Zone. As at November 2011, there were 845 companies operating in the DIFC, slightly more than 6 000 in the Jebel Ali Free Zone, approximately 1 450 in the Dubai Airport Free Zone, almost 2 000 in the Fujairah Free Zone, and nearly 5 000 in the RAK Free Zone. The UAE authorities have indicated that the regulations in place in the other free zones, all of which are significantly smaller than these five, are consistent with the regulations in place in the Jebel Ali Free Zone, the Dubai Airport Free Zone, the Fujairah Free Zone and the RAK Free Zone.

### *Information provided to government authorities*

#### DIFC

73. The DIFC Companies Law (Law 2/2009 – DCL) and the DIFC Companies Regulations (DCR) provide the legal and regulatory framework for companies conducting business from within the DIFC.

30. Free zones have been established in: Dubai (22), Abu Dhabi (5), Ras al-Khaimah (4), Fujairah (3), Sharjah (2) and Ajman and Quain one each. The Jebel Ali Free Zone was the first free zone created in 1985 in Dubai. About 6 400 companies are operating in this zone.

74. No person is allowed to conduct business operations in or from the DIFC without registration. The Registrar issues a certificate of incorporation and a registration number on registration of a company (Art. 14). A total of 845 companies were registered with the DIFC Registrar of Companies as at 16 November 2011 and, out of these, 335 are supervised by the DFSA. The remaining 510 companies, not supervised by the DFSA, are engaged in retail activities or are providing business or corporate services to other customers and are subject to supervision by the DIFC authority.

75. The DCL provides for the incorporation of companies limited by shares, limited liability companies and recognised companies (Art. 9):

- a **company limited by shares** can be incorporated by one or more shareholders whose obligation is limited to the payment of the subscription price of their shares (Art. 31). There is no restriction on these companies making public offerings of shares. As at November 2011, there were 448 registered companies limited by shares in the DIFC;
- a **limited liability company** – A limited liability company can be incorporated by one or more members whose obligation for the company's debts is limited to the amount of their subscribed membership interest (Art. 83). It cannot raise capital by offering membership interest by way of a public offer and also cannot issue shares of any kind (Art. 86). The transfer of membership interests in a limited liability company is restricted: existing members have the right of first refusal before interests can be transferred to a person that is not already a member of the company (Art. 89). As at November 2011, there were 116 registered limited liability companies in the DIFC; and
- a foreign company that carries out business in the DIFC must register as a **recognised company** (Art. 115). As at November 2011, there were 203 recognised companies in the DIFC.

76. An application for incorporation of a company limited by shares or a limited liability company must be filed with the Registrar of Companies containing, among other things, the full name, nationality and address of each of the incorporators (*i.e.* founders) (Art. 11 DCL). Further, for a company limited by shares, information on the number and class of shares to be allotted to each incorporator must be submitted. And for a limited liability company, information is to be provided on the number and class of membership interests (Art. 11 and Art. 2.1.1 Companies Regulations). Articles of association, containing all this information, need to be filed as part of the application for incorporation.

77. Domestic companies limited by shares and limited liability companies must file information with the Registrar regarding their initial and subsequent allotments of shares (Art. 2.6.1 Companies Regulations). Every company is obliged to file with the Registrar an annual return, before the end

of March every year, stating in respect of each class of shares or membership interest in the company the name and address of each shareholder or member as at 1 January that year (Art. 22 DCL).

78. Article 114 of the DCL provides for the incorporation of a prescribed type of company. Article 12 of the DIFC Companies regulations contains regulations concerning protected cell companies (PCC). A protected cell company may create one or more cells for the purpose of segregating and protecting cellular assets. A PCC is a single legal person and creation of a cell does not create in respect of that cell a legal person separate from PCC (Art. 12.2.3). A PCC can be created for conducting insurance business or the business of a fund and prior consent of the DFSA is necessary for its creation. The provisions of DIFC Companies law apply in respect of registration with the Registrar. A PCC can issue cell shares in respect of any of its cells. A PCC must create and keep documentary evidence of title to all cell shares (Art. 12.9.6). A PCC must keep an index of names of its shareholders and specify that particular cell or cells to which an account or accounts of that shareholder relate and must be kept at the place of keeping the register of shareholders (Art. 12.10). Accordingly, information on the ownership of PCC and its cells is ensured.

79. A foreign company is not allowed to carry on business in the DIFC unless it is registered as a “recognised company” (Art. 115 DCL). Foreign companies operating in the DIFC must provide a list of the company directors or managers, business address and a copy of the certificate of incorporation from the place of origin (Art. 7.1.1 DCR). They are required at the time of application of registration to provide a copy of the current certificate of incorporation of the company certified by the relevant authorities in the country of incorporation and a certified copy of the foreign company’s constitution (Art. 7.1.2 DCR). The DIFC Registrar of Companies may also require any further information he deems appropriate under DIFC Companies Regulation *i.e.* if he is not satisfied that the foreign company comes from a jurisdiction with regulatory oversight equivalent to the DIFC. Such “recognised companies” are obliged thereafter to file with the Registrar a notice of any change in the recognised company’s shareholders or members, directors, managers or secretary (Art. 116 DCL). The recognised company must also submit to the Registrar on an annual basis a copy of the annual return filed in its jurisdiction of incorporation.

80. In addition to the registration as a “recognised company”, a licence from the DFSA is required if a company seeks to provide financial services in or from the DIFC (Art. 45 DFSA Law). The DFSA, during the licensing process<sup>31</sup> makes an assessment of the ownership of the applicant company

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31. The register of all licenses and authorisations issued is available on the DFSA website: [www.dfsa.ae/PublicRegister/Default.aspx](http://www.dfsa.ae/PublicRegister/Default.aspx).

(DIFC incorporated and recognised companies) and the companies are expected to notify the DFSA of any changes in their ownership structures (Arts.7 and 11 GEN Rules<sup>32</sup>). The licensed entity must notify the DFSA of any change in the controllers (*i.e.* those who have more than a 10% shareholding in the company) and must also submit an annual report on its controllers within four months from the end of its financial year (Arts. 11.8.5 and 11.8.9). Therefore, foreign companies in the DIFC, other than those regulated by the DFSA, are not explicitly obliged to keep or provide ownership information to any authority in the DIFC.

### Other free zones

81. The Jebel Ali Free Zone, the Dubai Airport Free Zone, the Fujairah Free Zone and the RAK Free Zone allow for the operation of companies and establishments. The establishments are called free zone establishments and have a single owner, who can be a legal or natural person. Companies have minimum two shareholders who can be natural or legal persons. Some free zones also allow for the operation of offshore companies and branches of foreign companies. The UAE authorities have advised that all free zone authorities require companies, including branches of foreign companies, operating within their designated zones to register with them and provide full details of their owners. Any changes to this information must be reported to the relevant authority. Where the laws and regulations in the free zone do not contain provisions concerning information to be made available, reference must be made to the federal law of the UAE.

82. The relevant obligations in the four major free zones (not including the DIFC) are:

- companies, establishments and offshore companies may operate in the Jebel Ali Free Zone – JAFZ (Regulations 1/92 and 1/99 as well as the Jebel Ali Offshore Companies Regulations 2003). The Authority must maintain a register of all establishments and companies operating in the zone. All establishments and companies must have at least one director and one secretary resident in the Emirate of Dubai (Art. 25). The information submitted by these entities as part of registration includes copies of the passports of all natural persons who are owners of the company, or certificates of incorporation of legal persons who are owners of the company, and details of each of their shareholdings. This information must be updated with annual re-registration. Offshore Companies Regulations 2003 provide for formation of an incorporated offshore company with limited liability. Article 5 of this regulation stipulates the method of formation and

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32. The DFSA Rulebook, General Module (GEN), 27 February 2011.

the application for registration must *inter alia* include the full names and address of each of the incorporators and the persons who serve as directors;

- companies and establishments may operate in the Dubai Airport Free Zone (Law 25/2009). Dubai Airport Free Zone Authority Regulations 1/1998 and 1/2000 concerning the formation of establishments and companies contain provisions identical to those applicable to establishments and companies established in the Jebel Ali Free Trade Zone. In the Dubai Airport Free Zone, a company can have two to five shareholders. Branches of foreign companies must submit a: (i) certificate of home country incorporation or certificate of registration, (ii) copy of the parent company's memorandum and articles of association, and (iii) board of directors resolution to set up the branch. This information must be updated with annual re-registration. However, information on the ownership of a foreign company is not expressly required to be provided;
- limited liability companies (with two to five owners) or establishments or branches of UAE/foreign companies may be established in the Fujairah Free Zone (Art. 17 Emirate of Fujairah Law 1/2004). Law 1/2004 specifically notes that in the absence of provisions on an issue in Fujairah law, the CCL applies. The Operational Manual of the Fujairah Free Zone (which is the form in which the Free Zone Authority issues its regulations) provides that investors desiring to establish a free zone establishment or free zone company should submit the articles of association of the company and the minutes of the meeting declaring the board of directors, owners and percentages of shares to the Fujairah Zone Authority. For branches of foreign companies, information to be submitted includes: (i) a board resolution of the parent company to establish the branch; (ii) a copy of the memorandum of association attested by the UAE Embassy of the parent company; (iii) a copy of the valid operating license of the parent company/ies; and (iv) passport copies of all the directors, shareholders, and person in-charge *etc.* This information must be updated with annual re-registration; and
- international companies, international business companies (off-shore companies) and establishments may be established in the RAK Free Zone (RAK International Companies Regulations 2006, RAK International Companies Regulations 2006 and Implementing Regulation 1/2000). These entities must register with the free zone authority and as part of registration must submit *inter alia* the company's articles of association and the full names and addresses of the incorporators (Art. 6 RAK International Companies Regulations

2006 and Art. 4 RAK International Business Companies Regulations 2006). This information must be updated with annual re-registration. Establishments (FZE) are owned by a single person (natural or legal) and must submit an application form and copy of passport of the owner/manager.

83. The National Anti-Money Laundering Committee (NAMLC) was established in accordance with the provisions of the AML Law (Art. 10). The NAMLC issued a letter 21383/01 on 5 December 2001 providing guidance to the free zone authorities on the desired basis for identification of natural and legal persons, including foreign companies, who wish to establish businesses in the free zones:

- all necessary information and documents should be obtained, including the full name of the applicant, the current address and place of work as well as physical checking of passport; and
- all information and documents with regard to legal persons, particularly a copy of the trade license issued in the UAE or foreign country, should be obtained. Also, the name and address of the owner(s), as well as the names and addresses of the partners. With respect to public companies, the names and address of the shareholders whose shareholdings exceed 5% must be obtained.

### *Information held by companies*

#### DIFC

84. A company limited by shares must have and maintain a shareholder register, containing the names and addresses, a statement of the shares held by each shareholder, the date on which each person was registered as a shareholder and, where relevant, ceased to be a shareholder and also the date on which the number of shares held by any shareholder increased or decreased (Art. 39 DCL). A transfer of shares must be entered in the shareholder register on the basis of an instrument of transfer in writing. The shareholder register must be kept at the registered office of the company, or maybe be kept at the offices of the agent as long as a copy of the register is kept at the company's registered office. Limited liability companies must similarly maintain up-to-date registers of members noting therein the names, date of birth or incorporation, nationality, address and value of membership interest of each member. Transfers of membership interests must also be recorded in the members' register and such transfers are not valid before the date they are recorded (Art. 95). Foreign companies are not explicitly required to keep ownership information (see paragraph 80).

## Other free zones

85. In the Jebel Ali Free Zone, the establishments and companies themselves must maintain at an office in the free zone a share register (where shares have been issued) detailing all owners of shares (Art. 22 of Implementing Regulation 1/92 and Art. 23 of Implementing Regulation 1/99) or a register in which details of owners as well as ultimate ownership of the free zone establishment are entered (Art. 54 of Implementing regulation 1/92). Companies established in the free zone cannot invite the public to subscribe to their shares (Art. 3 Jebel Ali Free Zone Authority Regulation 1/99) and must have share registers detailing the number, amount and owners of all shares (which cannot be in bearer form) (Art. 23).<sup>33</sup> Offshore companies with limited liability must maintain at a registered office in the free zone a register of members (owners) indicating the name and address of each member and his/her holdings (Art. 22 of Offshore Companies Regulations 2003).

86. Dubai Airport Free Zone Authority Regulations 1/2000 and 1/1998 contains provision identical to those applicable to companies and establishments in the Jebel Ali Free Trade Zone.

87. Neither the Fujairah Free Zone Law of 2004 nor the Operational Manual specifies the ownership information to be maintained by companies and establishments. Law 1/2004 notes that in the absence of provisions on an issue in Fujairah law, the CCL applies. Thus the obligations which apply in the UAE, outlined previously, to maintain shareholder registers, apply to companies and establishments in the Fujairah Free Zone.

88. In the RAK Free Zone, all offshore companies (international business companies) must keep at their registered office in the free zone a share and member register containing the names and addresses of persons who hold shares in the company, the date on which the name was entered/removed, and also the number of shares held by each member (Art. 37 International Business Companies Regulations 2006). Similarly, international companies must keep registers containing the names and addresses of all members (Art. 23 International Companies Regulations 2006).

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33. The free zone companies (FZCO) register is maintained by the FZCO Department, a department of the Authority responsible for the formation, registration and regulation of the free zone companies.

## *Nominees*

### DIFC

89. Federal Law 4/2002 on the Criminalisation of Money Laundering (the AML law) applies throughout the UAE, including in all free zones. The 2007 DIFC Non Financial Anti-Money Laundering/Anti Terrorist Financing (AML/CFT) Regulations provide that company service providers when they prepare or carry out transactions for a client concerning acting as (or arranging for another person to act as) a nominee shareholder for another person must conduct customer due diligence and thus identify their clients and the beneficial owners of their clients (Arts.1 and 7).

90. In addition, pursuant to the DFSA Law, any person desirous of performing financial services or ancillary services in or from the DIFC must obtain a license from the DFSA (Part 3). Provision of legal services or accountancy services is considered an ancillary service. These service providers are supervised by the DFSA and they must have verified documentary evidence of the identities of their clients for whom they provide services (DFSA Conduct of Business Rule 5.10.1).

91. These provisions do not apply to persons who perform services gratuitously or in the course of a purely private non-business relationship. Particularly considering the nature of the free zones, it is likely that only a very limited number of nominees may be performing nominee services gratuitously. Still, it is recommended that the UAE monitor this and it will be followed up in the UAE's Phase 2 review.

### Other free zones

92. Companies in the free zones take the form of limited liability companies which are not permitted to publicly issue shares. In addition, most free zones have tight limits on the number of owners of companies. These cannot be more than five in the Dubai Airport Free Zone and Jebel Ali Free Zone, however, regulations for companies in the RAK free zone do not prescribe any limit on the number of shareholders.

93. The AML law applies in all free zones. Article 5.4 of the Central Bank AML Regulations for banks requires them to identify the person on whose behalf it appears another person may be conducting transactions. Similarly, Institutions must maintain records of “the identity of the persons making transactions in case they were other than the account holder(s) or beneficial owners” (Art.19(f)). Also applicable in the free zones is SCA Decision 17R/2010 concerning AML and CFT Procedures. This Decision requires institutions licensed to operate in the securities markets to ensure, when undertaking CDD, that their customers do not act for others (Art.4).



Thus, nominee arrangements are not possible when it comes to ownership of shares traded in the stock market.

94. In the RAK Free Zone, the International Companies Regulations 2006 specifically provides that a person who “acts as a nominee for a third party” must be a professional (lawyer, accountant, company administration and management service provider or corporate adviser) who is licensed by the RAK Free Zone Authority as a “registered agent” (Art. 22). Further, the regulations specify that a “registered agent” acting as a nominee must maintain information on the beneficial owners of the shares and must inform the RAK Free Zone Authority of any changes in the beneficial ownership of the shares when the authority so requests (Art. 22). The shareholders register must contain the details of both the nominee and the beneficial owner of the shares (Art. 23).

### *Conclusion*

95. Ownership and identity information for all companies incorporated pursuant to the UAE Companies Law and the DIFC Companies Law is available with the companies themselves. This is supplemented by various obligations to submit information to government authorities ensuring availability of ownership information with them, which is updated annually. Similarly, the laws in place in the other free zones provide for submission of ownership information as part of registration as well as maintenance by the companies themselves of information on their owners. Ownership information is also available for foreign companies operating in the UAE. However, foreign companies registered in the DIFC and other free zones are not explicitly required to keep or provide information on their owners to any authority. Therefore, availability of information on the ownership of a foreign company having its main activities or main office in the DIFC (other than those regulated by the DFSA) or other free zones is not fully ensured.

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

96. Pursuant to Article 154 of the CCL, in the UAE both public and private joint stock companies can only issue nominal registered shares and issuance of bearer shares is prohibited.

97. Article 38 of the DIFC Companies Law prohibits issuance of bearer shares by a company limited by shares.

98. Companies in the Jebel Ali Free Zone (Art.22 Implementing Regulation 1/92, Art.23 of Implementing Regulation 1/99), the Dubai Airport Free Zone (Art. 23 Implementing Regulation), and the Ras Al Khaimah Free Zone (Art. 27 Regulations on International Business Companies) are specifically prohibited from issuing shares in bearer form.

99. International companies incorporated in the Ras Al Khaimah Free Trade Zone (RAKFTZ) can issue bearer shares. The International Companies Regulations 2006 provides that the bearer of such shares must be a registered agent duly approved by the RAKFTZ authority. Additionally, where a bearer acts as a nominee for a third party he is obliged to maintain records of the beneficial owners of shares and must inform the authority of any change in the beneficial ownership within 30 days of the change (Art. 22). International companies must maintain share registers detailing the name and address of each member or, in case of a bearer share, the name of the beneficial owner of the share (Art. 23). Therefore, appropriate mechanisms are in place to identify the owner of bearer shares issued by international business companies in the RAKFTZ.

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

#### *UAE*

100. The CCL provides for three types of partnerships:

- ***general partnerships*** (Arts.23-46): All partners (two or more) are jointly liable for the company's debts to the extent of all their assets. All partners must be UAE nationals. Partners' shares cannot be in the form of negotiable instruments and can only be assigned either by the approval of all the partners or as per the terms and conditions of the memorandum of association. As at November 2011, there were 6 896 general partnerships in the UAE;
- ***simple limited partnerships*** (commandite) (Arts.47-55): This partnership consists of one or more general partners (all of whom must be UAE nationals) liable for the company's debts to the extent of all their assets, and one or more limited partners liable for the company's debts to the value of their respective shares. A limited partner may not be involved in management of the partnership. As at November 2011, there were 358 simple limited partnerships in the UAE; and
- ***partnerships limited with shares*** (Arts.256-272): This partnership has general partners (UAE nationals) who are jointly liable for the company's liabilities to the extent of all their assets, and participating partners, liable to the extent only of their shares in the company. The capital is divided into equal value negotiable shares. The partnership must have a minimum capital of AED 500 000 (EUR 95 000). As at November 2011, there were no partnerships limited with shares in the UAE.

## Ownership information held by government authorities

101. A partnership is considered a legal entity and as such is required to register its memorandum of association (MOA) and any amendment therein in the Commercial Register and can only conduct business after registration (Arts.11 and 12 CCL). The MOA must include, amongst other things, the information on name, surname, nationality, date of birth and domicile of each partner and the percentages for distribution of profits and losses in case of a general partnership or a simple limited partnership (Arts.26 and 51). Any change in the MOA, which includes change in information on partners, needs to be registered in the Commercial Register. Therefore, updated information on the partners must be available in the Commercial Register (Art. 11).

102. For partnerships limited with shares, the MOA and its articles must detail the names, surnames, nationalities and domiciles of the general partners (Art. 260 CCL). The CCL does not require keeping information on the participating partners in the articles of association or MOA of a partnership limited with shares, and information on the participating partners need not be submitted to any authority.

## Information held by partnerships

103. All partnerships are obliged to have a Memorandum of Association, authenticated by the competent authority, which contain identity information on all partners, with the exception of information on the participating partners in a partnership limited by shares (Arts 26, 51 and 260 CCL).

## Information held by service providers

104. In accordance with the AML Law, regulations and circulars, obliged entities<sup>34</sup> must obtain all information and necessary documents to establish the full identities of their customers. UAE Central Bank Regulation 24/2000 requires banks, when opening an account, to obtain all information and documents with regard to legal persons, in particular a copy of the trade license, the names and addresses of the account holders and names and addresses of the partners (Art. 3.1). The UAE authorities advise that the reference to “partners” in this article means banks are obliged to obtain information identifying all partners in partnerships which are customers.

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34. Financial institutions (including banks, money changers and finance companies), institutions in the securities and insurance sectors and lawyers when they are providing specified financial services.

105. In addition, notaries public must identify all customers prior to drawing up any contracts or deeds for them (Art. 6 Federal Law 22/1991 as amended by Federal Law 22/2001).

### Foreign partnerships

106. Provisions in the CCL dealing with foreign companies (Arts. 313 to 317) apply equally to foreign partnerships. Accordingly, ownership information is available where a foreign partnership has income, deductions or credit for tax purposes in the UAE or where a foreign partnership carries on business in the UAE.

### Conclusion

107. Information on the identity of all partners of general partnerships and simple limited partnerships and general partners of a partnerships limited with shares is available with the partnerships themselves and with the Commercial Register. Information on the general partners of partnerships limited with shares would be contained in the partnership agreement while information on the participating partners of partnerships limited with shares would be available when the partnership is a customer of a bank, and thus not available in all circumstances. Though no partnerships limited with shares have been registered, it is recommended that the UAE laws must ensure the availability of information on all the partners of such partnerships.

### *Partnerships in the free zones*

#### DIFC

108. The DIFC has enacted laws and regulations for the creation and governance of three types of partnerships:

- **general partnership:** DIFC Law 11/2004 (General Partnerships Law – GPL) and General Partnership Regulations (GPR). A general partnership is the relationship between two or more persons jointly carrying on any business, purpose or activity with a view to making a profit. A general partnership is a legal person and can sue and be sued in its own name, and the partners are jointly and severally liable for the liabilities of the partnership. The number of registered general partnerships in the DIFC as at November 2011 was three;
- **limited liability partnership:** DIFC Law 5/2004 (Limited Liability Partnership Law – LLPL) and DIFC Limited Liability Partnership Regulations (LLPR). A limited liability partnership is a body corporate with a legal personality separate from its members. All members

of a limited liability partnership are entitled to share equally in the capital and profits and debts of the partnership. There were 20 registered limited liability partnerships in the DIFC as at November 2011; and

- **limited partnership:** DIFC Law 4/2006 (Limited Partnership Law – LPL) and Limited Partnership Regulations (LPR). A limited partnership has one or more general partners, who are liable for all debts and obligations of the limited partnership, and one or more limited partners, whose liability is limited to the extent of the amount contributed by them. As at November 2011, there were three registered limited partnerships in the DIFC.

109. All partnerships are required to register with the Registrar of Companies (ROC) in order to be incorporated in the DIFC (Art. 12 GPL, Art. 10 LLPL and Art. 12 LPL).

110. Each partner of a general partnership must enter into a partnership agreement signed by all partners (Art. 10). An application for registration must contain, amongst other things, the name and address of each of the partners (Art. 12). Changes in a general partnership's constitution (*e.g.* the arrival or departure of a partner), must be notified to the Registrar in writing within 14 days (Art. 14).

111. A limited liability partnership is created by application to the Registrar by two or more persons in accordance with the limited liability partnership agreement. The application must include the names and address of each of the partners (Art. 8 LLPL). Any person can become a member of the limited liability partnership subsequent to the partnership agreement in accordance with an agreement with existing members (Art. 18). The LLPL mandates that any changes in the members or designated members or change in the names and addresses of the members must be notified to the Registrar (Art. 25).

112. To register a limited partnership, all general partners must sign and file an application with the Registrar (Art. 12 LPL). The application needs to mention, amongst other things, the full names and addresses of each general partner and a description of the limited partners (Art. 2.1 LPR). The description of a limited partner includes, for an individual: the full name and address; date and place of birth; and any former given or family names. For a limited partner which is a legal entity, the description includes: the name and address of the legal entity; any other addresses used in the past five years; and the amount and type of contribution of each owner of the entity. Any change in the registered information needs to be notified to the Registrar in writing within 14 days (Art. 13 LPL). The DIFC Registrar maintains a register of general partnerships, limited liability partnerships, limited partnerships

and recognised partnerships (Art. 6.4 GPR, Art. 5.4.1 LLR, Art. 7.4.1 LPR) containing information on current partners and former partners. In case of recognised partnerships information on the countries in which such partnerships are formed is kept.

### Information kept by the partnerships

113. General partnerships are obliged to keep registers of partners containing the full names and addresses of all partners and dates of admission and cessation as partners (Art. 4.1.1 GPR). Similar information with regard to partners is required to be kept in the register of members and designated members of limited liability partnerships (Art. 4.1.1 LLPR). Article 4.1 of the LPR sets out similar obligations for limited partnerships to maintain registers of all of their partners.

### Foreign partnerships

114. A general partnership or limited liability partnership or limited partnership formed outside the DIFC must be registered as a recognised partnership (Art. 13 GPL, Art. 36 LLPL, and Art. 45 LPL) in order to operate in the DIFC. General partnerships and limited partnerships need to provide information on the full names and addresses of the partners who are operating in the DIFC (Art. 5.1.1 GPR, Art. 5.1.1 LPR), but not on the partners who are not operating in the DIFC. Foreign limited liability partnerships applying for registration must provide a list of names and addresses of all partners in the application (Art. 7.1.1 DIFC LLPR). Disclosure of partners is required by any foreign partnership when applying for a DFSA license and ongoing basis in line with the requirements stated previously.

### Other free zones

115. Partnerships are not allowed to be formed in the Jebel Ali Free Zone, Dubai Airport Free Zone, Fujairah Free Zone or RAK Free Zone. The only corporate forms allowed in these free zones are companies, establishments and branches of foreign companies.

### Conclusion

116. All partnerships created in the DIFC must maintain registers identifying all of their partners and submit this information as part of registration. The Registrar also keeps a register containing information on the partners of all registered partnerships. A general partnership or limited liability partnership or limited partnership formed outside of the DIFC must be registered as a recognised partnership in order to operate in the DIFC. For foreign general

partnerships and foreign limited partnerships, registered as recognised partnerships, information may not be available on the partners who are not operating in the DIFC, though the Registrar may request this information at any time. The gap in information on the general partnerships and limited partnerships is likely to be bridged if such partnerships were formed under the UAE law as that law would ensure the availability of information.

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

#### *UAE*

117. The UAE laws, at Federal and Emirate levels, do not provide for the creation of trusts. The UAE has not signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.<sup>35</sup>

118. In terms of foreign trusts, UAE law does not prohibit a resident of the UAE from acting as a trustee or administrator or protector of a trust formed under foreign law. In the absence of any specific trust laws in the UAE, no requirements are prescribed for any such trustees/administrators/protectors to keep any information with regard to the trusts for which service is provided. The AML obligations (described below) would however apply whenever: (i) the trustee is a financial institution or lawyer; or (ii) the trustee comes into contact with a financial institution in the UAE or has a lawyer providing it financial services.

119. As described previously, under the AML Law all financial institutions and also lawyers conducting specified financial activities are required to identify their customers and the beneficial owners of their customers.<sup>36</sup> These obliged entities must obtain all information and necessary documents to establish the full identity of their customers and the beneficial owners of their customers. Further, financial institutions, if it appears that the transaction is carried out on behalf of another person, must identify that other person and record his details (Art. 5.4 Central Bank AML Regulation 24/2000). These provisions are broadly worded and thus can be expected to require identification of the settlors and beneficiaries of trusts (trustees) which are their customers. However, the term beneficial owner is not explicitly defined

35. [www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59), accessed 1 August 2011.

36. The entities obliged to conduct customer due diligence under the AML Law are: all financial institutions operating in the country (including banks, money changers and finance companies, financial or monetary intermediary or any other establishment licensed by the Central Bank, whether publicly or privately owned), as well as all institutions in the securities and insurance sectors and lawyers when they are providing specified financial services.

in the AML laws and AML provisions do not specifically apply to all trustees. For example gap will remain when trustees are not lawyers who provide specified financial services. This might lead to inconsistent application of the obligation by obliged entities.

120. The UAE allows formation of waqf which have characteristics similar to trusts. Two basic types of waqf are allowed:

- ***waqf khairree***: capital and income of the property is dedicated in perpetuity for religious or charitable purposes; and
- ***waqf khas or waqf ahlee***: capital and income of the property is dedicated to a member(s) of the family.

121. A waqf is required to have a waqif (founder), mutawalli (trustee), qadi (judge), and beneficiary. The founder, who must be an adult resident in the UAE, grants an endowment (property) with free will through a decision either verbally or in writing. This can be done during one's life or through a will. The endowment is irrevocable and for unlimited time. Promissory or conditional endowments are not allowed. The endowment must be consistent with UAE government policies. The founder has the right to increase his waqf over time. The beneficiaries can be individual(s) or institution(s). Waqf needs to be designated to Shariá compliant deeds. A waqf can be created for the benefit of specifically designated individuals or for general charitable purposes.

122. Waqf khairree are purely charitable vehicles. The Waqf khas/waqf ahlee, is a self-endowment under which whole or part of the income generated by the waqf belongs to the founder and upon his death is spent on the designated beneficiary. For these waqfs, the founder may confirm his decision to grant an endowment and designate its beneficiaries either verbally or in writing.

123. The General Authority of Islamic Affairs and Endowments administers all waqf property in the UAE. Law 29/1999 on Formation of the Public Organisation of Endowments sets down the role of the General Authority and the duties of a single Board of Directors comprised of UAE nationals, headed by the Minister of Islamic Affairs and Endowments, to manage all waqfs (Art. 6). The Board of Directors is encharged with the monitoring and control of all endowments through waqf. The Board of Directors and the General Authority of Islamic Affairs and Endowments have access to all information held by waqfs. The Board of Directors approves payments to beneficiaries. The UAE authorities have indicated that all waqfs are well regulated and the information on the beneficiaries is available with the waqfs. However, as the availability of information is dependent on the supervision by the Board of Directors, the availability of information in practice will be followed during the Phase 2 review of the UAE.



## Conclusion

124. AML obligations ensure that information is available on the settlors, trustees and beneficiaries of foreign trusts which have a trustee, administrator or protector in the UAE as long as the trustee/administrator/protector: (i) is himself a lawyer or financial institution, or (ii) comes into contact with a financial institution or has a lawyer providing it financial services. However, full information in respect of foreign trusts is not fully ensured because obliged entities under the AML laws do not include all trust service providers and there is likelihood of inconsistent application of the AML provisions by the obliged entities as discussed in paragraph 119 above. It is recommended that the UAE ensure that information is always available on settlors, trustees and beneficiaries of foreign trusts which have a trustee in the UAE. The UAE also allows for waqf, primarily charitable vehicles, and these are closely managed and monitored by a government authority and government-appointed board of directors.

### *Trusts in the free zones*

#### DIFC

125. The DIFC has a common law system and its law allows for the creation of trusts. DIFC Law 11/2005 (Trust Law) governs the duties and powers of trustees, relations among trustees and the rights and interests of a beneficiary. It applies to express trusts, charitable and non-charitable trusts. The Investment Trust Law (DIFC Law 5/2006) was enacted to facilitate the introduction of a collective investment funds regime. Trusts created in the DIFC have no restrictions in terms of the residence or domicile of the settlors or beneficiaries or the location of assets.

126. A DIFC trust comes into existence by an instrument in writing including a will or codicil (Art. 23(2) Trust Law). The instrument must mention the trust property and trustees. A trust can only be created if either it has a definite beneficiary or is a charitable trust or is a non-charitable purpose trust<sup>37</sup> (Art. 24). A beneficiary must be (Art. 34):

- identifiable by name; or
- ascertainable by reference to: a class; or a relationship to some other person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.

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37. A purpose trust is a type of trust which has no beneficiaries, but instead exists for advancing some non-charitable purpose of some kind (e.g. holding or making investments).

### Information held by government authorities

127. In respect of an investment trust, the trustee must be regulated by the DFSA for acting as a trustee of a fund or provide custody services. Alternatively, the trustee may be regulated by another regulator in a recognised jurisdiction<sup>38</sup> to provide custody or depository services. A public domestic fund must be registered with the DFSA (Art. 28 Collective Investment Law). There is no requirement of registration in the DIFC of other trusts.

### Information held by trustees and service providers

128. Part 8 of the Trust Law concerns duties and powers of trustees. The trustee must act with due diligence to the best of his ability and skill and must keep accurate accounts and records of his trusteeship and must keep trust property separate from his personal property and separately identifiable from any other property of which he is a trustee.

129. The AML Law applies in the DIFC but does not explicitly cover trustees. However, authorised firms, authorised market institutions, ancillary service providers, authorised individuals and funds in the DIFC must comply with this law (Art. 70(3) DFSA Law). Therefore, they must comply with AML obligations and keep identity information on their customers.

130. Pursuant to the DFSA Law, any person desirous of performing financial services or ancillary services in or from the DIFC must obtain a license<sup>39</sup> from the DFSA (Part 3). The provision of trust services<sup>40</sup> or acting as a trustee of a fund constitutes financial services. Provision of legal services or accountancy services is considered an ancillary service. These service providers (TSPs) and ancillary service providers (ASPs) are supervised by the DFSA and they must have verified documentary evidence of the settlors, trustees (in addition to the TSP itself) and principal named beneficiaries of trusts for which they provide services (DFSA Conduct of Business Rule 5.10.1). In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, the TSP must also have verified documentary

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38. Recognised jurisdictions are those which the DFSA has assessed as having standards at least equivalent to those in place for regulation of trusts in the DIFC.
39. As at 19 July 2011, there were 6 trust service providers, 10 persons licensed to act as trustees of funds and 51 ancillary service providers. 28 express trusts have been created by trust service providers.
40. A trust service provider may provide services to an express trust including: keeping accounting records; preparing trust accounts; preparing trust instruments or other documents; management and administration of trust assets; distribution of assets and payment of expenses or remuneration from trust funds.

evidence of any person who receives a distribution from the trust and any other person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from a trust. However, the scope of the term “principal named beneficiary” in the COB Rules is unclear and this may mean TSPs and ASPs are not obliged to obtain evidence of identification of all the beneficiaries. It is recommended that this be clarified in the Rules to ensure information on all the beneficiaries of trusts serviced by them.

### Foreign trusts

131. DIFC laws do not prohibit DIFC registered persons from acting as trustees or administrators of trusts created under foreign law. A foreign trust must be regarded as being governed by and interpreted in accordance with its governing law (Art. 69 Trust Law). A foreign trust is enforceable in the DIFC if its purpose and rights or powers conferred are not contrary to the DIFC Law. Circumstances under which the DIFC has jurisdiction over foreign trusts are stated in the jurisdiction of the DIFC Court (Art. 20):

- the trust is a DIFC trust;
- a trustee of a foreign trust is resident in the DIFC;
- any property of a foreign trust is situated in the DIFC ; or
- administration of any trust property of a foreign trust is carried out in the DIFC.

132. There is no requirement to register the foreign trusts. As discussed above, information on the foreign trusts to whom the licensed trust service providers (TSPs) or licensed ancillary service providers (ASPs) provide services must be available with such TSPs/ASPs. The AML laws also oblige TSPs/ASPs to keep information on their customers. The DFSA may obtain information from the service providers in the course of its supervision activities.

### Other free zones

133. Trusts cannot be established in any other free zones. The free zone authorities advise that, considering the nature of the free zones and the restricted range of commercial and trade activities which may be conducted there, it is unlikely that there would be a trustee or administrator of a foreign trust in the free zones.

134. The AML/CFT Law applies in all free zones. As described previously, under this law all financial institutions and also lawyers conducting specified financial activities are required to identify their customers and the

beneficial owners of their customers.<sup>41</sup> These obliged entities must obtain all information and necessary documents to establish the full identity of their customers and the beneficial owners of their customers. Further, financial institutions, if it appears that the transaction is carried out on behalf of another person, must identify that other person and record his details (Art. 5.4 Central Bank AML Regulation 24/2000). These provisions are broadly worded and thus can be expected to require identification of the settlors and beneficiaries of trusts (trustees) which are their customers. However, as discussed in paragraphs 119 and 124 the information on the constituents of foreign trusts may not be fully ensured.

## Conclusion

135. DIFC laws ensure the availability of information on the settlors, trustees and beneficiaries of express trusts created in the DIFC and foreign trusts either administered in the DIFC or for which a trustee is resident in the DIFC. Trusts cannot be established under the laws of the other free zones. Considering the nature of the activities and entities operating in these zones, it is unlikely that there are trustees or administrators of foreign trusts there. If financial institutions or lawyers act in such a role, AML/CFT obligations would require them to identify their customers.

## ***Foundations (ToR A.1.5)***

### *UAE*

136. The UAE does not have a specific law on foundations, however, “associations” having similar characteristics can be created for public welfare pursuant to Federal Law 2/2008. Associations composed of natural or legal persons can be formed to achieve social, religious, cultural, educational or technical goals, or to render humane services or achieve charity objects or other caring purposes.

137. All associations are required to be registered with the Ministry of Social Affairs (Art.9 Law 2/2008). An application for registration must include articles of association signed by the founding members and a list of

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41. The entities obliged to conduct customer due diligence under the AML Law are: all financial institutions operating in the country (including banks, money changers and finance companies, financial or monetary intermediary or any other establishment licensed by the Central Bank, whether publicly or privately owned), as well as all institutions in the securities and insurance sectors and lawyers when they are providing specified financial services.

the founding members (full name, age, profession, residence and copies of extracts of registration or identity cards) (Art. 6).

138. Associations must have at least 20 founding members and the members may contribute in the form of financial, moral or technical support. These founding members select a temporary committee and a delegation of such committee submits a declaration to the Ministry seeking a license and subsequent registration. Associations must keep all records, books, instruments and publications at their headquarters, including a record of the names of the members and the contribution made by them (Art. 22 Law 2/2008).

139. Information on the members of associations is also required to be obtained by banks and auditors if they provide any services to them (UAE Central Bank Circular 14/93/1993).

### *Free zones*

140. The DIFC as well as other free zones do not have any laws on foundations.

### *Conclusion*

141. UAE laws do not provide for the creation of foundations to benefit certain individuals. Information on the members of associations created for public purposes is available with the Ministry of Social Affairs and with the associations themselves. The laws of the DIFC and the free zones do not provide for the creation or operation of foundations.

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

### *UAE*

142. Failure to register a memorandum of association or its amendment renders a company or a partnership invalid as against third parties and its managers and directors are jointly liable for any loss suffered by the company or third parties as a result of the failure to register (Art. 11 CCL). Failure to obtain a licence and complete other formalities relating to registration in the foreign companies register or the Commercial Register prior to commencing activities makes all persons who performed activities personally and jointly liable for any loss suffered by the company or third parties as a result (Art. 316).

143. For limited liability companies, the managers are jointly liable for maintaining the register of members (Art. 228 CCL). Violation of any

provisions of the CCL or any implementing by-laws issued by the company, by any founding member, manager or member of its board of directors may result in imposition of a fine in the range of AED 10 000 to AED 100 000 (EUR 1 900 to 19 000) (Art. 323(6)). These penalties apply to companies and to partnerships which fail to keep registers of shareholders/members.

144. The failure of a branch or representative office of a foreign company to notify the Ministry of Economy of changes in the company's ownership may be fined by AED 200 (EUR 38) a month, to a maximum of AED 2 000 (EUR 380) within a year (Ministerial Decision 377/2010 and UAE Cabinet Decision 30/2004 as amended by Decision 5/2005).

145. Part Thirteen of the CCL contains provisions pertaining to inspection of companies. The Ministry of Economy and the relevant authority in the Emirate may apply for dissolution of a company for any breach of law (Art. 318).

146. Non-compliance with any provisions of the Anti-Fronting Law are sanctionable by a fine not exceeding AED 100 000 (EUR 19 000). Repeated non-compliance may lead to imprisonment for a period not exceeding two years in addition to a fine of AED 100 000 (EUR 19 000). The sanctions are applicable to both parties in an illegal fronting relationship (Art. 3).

147. Any violations of the registration or record keeping obligations for associations is sanctionable by a fine not exceeding AED 10 000 (EUR 1 900) (Art. 57 Federal Law 2/2008).

148. Non-submission of the statements, data, and information by any commercial bank as required under Articles 104 and 105 of the Central Bank Law, is punishable by a fine not exceeding AED 200 (EUR 38) per day (Art. 107).

149. Violations of the various AML circulars and resolutions detailing entities' obligations are subject to the penalties provided in the AML Law; imprisonment or a fine in the range of AED 10 000 to 100 000 (EUR 1 900 to 19 000) applies to all violations (including violations of CDD obligations), with slight variations on the duration of imprisonment and value of fine specified in some other provisions in the AML Law (Art. 19).

### *Free zones*

#### DIFC

150. Schedule 2 of the DIFC Companies Act prescribes fines for contraventions:

- conducting business in the DIFC without proper registration attracts a penalty of USD 25 000 (EUR 17 500) (Art. 13(4) DCL);

- failure to lodge an annual return is punishable with a fine of USD 2 000 (EUR 1 400) (Art. 22);
- failure to keep a register of shareholders by a company limited by shares or failure to keep a register of members by a limited liability company is liable for a fine USD 2 000; and
- a company violating the prohibition on issuance of bearer shares is liable for a fine of USD 5 000.

151. Schedule 2 of both the DIFC General Partnership Law and DIFC Limited Partnership Law stipulate a fine of USD 20 000 for carrying on business as a partnership in the DIFC without registration. General partnerships or recognised partnerships may be fined for USD 2 000 for failing to lodge notice of changes provided in Article 14 (including a change in the constitution of a partnership, by the incoming or outgoing of any partner) of DIFC General Partnership Law and Article 13 (change in registered details) of DIFC Limited Partnership Law. However, similar penalties are not prescribed in the DIFC Limited liability Partnership Law. Penalties are also not prescribed for failure to keep register of members by partnerships.

152. Part 7 of the DFSA Law details various penalties which may be applied for breach of DFSA laws or rules: imposition of fines (USD 5 000 for a natural person and USD 25 000 for a body corporate), administrative censure, injunctions and orders, compulsory winding up (Art. 90). The DFSA is also authorised to withdraw an authorisation under a licence from an authorised firm or authorised market institution if it is in breach of the laws or rules or other legislation administered by it (Art. 50).

153. The DIFC Court is empowered to compel a trustee to perform the trustee's duties. It can also suspend or remove the trustee (Art. 59 DIFC Trust Law). Contraventions of the Conduct of Business Rules by authorised persons in the matter of providing trust services are liable to be sanctioned as per the provisions of Part 7 of the DFSA Law.

### Other free zones

154. In the Jebel Ali Free Zone, the failure by a company to keep a register of members is punishable by a fine, applicable to both the company and its officers, of AED 1 000 (EUR 190) and a daily default fine of AED 200 (EUR 38) (Art. 22 Offshore Companies Regulations 2003). Failure by an offshore company to comply with the requirement to keep and retain accounting records or appoint an auditor is an offence liable to a fine of AED 2 000 (EUR 380) (Arts. 57 and 58).

155. Neither Law 1/2004 nor the Operational Manual specifies the penalties applicable to entities operating in the Fujairah Free Zone for violations

of their obligations. The Fujairah Free Zone Authority advises that a range of penalties has been established and are applied in practice but these have not been outlined in either legal document.

156. Dubai Airport Free Zone Law 25/2009 Article 25 says penalties for “violation of any provision in this law and the regulation issued there under or any of the licensing conditions issued by the Authority” are to be laid down by the Free Zone Authority in a regulation. No such regulation has been issued yet.

157. In the RAK Free Zone, various fines, ranging from AED 200 to AED 50 000 (EUR 38 to 9 500), are proscribed for failures to comply with the regulations applicable to foreign companies (Schedule 1 RAK International Companies Regulations 2006). For example, failure to maintain an accurate shareholders register is punishable by a fine of AED 1 000 (EUR 190) plus a daily fine of AED 200 (EUR 38). For international business companies, failures to comply with the RAK International Business Companies Regulations 2006 attract fines ranging from AED 5 000 to 50 000 (EUR 950 to 9 500) (Schedule 2 RAK International Business Companies Regulations 2006).

## Conclusion

158. The UAE’s commercial and AML legislation include enforcement provisions which are applicable in case of non-compliance with provisions that ensure availability of relevant ownership information. The DIFC’s commercial and financial services legislation similarly set out penalty provisions applicable for non-compliance with obligations to ensure the availability of ownership information. Legislation and regulations in place in the Jebel Ali Free Zone and the RAK Free Zone also contain penalty provisions concerning the availability of ownership information. The effectiveness of these enforcement provisions which are in place in the UAE will be considered as part of its Phase 2 Peer Review. Penalty provisions related to non-compliance with some obligations concerning the availability of ownership information are not yet in place for the Dubai Airport Free Zone or the Fujairah Free Zone and it is recommended that these free zone authorities and other free zone authorities where similar deficiencies are likely must establish penalty provisions ensuring availability of information.



### Determination and factors underlying recommendations

<b>Phase 1 determination</b>	
<b>The element in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Foreign companies having their main offices, main activities or effective management in the DIFC (other than those regulated by the DFSA) or other free zones are not consistently obliged to maintain ownership information or provide it to the authorities and thus such information may not be available to the competent authority.	The UAE should ensure that ownership information is available for foreign companies having their main offices, main activities or effective management in the DIFC or other free zones.
The UAE law does not ensure the availability of information on the participating partners of partnerships limited with shares. Further, the information on all partners of foreign general partnerships and foreign limited partnerships that are registered as recognised partnerships in the DIFC is not available.	The UAE as well DIFC laws should ensure that information on the partners of partnerships limited with shares and foreign general partnerships and foreign limited partnerships is available to its competent authority.
Identity information may not be consistently available in respect of foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.	An obligation should be established to maintain information in all cases in relation to settlors, trustees and beneficiaries of those foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.
Not all free zones have effective enforcement provisions in place to ensure availability of ownership information.	The relevant authorities in all free zones should establish effective enforcement provisions to reinforce the availability of information on the ownership of relevant entities.

## A.2. Accounting records

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

159. A condition for exchange of information for tax purposes to be effective is that reliable accounting information, foreseeably relevant to the tax requirements of a requesting jurisdiction, is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records.

### *General requirements (ToR A.2.1)*

#### *UAE<sup>42</sup>*

160. While there is no one accounting standard to be followed by entities in the UAE, most legal entities have adopted the Full International Financial Reporting Standards (IFRS) or the US Generally Accepted Accounting Principles (GAAP). In addition, all banks, financial companies and investment companies supervised by the Central Bank are required to follow the IFRS (Central Bank Circular 20/99).

161. General account keeping obligations are prescribed in Federal Law 18/1993 – Commercial Transactions Law (CTL). The provisions of the CTL apply to all traders as well as to all commercial activities carried out by any person who may not be a trader. Commercial activities are defined comprehensively (Arts.4 to 10). A “trader” includes every company and partnership which undertakes a commercial activity or has adopted one of the legal forms stipulated by the Commercial Company Law. Therefore, the provisions of the CTL apply to all relevant entities in the UAE. Articles 26 to 38 of the CTL set out the rules relating to commercial books. Commercial books, considering the nature and importance of the trade, must be kept in a manner which ensures that they accurately reflect the financial position as well as the trader’s rights and obligations (Art. 26(1)). In all cases a trader must keep a daybook and a general ledger.

162. A trader must record all financial transactions on a day-by-day basis in the daybook (Art.27(1) CTL). Further, the general ledger must contain entries relating to accounting operations, as carried forward from the daybook on the basis of supporting documents (Art. 28). It must contain accounts related to cash money, banking, partners, creditors, debtors, revenues, withdrawals and expenditures. The general ledger must also contain a copy of the annual balance sheet and profit and loss account. Pages of the daybook and

42. See separate analysis below concerning accounting records in the free zones.

general ledger must be numbered, signed and stamped with the official seal of the Commercial Registrar (Art. 29).

163. For public joint stock companies and private joint stock companies, the boards of directors are obliged, at least one month prior to convening the company's general assembly, to prepare the company balance sheet, a profit and loss account, and a report on the company activities during the previous financial year (Art. 191 CCL).

164. For limited liability companies, the company's managers are obliged within three months of the end of the financial year to prepare the company's balance sheet, profit and loss account, the annual report of the company's activities, its statement of financial position and its proposal concerning distribution of profits. The profit and loss account and balance sheet must be submitted to the Ministry of Economy and the authority in the relevant Emirate within ten days of ratification by the company's General Assembly (Art. 238 CCL).

165. Partnerships limited with shares are subject to the same financial regulations as apply to joint stock companies (Art. 271 CCL). The board of supervisors<sup>43</sup> oversees the company's business and has the right to examine the company books and documents and may perform stock takes of company assets (Arts. 266 and 267).

166. All joint stock companies, limited liability companies and partnerships limited with shares must have one or more auditors (Arts. 144, 253 and 270 CCL). The auditor must audit the company accounts and examine its balance sheet and profit and loss account and is obliged to submit a report to the general meeting of the shareholders, the Ministry of Economy and the competent authority which, among other things, affirms (Arts. 146 and 150):

- that the particulars clearly and honestly reflect the true financial position of the company;
- whether the company keeps proper records; and
- whether there are any violations to the provisions of the law or the company's articles that affect the company activities or its financial position.

167. The profit and loss and share of each partner in a general partnership must be determined at the end of the partnership's fiscal year calculated on the basis of the partnership's balance sheet and the profit and loss account (Art. 46 CCL). Further, limited partners in simple limited partnerships have right to demand copies of the profit and loss account and balance sheet to verify the accuracy of its contents by inspecting the company's books

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43. Comprising at least three members appointed by the General Assembly.

(Art. 53). These two requirements oblige the partnerships to prepare a profit and loss account and balance sheet.

168. Foreign companies having their main activity or main office or branches in the UAE must have a separate balance sheet and separate profit and loss account and have an auditor (Art. 315 CCL). The provisions of the CCL, except those concerning incorporation, apply to foreign companies that practice their main activities or have their main offices in the UAE (Art. 313). Therefore, the account keeping requirements of the CCL (described above for domestic entities) apply to foreign companies also. In addition, the provisions of the Commercial Transactions Law (described above for domestic entities) apply to all entities, including foreign entities, undertaking commercial activities (Art. 11).

169. The Central Bank Law contains provisions relating to organisation of banks in the UAE. The entities governed by this law<sup>44</sup> are subject to obligations of keeping of accounting records, auditing thereof and submission of auditor's report to the Central Bank. Branches of foreign banks must maintain separate accounts for all their operations in the UAE including the balance sheet and profit and loss accounts (Art. 102). Every commercial bank operating in the UAE is required to appoint an auditing company for auditing its accounts (Art. 103). These requirements ensure that the licensed and regulated entities maintain adequate accounting records.

170. Companies listed on the UAE stock market are obliged to notify and provide interim as well as annual financial reports to the SCA and the stock market (Art. 36(7) SCA and Decision 3/R/2000 concerning the Disclosure and Transparency). These reports are required to be prepared in accordance with the international accounting standards issued by the International Accounting Standards Board. These reports include the board of director's report, audit report, balance sheet, income statement, cash flow statement, changes in equity statement, and the notes to the financial statements.

171. The keeping of accounting records in respect of foreign trusts, for which a trustee is resident in the UAE or which are administered in the UAE, is not ensured. The keeping of accounting records by waqfs is ensured due to strict control and supervision by the Board of Directors. The effectiveness of the control in ensuring the keeping of accounting records by waqfs will be followed up during the Phase 2 review of the UAE.

172. Associations must keep at their headquarters account books of revenue and expenses corroborated with the accredited documents (Art. 22 Law

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44. Commercial banks, investment banks, financial institutions, monetary and financial institutions, representative offices, public credit institutions, private savings and pension funds and insurance and re-insurance companies (Art. 77).

2/2008). Auditors are obliged to verify that the accounting records kept by associations are in accordance with the generally accepted accounting standards (Ministry of Economy Circular 16 July 2002).

173. All financial institutions in the UAE (including foreign institutions) must record all transactions against the relevant account and these transactions must appear on the account statement (Art. 14 Central Bank Law). Thus, whenever a legal or natural person in the UAE, including a foreign company, comes into contact with a financial institution, transaction records are maintained.

174. Falsification of accounts, balance sheet or profit and loss account with an intention to conceal the real financial position of the company by any manager, member of the board of directors or liquidator may be penalised by either or both of the penalties in the form of a prison sentence for a period of not less than three months and not more than two years or a fine from AED 10 000 to 100 000 (EUR 1 900 to 19 000). An auditor who intentionally prepares a false report on the result of an audit or who intentionally conceals substantial facts from the report may also be subject to similar penalties (Art. 322 CCL).

## Conclusion

175. Relevant entities in the UAE are obliged to keep reliable accounting records consistent with the international standard. There are however no obligations which ensure that accounting records are kept where a foreign trust has a trustee or administrator resident in the UAE.

## *Free zones*

### DIFC

176. All companies in the DIFC must keep accounting records which are sufficient to show and explain their transactions so as to disclose with reasonable accuracy the financial position of the company at any time and enable the directors or managers to ensure that any accounts prepared by the company complies with the requirements of the companies law (Art. 101 DCL). The accounts must be prepared in accordance with accounting principles or standards approved by the Registrar or prescribed in the regulations and must show a true and fair view of the profit or loss of the company for the period and of the state of the company's affairs at the end of the period (Art. 103). Articles 102 to 113 contain provisions dealing with the approval of accounts, audit of accounts and filing of a copy of accounts and auditor's report with the Registrar.

177. The obligations of the DCL concerning accounts and audit do not apply to entities performing financial services and authorised by the DFSA as per provisions of Regulatory Law 2004 (DFSA Law). The DFSA has made rules concerning accounting records applicable to all entities, including foreign companies, supervised by them (Part 8 DFSA Rule Book General Module (GEN) Accounting and Auditing). These entities must prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards. Pursuant to Article 8.3.1 of the GEN, every authorised person is obliged to keep accounting records which are sufficient to show and explain transactions and are such as to be capable of disclosing the financial position on an ongoing basis and record the financial position at its financial year end. Further, Islamic financial institutions are obliged to prepare and maintain all financial accounts and statements in accordance with the Accounting and Auditing Organisation for Islamic Financial Institutions (s. 4.3 IFR Module).

178. The DCL does not itself prescribe account keeping requirements for recognised companies (foreign companies). A foreign company is however obliged to submit to the Registrar on an annual basis a copy of its annual report filed in the jurisdiction of incorporation (Art. 116(d)). In the absence of account keeping requirements to the international standard in the jurisdiction of incorporation, the availability of accounting records of foreign companies operating in the DIFC is not ensured.

179. Failure to keep accounting records by companies as prescribed in Article 101 is punishable by a fine of USD 15 000. Failure to maintain accounting records for 10 years may be fined by an amount of USD 2 000.

180. The accounting record requirements for limited liability partnerships are similar to that of DIFC companies, and accounts must be prepared in accordance with accounting principles or standards approved by the Registrar (Art. 26 LLPL). A limited partnership's accounting records must show and explain transactions and accounts must also disclose with a reasonable accuracy at any time the financial position of partnerships (Art. 18 LPL). For general partnerships, the accounting records must show and explain its transactions and show a true and fair view of the profit or loss for the period it covers and state of financial affairs at the end of the period (Art. 19 GPL). Schedule 2 of the DIFC General partnership Law prescribe a penalty of USD 15 000 for failure to keep accounts or prepare accounts as required. Schedule 2 of DIFC Limited Partnership Law also prescribes fine of USD 15 000 for the defaults concerning keeping or preparing accounts. In case of limited liability partnerships, no fines are stipulated for failure to cause accounts to be prepared or failure to prepare true and fair accounts.

181. In respect of DIFC trusts and foreign trusts, the books and records of a trust service provider (TSP) must be sufficient to demonstrate adequate

and orderly management of clients' affairs (COB Rule 5.9.1). A TSP, who is licensed by the DFSA, must prepare proper accounts at regular intervals on the trusts and underlying companies administered for its clients. Where trusts and underlying companies are governed by the laws of a jurisdiction that require accounts to be kept in a particular form, the TSP must meet those requirements. In any case, the TSP's books and records must be sufficient to allow the recreation of the transactions of the business and its clients and to demonstrate what assets are due to each client and what liabilities are attributable to each client. Further, section 9.2 of the CIR Module requires the fund manager of a domestic fund to prepare and maintain financial accounts and statements.

### Other free zones

182. The accounting obligations in the four major free zones (not including the DIFC) are:

- in the Jebel Ali Free Zone, the requirements include: all companies and establishments must keep accounting records sufficient to show and explain transactions and be such as to disclose with a reasonable accuracy, at any time, the financial position of the company or establishment and enable the directors to ensure that the balance sheet and profit and loss account of the entity comply with the requirements of the regulations (Art.40 Implementing Regulation 1/99 and Art.39 Implementing Regulations 1/92); a record of assets and liabilities and entries from day to day of all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place (Art.41 Implementing Regulation 1/99 and Art.40 Implementing Regulations 1/92); directors must prepare a balance sheet and profit and loss account for each financial year (Art.45 Implementing Regulation 1/99 and Art.44 Implementing Regulations 1/92); auditors must be appointed and must give their opinion about the preparation of accounts including whether a true and fair view is given in the balance sheet and profit and loss account (Art.51 Implementing Regulation 1/99 and Art.50 Implementing Regulations 1/92);
- the account keeping obligations which apply to companies and establishments formed in the Dubai Airport Free Zone mirror the obligations in place for entities in the Jebel Ali Free Zone (Arts.40 to 53 of Implementing Regulation 1/2000 and Arts.39 to 52 of Implementing Regulations 1 of 1998);
- no obligations regarding keeping of accounting records have been prescribed for the limited liability companies and establishments in

the Fujairah Free Zone. The Fujairah Free Zone Authority is empowered to issue regulations concerning accounting records but has not yet done so; and

- international business companies in the Ras Al Khaimah (RAK) free zone must keep at their registered offices proper books of accounts in relation to all sums of money received and disbursed by the company along with proper justification thereof and the assets and liabilities of the company (Arts.99 to 104 Regulations on the International Business Companies 2006). International companies in the RAK Free Zone must maintain accounting records sufficient to: (i) show and explain all transactions; (ii) disclose with reasonable accuracy at any time the financial position of the international company; (iii) enable the directors to ensure that any accounts prepared by the international company comply with the regulations (Art.62 RAK International Companies Regulations 2006). They must also keep a profit and loss account (Art. 64). Non-compliance is sanctionable with a fine of AED 2 000 (EUR 380) (Schedule 1).

183. Article 49 of Regulation 1/92 and Article 52 of Regulation 1/99 in the case of Jebel Ali Free Zone and Art.49 of Regulation 1/98 and Art. 50 of Regulation 2000 in case of Dubai Airport Free Zone oblige the establishments/companies to deliver a copy of annual accounts to the respective free zone authorities within 3 months of the end of the financial year.

### *Conclusion*

184. All entities incorporated in the DIFC are obliged to keep reliable accounting records consistent with the standard. Foreign companies regulated by the DFSA are also required to keep accounting records consistent with the international standard. Other foreign companies in the DIFC do not have such an obligation. For them, the accounts kept are in accordance with their “home” country requirements. Foreign companies in the other free zones are not required to keep accounting records. There are obligations which ensure that accounting records are kept with respect to DIFC trusts and a foreign trust having a trustee or administrator resident in the DIFC. Entities in the Jebel Ali Free Zone, the Dubai Airport Free Zone and the RAK Free Zone are required to maintain accounting records consistent with the international standard. The regulation setting out the accounting obligations for entities in the Fujairah Free Zone has not yet been promulgated.



## *Underlying documentation (ToR A.2.2)*

### *UAE*

185. The Commercial Transactions Law obliges traders, including all domestic companies and partnerships, to keep exact copies of the originals of all correspondence, telegrams, invoices and other documents related to their trade (Art. 30). Article 26 of Resolution 193 outlines the information on the financial and accounting transactions to be kept by associations and includes all papers, supporting documents and financial statements. These obligations are consistent with the international standard.

### *Free zones*

#### *DIFC*

186. Part 9 of the DCL contain provisions concerning accounts and audit. Article 6 of the DIFC Companies Regulation obliges a company to prepare accounts and financial statements of company in accordance with the IFRS, other than cases where deviations are allowed by the Registrar. Partnerships are obliged to keep accounting records sufficient to show and explain their transactions (Art. 19 GPL and Art. 18 LPL). The accounting requirements for limited liability partnerships are similar to those for companies. All DFSA supervised entities are obliged to prepare and maintain all financial accounts and statements in accordance with GEN Rules (Part 8). The DIFC laws and regulations governing various entities do not explicitly require DIFC entities to keep and maintain underlying documentation, such as invoices, contracts, *etc.* and required documents do not reflect details of: (i) all sums of money received and expended and the matters in respect of which receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity and arrangement.

#### *Other free zones*

187. In the laws of the four free zones examined in the course of this review, only the entities in the Ras Al Khaimah Free Zone are explicitly required to keep underlying documentation related to their accounting records. All sums of money received and disbursed by the company must have proper justification thereof (Art. 99 RAK International Business Companies Regulations 2006). It is recommended that the UAE ensure that all entities operating in all free zones are required to maintain full underlying documentation for their accounting records consistent with the standard.

### *Conclusion*

188. All relevant entities in the UAE have obligations to keep underlying documentation consistent with the standard. However, the same is not ensured for entities in the DIFC and other free zone entities. Obligations are in place for trusts, including foreign trusts, in the DIFC to maintain underlying documentation for their accounting records. There are no obligations for foreign trusts with an administrator or trustee in the UAE or in the free zones to maintain underlying documentation.

### ***5-year retention standard (ToR A.2.3)***

#### *UAE*

189. All traders including entities covered under the Commercial Companies Law are obliged to keep commercial books and the documents supporting accounting entries for a minimum period of five years commencing from the date the pages of the commercial book are filled up (Art. 31 CTL). All correspondence, invoices and other documents (underlying documentation) must be kept for a minimum period of five years from the date of issue or receipt of such documents (Art. 30).

190. Auditors are obliged to maintain the records, files and data of the companies under audit for a period of no less than five years (Art. 33 Auditors Law).

191. Claims against the liquidator of a company may be made for five years from the registration of liquidation (Art. 317 CCL). Accordingly, the liquidator would in practice keep records of the liquidated company for at least five years from the liquidation so as to defend claims against him. Further, under the Civil Code, no claim can be made against a legal or natural person after 15 years. Therefore, to defend a claim, it may in practice be necessary to maintain accounts and documents for 15 years.

192. Banks are obliged to retain transaction data for a minimum of five years and account opening data must be kept for five years from the date of closure of the account (Art. 21 Central Bank Regulation 24/2000).

#### *Free zones*

#### **DIFC**

193. Companies' accounting records must be preserved for at least ten years from the date to which they relate (Art. 101(2) DCL). Authorised firms supervised by the DFSA must retain accounting records for ten years from the date to which they relate (Art. 8.3.3 GEN Module). Similarly, accounting

records must be preserved for ten years by limited liability partnership (Art.26(2) LLPL). However, no similar account retention requirement is prescribed for general partnerships and limited partnerships. All DFSA-authorized firms, irrespective of legal nature, are required record to retain accounting records for at least 10 years. DFSA-regulated trust service providers must maintain accounting records for each trust for a minimum of six years (DFSA Rulebook GEN 2.6 read in conjunction with GEN 5.9).

### *Other free zones*

194. Regulations governing companies operating in the free zones require keeping of accounting records at the entity's registered office in the free zone but the retention period for maintaining these accounting records is not always explicitly specified. Offshore companies established pursuant to the JAFZA Offshore Companies Regulations must maintain accounting records for at least 10 years from the date on which they are made (Art. 58). A monetary penalty of AED 2 000 (EUR 380) is prescribed for defaults by offshore companies in the JAFZA Free Zone concerning keeping and retaining accounting records. International companies in the RAK Free Zone must maintain accounting records for at least seven years from the date on which they were drawn up (Art.63 RAK International Companies Regulations 2006). Non-compliance with this retention requirement is sanctionable by a fine of AED 2 000 (EUR 380) (Schedule 1).

### **Conclusion**

195. Accounting records must be maintained for at least five years by all relevant entities in the UAE. Companies, limited liability partnerships and trust service providers in the DIFC must also maintain accounting records for at least five years. However, general partnerships and limited partnerships and foreign companies in the DIFC, other than those regulated by the DFSA, and many entities in the free zones do not have explicit retention periods attached to obligations to retain accounting records.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendation
Foreign companies in the DIFC, other than those regulated by the DFSA, and in other free zones are not obliged to keep accounting records consistent with the standard. Further, entities in the Fujairah Free Zone are not obliged to keep accounting records.	The UAE should ensure that complete and reliable accounting records consistent with the standard are required to be kept by all entities in the free zones, including foreign companies, for at least five years.
Entities in the DIFC and the other free zones are not obliged to maintain underlying documentation for their accounting records.	The UAE should oblige all entities in the free zones to maintain full underlying documentation in line with the international standard for at least five years.
UAE and free zones legislation (with the exception of the DIFC) do not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with a resident administrator or trustee.	The UAE and free zones laws should expressly provide for keeping of complete accounting records, including underlying documentation, for at least five years for foreign trusts with resident administrators or trustees.
General partnerships and limited partnerships in the DIFC, other than those regulated by the DFSA, and some entities in the other free zones are not obliged to retain their accounting records for at least five years.	The accounting record keeping requirements should ensure that all entities in the DIFC and other free zones maintain accounting records for a minimum five year period.

### A.3. Banking information

Banking information should be available for all account-holders.

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

196. Financial institutions are obliged to identify customers with reference to reliable documentation such as passports and must retain true copies of the identity documents produced (Art. 3.1 Central Bank Regulation 24/2000). Opening accounts with assumed names or numbers is expressly prohibited (Art. 4). Where the customer is a legal person; a copy of its government-issued

trade license must be obtained. For a customer which is a publicly listed company, the institution must keep a record of the names and addresses of shareholders who own an aggregate of 5% or more of the shares of the company. This regulation further provides that, where the customer is a partnership, the names and addresses of all partners must be obtained. Central Bank Regulation 24/2000 is supported by Central Bank Circular 14/93, which provides that when identifying customers, financial institutions must obtain account holders' full names, addresses, and places of employment.

197. Financial institutions are required to maintain adequate accounting records and statements (Art. 6 Central Bank Law). Branches of foreign institutions are subject to similar requirements. Further, institutions must be able to “reconstruct the individual transactions undertaken, at the request of the relevant authorities (Art. 18.1 Central Bank Regulation 24/2000). It is important that a database is available and all transactions are individualised and booked in the customer’s account. Further, all transfers of funds must pass through an account, be registered against that account and appear on the account statement (Art. 14).

198. Obligations to maintain full transaction records are further detailed in Central Bank Regulation 24/2000, which provides that financial institutions must keep information on the volume of funds flowing through each account, the origin of funds, the form of funds deposited (e.g. cheque or cash), the identity of the person making the transaction and the destination of the funds (Art. 19). Transaction records must be retained for five years and account opening data is required to be maintained for five years from the date of closure of the account (Art. 21). Banks must also maintain correspondence, statements and contract notes on transactions and should be able to respond to the relevant authority’s requests in a timely manner (Art. 18.2).

199. The UAE and the DIFC allow Islamic finance business subject to licensing. This business is carried out as per Sharia law and supervised by Sharia Board appointed by the licensed institutions. The provisions of AML laws concerning customer due diligence apply equally to Islamic banking.

200. Any violation by a financial institution of the provisions of the Central Bank Law or of any regulations, circulars or instructions issued in accordance with that law is punishable by (Art. 112 Central Bank Law):

- warning;
- reduction or suspension of the credit facilities it is licensed to provide;
- prohibition from carrying out certain operations or imposition of restrictions on its operations; or
- de-registration (see also Art. 88).

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

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

## B. Access to Information

### Overview

201. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether UAE's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards that are in place would be compatible with effective exchange of information.

202. The Ministry of Finance (MOF) is the competent authority for exchange of information in tax matters. The UAE authorities rely on the Ministerial Council for Services Circular 454/2010 as providing the MOF authority to implement the exchange of information provisions in international agreements. Income tax or corporation tax is not levied in the UAE, except for companies operating in the oil and gas sector in the Emirates of Abu Dhabi, Dubai, Ras Al Khaimah and Sharjah or branches of foreign banks. The MOF therefore has limited information holdings and it relies on the information held by or obtained by other authorities.

203. The Central Bank is authorised to obtain information from the commercial banks for its monitoring and supervision functions. The establishing laws and regulations of the other relevant authorities, notably including the Ministry of Economy, the Attorney General, the Securities and Commodities Authority, the Dubai International Financial Centre Authority, the DIFC Financial Services Authority and the free zones' authorities do not expressly empower them to obtain information for purposes other than to fulfil their supervisory or regulatory functions. Apart from Circular 454/2010 under which the Ministry of Finance is mandated to co-ordinate with local authorities to gather financial information from foreign companies working in the UAE, there is no provision allowing these authorities to exercise their powers

on behalf of the MOF or to share information with the MOF for the purpose of responding to international requests for information in tax matters.<sup>45</sup> These authorities have a good range of powers to access information, including compulsory powers.

204. Confidentiality of information is protected but can be lifted whenever information, including bank information, is required by law. However, confidentiality provisions in the Central Bank law and the DFSA laws are not explicitly overridden to access banking information for EOI purposes.

205. The UAE has no domestic tax interest requirement with respect to its information gathering for the purposes of international exchange of information pursuant to its DTCs. However, the scope of professional secrecy in the domestic laws of the UAE is broader than the international standard and has the potential to inhibit effective exchange of information.

206. Application of rights and safeguards (e.g. notification, appeal rights) in the UAE does not unduly prevent or delay effective exchange of information.

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

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

### ***Bank, ownership, and identity information (ToR B.1.1) and accounting records (ToR B.1.2)***

207. The Department of International Financial Relations of the Ministry of Finance is the competent authority for the international exchange of information for tax purposes pursuant to double taxation conventions (DTCs) signed by the UAE (Ministerial Decree 196/03/1989). The competent authority is not explicitly authorised to conclude taxation information exchange agreements (TIEAs) and a proposal that the Ministry of Finance be granted the power to enter into TIEAs is now with the Council of Ministers.

208. The UAE authorities have cited a decision (No. 178 of 2011) of the Federal Supreme Court of the UAE which held that, if any bilateral convention is signed by the UAE with any other State, then the provisions of that Convention shall have priority and precedence over national laws, even if it conflicts with the national laws.

45. A proposal is currently before the Council of Ministers to give full power to the MOF to collect information from all entities in the UAE, including the DIFC and the free zones.



209. The Ministerial Council for Services Circular 454/2010 with respect to the UAE's commitment to the principles of transparency and exchange of information for tax purposes refers to Ministerial Council decisions taken on 18 April 2010:

- approval is granted to the Ministry of Finance to follow up the implementation of the G20 resolutions with respect to exchange of information for tax purposes;
- approval is granted to the Ministry of Finance to participate in and join OECD committees for exchange of information; and
- the Ministry is mandated to co-ordinate with local authorities to gather financial information of the foreign companies working in the UAE.

210. The UAE authorities rely on these decisions as providing the Ministry of Finance (MOF) unrestricted authority to implement the exchange of information provisions in international agreements. The UAE authorities have advised that on the basis of this Circular the MOF is authorised to request and obtain any information which may be requested pursuant to the international arrangements with other countries. They consider that the MOF is empowered to either request the information from the concerned government authority<sup>46</sup> or from the company or individual directly. The UAE authorities advise that in practice authorities provide information available with them to the MOF and, if the required information is not available with them, gather the information from the holder of the information by exercising powers available to them under their governing legislation.

211. This Circular does not however grant MOF any access powers. While various supervisory and regulatory authorities do have broad access powers to obtain information from the persons supervised/regulated by them, this Circular does not provide these authorities the ability to exercise their powers on behalf of the MOF or to share information with the MOF for the purpose of responding to international requests for information in tax matters.<sup>47</sup>

212. In the 1960s, four of the Emirates – Abu Dhabi, Dubai, Ras Al Khaimah and Sharjah – issued Income Tax Decrees for the taxation of bodies corporate.<sup>48</sup> These Decrees predate the federation of the United Arab Emirates

46. Including the Central Bank, Attorney General, Securities and Commodities Authority (SCA), and the Ministry of Economy.

47. A proposal is currently before the Council of Ministers to give full power to the MOF to collect information from all entities in the UAE, including the DIFC and the free zones.

48. Abu Dhabi Income Tax Decree 1965, Dubai Income Tax Decree 1969, Ras Al Khaimah Income Tax Decree 1969, and Sharjah Income Tax Decree 1968.

under a provisional written constitution in 1971, and have not been implemented in practice, save in certain defined circumstances. These Decrees provide for some submission of returns to the relevant Director (tax authority) by certain limited classes of entities but this obligation has not been implemented. The Decrees do not provide powers to access information.

### *Bank information – the Central Bank*

213. The UAE Central Bank is the financial sector licensing and regulatory authority and is responsible for implementation of and supervision under the AML and CFT laws. The Central Bank may issue to commercial banks such instructions and recommendations that it deems appropriate to the attainment of its monetary or credit policies and it may take any measures to ensure sound functioning of the banking system (Art. 94 Central Bank Law). The Central Bank may delegate one or more inspectors to ascertain the financial position of a particular bank and its adherence to applicable laws and regulations in the conduct of its business (Art. 100). Commercial banks must allow the inspectors to examine all books, accounts, documents, and papers bearing on his task and must provide him with any information requested on time (Art. 100(2)).

214. The Central Bank Law contains provisions on accounts and statements. Article 105 states:

- the commercial banks shall provide the Bank with statements, information, statistical data and other documents which are deemed necessary for the performance of its tasks;
- the bank may set rules for the compilation of bank credit statistics on a periodical basis; and
- the bank shall specify the nature of these data, statements and information as well as the forms on which they are supplied and the dates by which they are to be submitted. Commercial banks shall submit the above to the Bank in accordance with the latter's instruction.

215. All information submitted to the Central Bank is treated as confidential except for statistical data that may be published on an aggregate basis (Art. 106). The Financial Information Unit (FIU), within the Central Bank, deals with money laundering and suspicious transactions (Art. 7 AML Law). The FIU is authorised to conduct investigations of cases reported to it and provide information to law enforcement agencies to facilitate their investigations (Art. 7). With respect to credit information, Federal Law 6/2010 provides that the Central Bank has direct access to the databases of credit information companies (Art. 13).

216. Currently, the Central Bank Law, the AML/CFT Law and Federal Law 6/2010 do not specifically empower the Central Bank to collect information from commercial banks and financial institutions for purposes other than its own supervision. The UAE authorities have advised that, in practice, the Central Bank provides information to the MOF in order to respond to requests made under EOI agreements. The MOF sends a written request to the Central Bank for the information, providing basic details such as the full name of the individual or company in question, and where available, the relevant bank account number. Upon receipt of such requests, the Central Bank collects the requested information and provides it to the MOF. As this practice is not supported by any legal or regulatory mechanisms, the UAE authorities have advised that amendments have been drafted to the Central Bank Law to specifically provide for this information sharing between the Central Bank and the MOF.

217. Article 11 of the AML law requires that agencies concerned with the licensing and supervision of financial institutions or other financial, commercial, and economic establishments are required to establish appropriate mechanisms to ensure compliance of those institutions with anti-money laundering rules and regulations in the State, including reporting suspicious cases upon detection thereof. The UAE authorities have indicated that the information available under the AML Law to the FIU can be utilised to answer requests of information in tax matters. The authorities are of the view that as the FIU is part of the Central Bank, co-operation between the MOF and the Central Bank includes provision of information from the FIU to the MOF. But, it is unclear under what provisions of law these authorities can obtain information on behalf of the MOF for EOI purposes.

*Information gathering powers of the Ministry of Economy, Attorney General, Securities, Commodities Authority and Insurance Authority*

218. Ownership and identity information for relevant entities subject to registration and other filing obligations is to a large extent available with the Ministry of Economy. The UAE authorities have indicated that, pursuant to Ministerial Council for Services Circular 454/2010 discussed above, the MOF can request ownership and identity information held by the Ministry of Economy. In addition to its role as registrar, the Ministry of Economy is the supervisory authority with regard to the CCL which applies to all companies established in or having their main office in the UAE. The Minister, in co-ordination with other relevant authorities (including the MOF), has the power to monitor all forms of companies and partnerships limited with shares (Art. 318). It may inspect these entities and examine their accounts and it can demand particulars from the board of directors or managers.

219. Pursuant to the Counter-Financing of Terrorism Law (CFT Law), the Attorney General can obtain any data or information regarding the accounts, deposits, trusts, locks, transfers or property movements based on the suspicion of involvement with financing or committing a terrorism offence (Art. 30). The Attorney General can obtain the data and information from the Central Bank or the financial and commercial establishments directly in this regard.

220. The Securities and Commodities Authority (SCA) Board is empowered to compel any person, natural or legal, having a connection with activities in the securities market to submit any information related to his activities (Art. 33 SCA Law).

221. Insurance and re-insurance business can be conducted by a public joint stock company established in the UAE, a branch of a foreign insurance company or by an insurance agent. They are subject to licensing by the Insurance Authority. The Insurance Authority is empowered to verify the company's transactions, records, or documents for carrying out its duty (Art. 36 Federal Law 6/2007 on Establishment of the Insurance Authority and Organisation of the Insurance Operations).

222. The Ministry of Economy, the Attorney General, the Securities and Commodities Authority and the Insurance Authority are empowered to collect information from their regulated entities for purposes of their supervision and monitoring. However, there are no express provisions in the regulating laws underpinning these authorities' ability to exercise their powers on behalf of the MOF or share information with the MOF.

#### *Information gathering powers of DIFC authorities*

223. The DIFC Authority (DIFCA) is responsible for the administration of laws and regulations for non-financial services activities, which are not regulated by the Dubai Financial Services Authority. The DIFCA's Registrar of Companies (ROC) is responsible for administering laws and regulations concerning various types of entities discussed in Part A of the report (Art. 8 DIFC Companies Law). The Registrar may appoint one or more inspectors to investigate the affairs of the company if he considers it necessary or desirable in pursuit of his objectives (Art. 124). The inspectors may require the production of any books and records. The inspectors need to submit a report to the Registrar at the conclusion of their investigations. The Registrar may also issue an order to any person or entity registered in the DIFC to produce any information or document and such persons must comply with the order (Art. 159).

224. The Dubai Financial Services Authority (DFSA) is responsible for administration of laws and regulations for financial services activities. The

DFSA has comprehensive statutory powers to undertake its authorisation, supervision and enforcement functions and can obtain information from a person within the DIFC in connection with its licensing and supervision functions, including the (Part 5 DIFC Law 1/2004):

- power to obtain information and documents from authorised firms (Art. 73);
- power to enter business premises of a person during the course of an investigation for the purpose of inspecting and copying information or documents (Art. 80(1)(a));
- power to require a person to give or procure the giving of information (Art. 80(1)(b));
- power to require a person to produce or procure the production of specified documents relevant to an investigation (Art. 80(1)(c));
- power to require a person to attend a compulsory interview or produce oral evidence relevant to an investigation it is conducting (Art. 80(1)(d)); and
- Article 80(10)(e) requires a person to give the DFSA any assistance in relation to an investigation which the person is able to give.

225. The DFSA has specific statutory authority to exercise its powers at the request, and on behalf, of all civil authorities and enforcement authorities in the UAE or elsewhere. The DFSA may exercise its powers for the purpose of assisting such authorities in the conduct of their regulatory functions. DFSA can also obtain information from third party suppliers, including intermediaries and companies that have accepted outsourced functions for regulated entities (Art. 39 DFSA Law).

226. As noted previously, the UAE authorities have advised that the MOF is authorised by Ministerial Council Circular 454/2010 to request any information from the ROC and DFSA in order to answer EOI requests.

### *Information gathering powers of the free zone authorities*

227. The free zone authorities are likely themselves to have complete ownership information on the entities established in the free zones (see Part A of this report). Accounting information, other than annual reports are not required to be filed with the free zone authorities and would in all instances need to be accessed from the entities themselves.

228. The free zone authorities have powers to supervise and inspect entities operating within the free zones. For example, Jebel Ali Free Zone Authority Implementing Regulation 1/92 provides that entities wishing to

operate in the zone must first obtain permission from the free zone authority (Art. 5); the authority may appoint inspectors to investigate the affairs of any free zone establishment (Art. 60); and inspectors have all powers vested in them by the free zone authority (Art. 60).

229. Identical provisions can be found in the Dubai Airport Free Zone Authority Regulation 1/2000 (Arts.61 to 64). The RAK Implementing Regulation 1/2000 provides the Free Zone Authority with powers to call for documents and to inspect entities operating within the RAK Free Zone (Art. 20). Similarly Articles 105 to 107 of the RAK International Companies Regulations 2006 provides the Free Zone Authority powers to call for documents and for inspection on the affairs of an International Company. However, Fujairah Law 1/2004 does not indicate the access powers available to the authority in this free zone.

230. Companies established in the free zones must have a registered office in the free zone/UAE, which can be the office address of the company's registered agent. Where the registered agent is a lawyer, s/he is protected under federal laws from disclosing information due to legal professional privilege (see further below).

231. There are no express legal provisions empowering the free zone authorities to collect information from their regulated entities for purposes other than their own supervision and monitoring. There is no express provision underpinning these authorities' ability to share information with the MOF. This occurs in practice in implementation of Ministerial Council for Services Circular 454/2010 (see above).

### *Information from auditors*

232. All auditors practicing within the UAE must register with the Ministry of Economy (Federal Law 22/1995 – Auditors Law). Auditors are obliged to keep records, files, and data related to the clients for a period of at least five years from the end of the last fiscal year during which the audit was done (Art. 33). Article 34 provides that, whenever necessary and whenever public interest so requires, the auditor must submit to the competent official authorities any information required by such authorities regarding the companies and institutions audited or being audited by them, after the competent authority has obtained permit for the competent judicial authority.

233. All public joint stock companies and private joint stock companies need to appoint one or more auditors (Art. 144 CCL). Similar obligations apply to limited liability companies and partnerships limited by shares (Arts.253 and 270). Commercial banks must appoint a qualified auditor (Art. 103 Central Bank Law) and all finance companies must appoint a statutory auditor acceptable to the Central Bank (Central Bank Board of Directors

Resolution 58/3/96). Financial and monetary intermediaries are subject to similar obligations (Central Bank Resolutions 126/5/95 and 153/5/97). Investment companies must maintain accounting records for each client and also appoint an auditor (Art. 2.4 Central Bank Resolution 164/8/94).

### *Conclusion*

234. Various supervisory and regulatory authorities have broad access powers to obtain information from the persons supervised/regulated by them. However, there is no provision clearly allowing these authorities to exercise their powers on behalf of the MOF or to share information with the MOF for the purpose of responding to international requests for information in tax matters. The MOF does not itself possess any access powers. With respect to financial information of foreign companies, the MOF has a mandate of the Ministerial Council for Services to co-ordinate with local authorities to gather such information. However, it is unclear how local authorities can assist the MOF in other areas in absence of enabling provisions in their governing statutes for extending such co-operation.

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

235. 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 UAE has no domestic tax interest with respect to its information gathering powers for purposes of international exchange of information in tax matters.

### ***Compulsory powers (ToR B.1.4)***

#### *UAE*

236. A commercial bank’s delay or failure to comply with or respond to any information request from the Central Bank constitutes a breach of its reporting obligations as set out in the Central Bank Law (Arts.107 and 112). The administrative penalties for such breaches include warnings, reduction or suspension of bank’s credit facilities, prohibition or restrictions on carrying out certain operations and deletion of name from the Register of Banks (Art. 8).

237. Failure by a supervised entity to comply with the request for information received from the Securities and Commodity Authority constitutes an offence punishable by imprisonment and/or a fine (Art. 43 Law 4/2000).

238. The Insurance Law empowers the regulatory authority, the Director General or his deputy, to obtain information or data necessary for the performance of their duties. Failure to provide information is sanctionable by a fine of AED 100 000 (EUR 19 000).

239. Any chairman, director, manager, or employee of a financial institution who fails to report to the FIU any act tantamount to money laundering that occurred within their institution may be punished by imprisonment or a fine from AED 10 000 to AED 100 000 (EUR 1 900 to 19 000) (Art. 15 AML Law).

240. Violations of any provisions of the credit information law (Federal Law 6/2010 on Credit Information) attract penalty in the form of imprisonment and/or a fine of no less than AED 10 000 (EUR 1 900) (Art. 18).

241. The breach of any implementing legislation concerning any entity established in the free zone may result into de-registration of the entity. For example, Article 63 of the Implementing Regulation 1/99 issued pursuant to Law 2/1986 issued by the Jebel Ali Free Zone Authority provides for the deregistration of the free zone company which is not carrying on business or operation. Free zone authorities do not have search and seizure powers.

242. Non-compliance with the provisions of the Auditors Law is punishable by a fine ranging between AED 5 000 to AED 10 000 (EUR 950 to EUR 1 900) (Art. 47).

243. Law 39/2006 concerning international judicial co-operation in criminal matters obliges the judicial authorities to co-operate with foreign authorities in criminal matters, which includes providing them any such information as may be required to facilitate their criminal investigations. This law sets out the mechanisms and procedures whereby foreign authorities may request and obtain depositions of witnesses (Arts.46 and 60). Taking witness statements by prosecution authorities is governed by the Criminal Procedure Code (Arts.88 to 93).

244. Law enforcement authorities have powers to search, seize and retain records in accordance with the provisions in the Criminal Procedure Code. It is unclear whether these law enforcement authorities, including the Police, can use these powers to compel production of information required to meet the information requests in tax matters from the foreign competent authorities.

### *DIFC*

245. Chapter 3 of the DFSA Law deals with provisions of compliance with requirements to the DFSA. The DFSA is vested with enforcement powers to ensure compliance with its laws and rules. Such powers include:



- imposition of conditions or restrictions on a license or registration;
- withdrawal of a license or registration;
- administrative fines or censures; and
- injunctive orders issued by the DIFC Court.

246. The powers of the DFSA to obtain information (Art. 73) or obtain a report on any matter (Art. 74) and powers to obtain information for investigation (Art. 80) can be enforced by injunction issued by the Court (Art. 84). The DFSA may also request an order from the Court to search the premises for information that was requested but not provided. Provisions concerning the appointment and role of the Registrar are contained in Part 2 (Arts.7 and 8) of the DCL. The provisions authorise the Registrar to gather information from the registered entities for the purpose of registration.

### *Other free zones*

247. The Free Zone Authorities have powers to fine entities for non-compliance with their obligations:

- the affairs of a free zone establishment in the Jebel Ali Free Zone can be investigated by competent persons appointed by the Free Zone Authority (Art. 60 Implementing Regulation 1/92). Similar provisions of investigation are stipulated for free zone companies and offshore companies (Art. 61 Implementing Regulation 1/99 and Article 102 of Offshore Companies Regulations 2003);
- the Dubai Airport Free Zone Authority has been vested powers of investigation concerning free zone establishment (Arts.60 to 63 of Implementing Regulation 1/1998). Similar powers concerning free zone companies are stipulated in Articles 61 to 64 of implementing regulations 1/2000. Defaults by a free zone establishment or its owner concerning implementing regulations may attract sanctions in the form of a fine of AED 10 000 (EUR 1900) per day (Art. 70). Defaults concerning non-compliance of the provisions of implementing regulations by a free zone company are liable to a fine ranging from AED 500 to AED 5000 (EUR 95 to EUR 950) per day;
- RAK International Companies Regulations 2006 also empowers the Registrar to appoint inspectors to investigate the affairs of an international company (Art.105). An international company can also be dissolved if it is acting in contravention of the regulations (Art. 108). An offshore company established in accordance with the RAK Regulations on International Business Companies 2006 can be

deregistered by the Registrar for the failure of company to fulfil the requirements prescribed under the regulations (Art. 128); and

- neither Law 1/2004 nor the Operational Manual specifies the penalties applicable to entities not providing information to the Fujairah Free Zone Authority. The Fujairah Free Zone Authority advises that a range of penalties has been established and are applied in practice but these have not been outlined in either legal document.

248. Companies established in the free zones must have a registered office in the free zone/UAE, which can be the office address of the company's registered agent. Where the registered agent is a lawyer, s/he is protected under federal laws from disclosing information due to legal professional privilege (see further below).

### *Conclusion*

249. Regulatory authorities in the UAE, DIFC and other free zones, with the exception of the Fujairah Free Zone, have powers to impose fines for non-compliance with obligations stipulated in the respective laws and regulations. Investigations can be ordered for specific non-compliance. It is unclear that that these powers may be used for EOI purposes.

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

#### *UAE*

250. Article 105 of the Central Bank Law requires commercial banks to provide the Central Bank with statements, information, statistical data and other documents necessary for the performance of its tasks. All information submitted to the Central Bank must be treated as confidential, except for statistical data (Art. 106). Provisions of confidentiality contained in articles 29 and 106 prohibit the Central Bank to disclose any information to other persons.

251. Confidentiality provisions relating to bank information are contained in Article 29 of the Central Bank Law. Pursuant to this, any member of the Board of Directors, manager, or any staff member of the Central Bank is prohibited from disclosing any information he may acquire during performance of his duties concerning the affairs of the bank, or its customers, of the affairs of the banks and any other institutions which are subject to supervision by the Central Bank, unless such disclosure is required by law. Contravention of this provision is punishable by imprisonment for a period not exceeding three months and a fine not exceeding AED 5 000 (EUR 950), or either of these, and the person must be dismissed from service.

252. The Securities and Commodities Authority Law requires brokers and auditors, or whoever is involved in the execution of the securities market operations, to maintain the confidentiality of the client names and conform to the ethics of the profession. Failure by any market participant to respect professional confidentiality and secrecy of client names attracts a penalty in the form of imprisonment and a fine not exceeding AED 100 000 (EUR 19 000) or either of these (Art. 40 SCA Law). However, entities in the securities sector must provide the Securities and Commodities Authority with any requested information related to activities in the securities market (Art. 33).

253. Experts, advisors, actuaries or auditors appointed to evaluate the financial position of any insurance companies are prohibited from disclosing any information without the written approval of the Insurance Authority (Art. 36.5 Insurance Law).

254. “All agencies<sup>49</sup> dealing with AML matters must treat the information they have obtained in respect of criminal offence, as confidential, and must refrain from breaching confidentiality except to the extent required for use in investigations, legal actions or law suites relation to the violations of the [AML] law” (Art. 12 AML Law). Similarly, “all competent bodies in applying the provisions of law must keep information obtained in the execution of its provisions confidential and must not reveal it, except to the extent as necessary for use thereof, in respect of inquiry or investigation in the offences provided in the law” (Art. 38 CFT Law). Article 7 authorises the FIU to exchange information it may have in relation to suspicious transactions with other counterparts in other countries, in accordance with any international treaties to which the UAE may be a party, or on the basis of reciprocity.

### *DIFC*

255. Banking businesses are under a duty of confidentiality to their customers (Arts. 37 and 150 DIFC Law 5/2005) but may disclose information if such disclosure is required by law or if the customer has consented to its disclosure (Art. 37).

256. Public authorities, including the DFSA, as well as their employees and agents cannot disclose confidential information to third parties without having the legal authority to do so (Art. 379 Penal Code). The law prescribes severe penalties on public officers if they disclose such information in cases other than those permitted by the law.

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49. Article 11 of the AML Law refers to agencies concerned with the licensing and supervision of financial institutions or other financial, commercial and economic establishments who are required to establish appropriate mechanisms to ensure compliance of those institutions with AML rules and regulations.

257. The DFSA is required to keep confidential any confidential information obtained, disclosed or collected by it, in the course of performing its functions (Art. 7 Dubai Law 9/2004). Information may not be disclosed to third parties except in circumstances permitted by DIFC laws and regulations (Art. 37(5) DIFC Law 5/2005). The DFSA, its employees, agents and other associated persons are prohibited from disclosing confidential information<sup>50</sup> unless they have the consent of the person to whom the duty of confidentiality is owed or unless the disclosure is expressly authorised (Art. 38(1) DIFC Law 1/2004).

258. DFSA Policy Statement 1/2010 lays down the scope of disclosure of confidential regulatory information pursuant to Articles 38 and 39 of the Regulatory Law 2004. The DFSA discloses confidential information to fulfil a DFSA regulatory purpose or legal obligations. It may also disclose confidential information to domestic and foreign regulators and authorities if it is for purpose of assisting them in the performance of their specific regulatory and enforcement functions regarding financial services and criminal investigation.

### *Free zones*

259. There are no specific secrecy provisions in the implementing regulations of the free zones which will inhibit effective exchange of information in respect of free zone entities.

### *Conclusion*

260. The confidentiality provisions in various laws, including the Central Bank Law prohibit disclosure of bank information unless such disclosure is required under any law. Similarly, in the DIFC, confidentiality is protected, including confidentiality of bank information, unless disclosure is necessary to fulfil a DFSA regulatory purpose or legal obligations. In the absence of express provisions enabling the MOF to obtain information for the purposes of exchange of information or enabling the relevant authorities to obtain information on behalf of the MOF, the confidentiality provisions in different laws of the UAE are likely to hinder effective exchange of information. It is recommended that the UAE ensures that confidentiality provisions in the UAE laws are explicitly overridden for gathering information for EOI purposes.

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50. Article 38(2) of DIFC Law 1/2004 provides that information is confidential when: it is received by the DFSA or any of its officers, employees or agents in the course of performance of a function under the Law or under any other legislation administered by the DFSA; and it has not been made available to the public in circumstances in which disclosure is not prohibited under such Law or other legislation.

### *Professional privilege*

261. Lawyers are not permitted to reveal any confidential information which is relayed in the course of professional practice (Art. 42 Federal Law 23/1991). Additionally, a lawyer cannot give evidence with regard to any information or events which comes to his knowledge in the course of his professional practice, unless he obtains consent from the person to whom the information applies and who had provided the information or disclosure would result in preventing the commission of a crime (Art. 41). Circular 8 of 2010 issued by the Central Bank provides an exception to this; where there may be grounds for suspicion in relation to the source of the funds in a transaction by a client, the lawyer is obliged to report any such suspicions to the FIU.

262. The scope of professional privilege is very broadly defined under the law, as it applies to all information to which lawyers become privy as a result of their profession.<sup>51</sup> This broad scope is of concern as lawyers in the UAE can act as company service providers or trustees in the domestic sector, commercial free zones and also in the DIFC.

263. Federal Law 22/1995 regulates the auditing profession in the UAE. No natural or legal person can be an auditor unless registered with the Ministry of Economy. Auditors provide accounting services and can also act as company service providers. These professionals may also provide services in the areas of finance and commerce and can act as agents of foreign companies. Auditors are required to undertake an oath including that they will not reveal the secrets of clients or any information which is entrusted by virtue of their work except “within the limits stipulated in the existing Laws and Regulations” (Art. 18). In this regard, when necessary, and in view of promoting public interest the auditor must provide government authorities with any

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51. Pursuant to paragraph 3(c) to Article 26 of the OECD Model Tax Convention, a requested state is allowed to not provide information which would disclose professional secrets. Commentary on this paragraph notes that too wide an interpretation of “professional secrets” would in many cases render ineffective the exchange of information. The scope of protection afforded to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients should be narrowly defined. Further, such protection does not attach to documents or records delivered to an attorney in an attempt to protect such documents or records from disclosures required by law. Additionally, such protection is not available if attorneys act in different capacity, such as nominee shareholders, trustees, settlors, company directors or under a power of attorney to represent a company in its business affairs. The commentary suggests that such protection can be limited to communications between a client and attorney which are produced for the purpose of seeking or providing legal advice or produced for the purposes of use in existing or contemplated legal proceedings.

information required by them in respect of companies and establishments for which they have conducted or are still conducting an audit, provided that the authorities obtain authorisation for that purpose from a judicial authority (Art. 34). Therefore, MOF after obtaining an authorisation from the judicial authority can obtain information from auditors. The UAE authorities have indicated that providing information in accordance with the international agreement is considered promoting public interest.

264. Where the DFSA requires a lawyer to give information or to produce a document or to answer a question, and the giving of the information or the production of the document or the answer to the question would involve disclosing a privileged communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless (Art. 82 (2) DFSA Law):

- the person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is under official management or is being wound up, the official manager or liquidator of the body as the case may be consents to the lawyer complying with the requirement; or
- otherwise, the person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.

265. The DFSA Law defines privileged communication as a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality. As any other advice given by the lawyer to a client is also covered by definition of privileged communication, this suggests the scope of legal privilege is wider than the international standard and this has the potential to hinder effective exchange of information.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The ability of the Ministry of Finance to access foreseeably relevant information for exchange of information purposes, either directly or via other agencies, is unclear and there are no provisions in law providing authorities with the power to collect information on behalf of the Ministry of Finance for the purpose of responding to EOI requests.	The UAE should introduce express statutory provisions ensuring the authorities have access to information for exchange of information purposes.
Confidentiality provisions in the Central Bank law and the DFSA laws are not explicitly overridden to access banking information for EOI purposes.	The UAE should ensure that the confidentiality provisions in the UAE laws are overridden to permit access to banking information for EOI purposes.
The scope of legal professional privilege appears to extend beyond that provided for in the international standards.	The UAE should ensure the application of legal professional privilege does not limit or prevent it from responding to a request for information made pursuant to an international exchange of information request.

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

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

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

266. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chances of success of the investigation conducted by the requesting jurisdiction).

267. The MOF is not statutorily obliged to inform the person concerned of the existence of an exchange of information request or the intended exchange of information related to that person. Nor is it obliged to inform the person concerned prior to contacting third parties to obtain information.

268. Article 27 of the Civil Code prohibits the application of a law where such provisions are contrary to Shariá law, public order or morals. Article 31 of the Constitution guarantees confidentiality of any communication involving the Federation and therefore, the information concerning taxpayers is protected from disclosure not authorised by law.

**Determination and factors underlying recommendations**

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



## C. Exchanging Information

### Overview

269. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the UAE, the legal authority to exchange information is derived from double tax conventions (DTCs). This section of the report examines whether the UAE has a network of information exchange that would allow it to achieve effective exchange of information (EOI) in practice.

270. The UAE has a broad treaty network that provides for exchange of information in tax matters. It has signed 60 DTCs, of which 53 are in force (see Annex 2). The Ministry of Finance at present is authorised to negotiate and enter into DTCs only and UAE authorities indicated that the MOF is being mandated by the Council of Ministers to enter into TIEAs, if such request is received from any jurisdiction. The UAE is encouraged to establish a legal basis for entering into TIEAs as early as possible. International treaties, such as DTCs, are ranked at higher level than the national law and in the event of any conflict between the DTC ratified by the Union and national law; DTCs have priority and precedence over national laws.

271. The large majority of the UAE's DTCs contain provisions which are in line with the international standards.<sup>52</sup> However, the UAE is not able to comply fully with the terms of all its 60 DTCs due to domestic law restrictions on the competent authority's powers to access information for exchange of information purposes.

272. Exchange of information articles in the UAE's DTCs contain confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the DTCs.

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52? 11 (of 60) DTCs not fully consistent with the international standards are with: Austria, Czech Republic, Indonesia, Malaysia, Morocco, Mozambique, Poland, Romania, Singapore, Thailand and Ukraine.

273. The UAE’s network of DTCs covers its relevant partners, including the GCC countries and important economic partners. Nine more DTCs have been initialled and the UAE is currently in the process of negotiating an additional five DTCs, all of which will incorporate provisions that allow the UAE to exchange information according to the international standard.

274. There are no legal restrictions on the ability of the UAE’s competent authority to respond to request within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

### C.1. Exchange of information mechanisms

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

275. Pursuant to Article 47(4) of the UAE Constitution, the Supreme Council of the Union (consisting of the Rulers of the seven individual Emirates) ratifies international agreements including the EOI agreements signed by the UAE’s duly authorised representative. The ratification is affected by the promulgation of a Presidential Decree. The Ministry of Finance (MOF) is authorised to negotiate and enter into bilateral treaties on the avoidance of double taxation with Arab and foreign States (Ministerial Decree 196/03/1989). The MOF is not currently authorised to enter into TIEAs but a proposal that the Ministry be granted this power is now with the Council of Ministers.

276. The UAE has signed 60 DTCs that provide for the exchange of information, as of November 2011. The first agreement was signed with France in 1989 and the latest was signed with Kenya on 21 November 2011.

#### *Foreseeably relevant standard (ToR C.1.1)*

277. 46 of the UAE’s 60 DTCs provide for exchange of information that is “necessary”<sup>53</sup> for carrying out the provisions of the Convention or of the domestic laws of the Contracting States. The UAE’s 14 DTCs (or protocols), with Cyprus,<sup>54</sup> Estonia, Georgia, Germany, Guinea, India, Ireland, Kazakhstan,

53. The term “necessary” is recognised in the commentary to Article 26 of the *OECD Model Tax Convention* to allow for the same scope of exchange as does the term “foreseeably relevant”. See Article 1 of the *OECD Model TIEA*, para.5.4 of the Revised Commentary (2008) to Article 26 of the *UN Model Convention* and para.9 of the Commentary to Article 26 of the *OECD Model Convention*.

54. 1. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and

Kenya, the Netherlands, Portugal, Spain, Switzerland and Vietnam, follow the updated *OECD Model Tax Convention on Income and on Capital* and provide for exchange of information “foreseeably relevant” for carrying out the provisions of the Convention or of the domestic laws of the Contracting States. In view of this, these DTCs meet the “foreseeably relevant” standard.

278. Eight of the UAE’s older DTCs, with Austria, Indonesia, Malaysia, Mozambique, Poland, Romania, Thailand and the Ukraine, limit the exchange of information to that necessary for carrying out the provisions of the Convention, not allowing for exchange of information for the administration or enforcement of the domestic laws of the Contracting States. As no obligations arise to exchange information for the implementation of domestic laws, these agreements are not fully consistent with the international standard and it is recommended that the UAE work with relevant treaty partners to bring these agreements to the standard.

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

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

280. All of the UAE’s DTCs except those with Armenia, Austria, Bangladesh, Canada, Cyprus<sup>55</sup>, Finland, India, Indonesia, Korea, Luxembourg, Mongolia, Malaysia, Mozambique, Pakistan, Poland, Romania, Singapore, Thailand, Tunisia, Turkey, Ukraine, and Vietnam provide that exchange of information is not restricted by Article 1. Article 1 of the treaty generally defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. The absence of this reference to Article 1 in these treaties would mean that the exchange of information is limited to the residents of the contracting states.

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equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

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

55. See previous footnote.

281. However, the EOI provisions in the UAE's DTCs with Armenia, Bangladesh, Canada, Cyprus<sup>56</sup>, Korea, Luxembourg, Mongolia, Pakistan, Singapore, Tunisia, Turkey and Vietnam apply to "carrying out the provisions of the Convention or of the domestic laws (national laws) of the Contracting States concerning taxes covered by the Convention insofar as the taxation there under is not contrary to the Convention". The treaty with Finland provides for carrying out the provisions of the agreement or for the prevention of the fiscal evasion. Further, the treaty with India provides for exchange of information for carrying out the provisions of convention or prevention or detection of evasion of taxes which are subject of the agreement. As domestic laws are applicable to residents and non-residents equally, even in absence of reference to Article 1, the contracting states are under obligations to exchange information in respect of all persons.

282. Exchange of information in respect of all persons may not be possible under UAE's DTCs with Austria, Indonesia, Malaysia, Mozambique, Poland, Romania, Thailand, and the Ukraine for the reasons that these provide for the exchange of information for carrying out the provisions of the Convention only.

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

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

284. Article 26(5) of the OECD *Model Tax Convention* states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership

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56. See previous footnote.

interests in a person<sup>57</sup>. Except for the DTCs with Cyprus<sup>58</sup>, Estonia, Georgia, Germany, Greece, Guinea, Ireland, Kazakhstan, Kenya, the Netherlands, Portugal, Spain, Switzerland, and Venezuela, the other 46 DTCs entered into by the UAE do not contain such a provision.

285. As mentioned in section B.1 of this report, there are confidentiality provisions in the UAE law which are not explicitly overridden for EOI purposes. There may also be domestic limitations in place in the laws of some of these partners.<sup>59</sup> The peer review of Austria, Indonesia, Malaysia and Singapore has identified deficiencies in their legal framework restricting exchange of banking information to the standard. Application of the reciprocity principle also means the UAE likely will not provide bank information to a partner which has such limitations in its domestic laws. The UAE should therefore renegotiate its older treaties in order to incorporate wording in line with Article 26(5) of the OECD *Model Tax Convention*.

#### ***Absence of domestic tax interest (ToR C.1.4)***

286. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement

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57. The Commentary to Article 26(5) indicates that while paragraph 5, added to the *Model Tax Convention* in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

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

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

59. 13 of the 46 jurisdictions with DTCs that do not include Article 26(5) have already been reviewed by the Global Forum (Austria, Belgium, France, India, Indonesia, Italy, Luxembourg, Malaysia, Mauritius, New Zealand, Philippines, The Seychelles and Singapore). No relevant limitations, except in the cases of Austria, Indonesia, Malaysia and Singapore have been identified within the legislation of these jurisdictions.

is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

287. The UAE's DTCs with Canada, Cyprus<sup>60</sup>, Estonia, Georgia, Germany, Greece, Guinea, Ireland, Kazakhstan, Kenya, the Netherlands, Portugal, Spain, Switzerland, Venezuela and Vietnam contain explicit provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. The UAE's other 46 DTCs do not contain such a provision.

288. As noted above (see section B.1), there is no domestic tax interest requirement in the UAE. A domestic tax interest requirement may exist in some of the UAE's partners' domestic laws.<sup>61</sup> In such cases, the absence of a provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information which can occur under the relevant agreement. Application of the reciprocity principle also means the UAE likely will not provide information where it does not have a domestic tax interest in the matter to a partner which has domestic tax interest limitations in its domestic laws. Thus the UAE should continue its program of renegotiating older treaties and establishing Protocols in order to incorporate wording in line with Article 26(4) of the OECD Model Tax Convention.

### *Absence of dual criminality principles (ToR C.1.5)*

289. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information

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

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

61. 13 of the 46 jurisdictions with DTCs that do not include Article 26(4) have already been reviewed by the Global Forum (Austria, Belgium, France, India, Indonesia, Italy, Luxembourg, Malaysia, Mauritius, New Zealand, Philippines, The Seychelles and Singapore). No relevant limitations, except in the case of Singapore has been identified within the legislation of these jurisdictions.

request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

290. None of information exchange mechanisms established by the UAE applies the dual criminality principle to restrict exchange of information.

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

291. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (“civil tax matters”).

292. All of the UAE’s DTCs provide for exchange of information in both civil and criminal tax matters. As discussed in paragraph 281 the DTC with Finland provides for carrying out the provisions of the agreement or for the prevention of fiscal evasion. Both Finland and the UAE are of the view that this wording covers exchange of information in both criminal and civil tax matters.

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

293. There are no restrictions in the UAE’s DTCs or laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Further, the UAE’s DTC with the Spain contains explicit provisions (see Protocol) that reinforce the need to provide information in the form requested.

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

294. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

295. The Supreme Council of the Union (consisting of the Rulers of the seven individual Emirates) ratifies treaties by Decree. Subsequently, the President issues another Decree notifying the ratification and Article 2 of this Decree provides that the Minister of Finance shall publish the Decree in the Official Gazette and implement it. An international agreement is binding in the UAE after ratification.

296. The UAE has DTCs signed with 60 jurisdictions. Of these agreements, 53 are currently in force. The UAE has brought its agreements into force expeditiously: 42 of the 53 agreements which are in force came into force in less than one year; 9 came into force in less than two years, 1 in less than three years (with Romania), and 1 in less than five years (with Tajikistan). Seven of the UAE's DTCs – with Bangladesh, Cyprus<sup>62</sup>, Estonia, Greece, Guinea, Kenya and Switzerland<sup>63</sup> – are not in force. Five of these were signed in 2011 and the other two were signed in 2010. The UAE has completed its process for ratification of the agreement with Greece.<sup>64</sup>

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

297. In order for information exchange to be effective, the contracting parties have to take the necessary measures to comply with their commitments.

298. Article 125 of the constitution provides that *the governments of the Emirates must take the necessary measures to implement the laws enacted by the Federation as well as all international treaties and agreements concluded by it including issuance of such laws, regulations, decisions and local orders necessary for this implementation and the Federal Authority must supervise the implementation by the governments of the emirates all laws, regulations, international treaties and agreements and federal judicial decisions. The competent administrative and judicial authorities in the Emirates must extend in this respect all possible assistance to the Federal authorities.* All of the UAE's agreements, which have been signed and ratified by both parties, are in effect in the UAE.

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

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

63. Dates of signing: Bangladesh (17 January 2011); Cyprus (12 February 2011); (Estonia 20 April 2011); Greece (18 January 2010); Guinea (13 November 2011), Kenya (21 November 2011) and Switzerland (6 October 2011).

64. Ratified by Act 42/3/15 of 2010.



299. As discussed in Part B.1 of this report, there are limitations in the legislation providing for availability of information in the UAE and in the access to information by the authorities.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The UAE's arrangements providing for international exchange of information have not been given effect to through domestic law as there are limitations in the authorities' powers to obtain necessary information for the purpose of international information exchange.	It is recommended that the UAE ensure it has complete legislation enabling it to give full effect to its EOI agreements.
11 of the 60 DTCs signed by the UAE do not meet the international standard.	The UAE should work with relevant partners to ensure that these agreements are brought in line with the international standard.

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

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

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

301. The UAE has signed 60 DTCs (53 of which are currently in force) allowing for exchange of information in tax matters with a wide range of jurisdictions and this covers:

- 20 out of the 27 members of the European Union;

- 9 out of the G20 countries;<sup>65</sup>
- 8 of the 22 Member States of the Arab League;<sup>66</sup> and
- 32 of the 102 Global Forum members.

302. Members of the Gulf Cooperation Council, India, China, the United States of America, Germany, Japan, Switzerland, Iraq, South Korea and the United Kingdom are the major trading partners of the UAE. The UAE has concluded DTCs with all of these countries except the USA, Japan, Iraq and the United Kingdom. Annex 2 contains a list of all DTCs concluded by the UAE.

303. The UAE is currently in the process of negotiating a number of other DTCs and protocols, and the authorities advise that all of these will incorporate provisions that allow the UAE to exchange information according to the international standard. Agreements have been initialled with nine jurisdictions and negotiations are currently underway to establish agreements with five more. Moreover, the Nordic countries of Sweden, Norway, Denmark, Iceland, the Faroes and Greenland have approached the UAE to conclude tax information exchange agreements.

304. Ultimately, the international standard requires jurisdictions to exchange information with their relevant partners, meaning those partners who are interested in entering into an exchange of information agreement. During the course of the assessment, no jurisdictions have advised that the UAE has refused to enter into negotiations or conclude an EOI agreement. However, the Nordic countries of Sweden, Norway, Denmark, Iceland, the Faroes and Greenland have approached the UAE seeking to conclude TIEAs and formal negotiations are yet to start, as the UAE authorities do not currently have a mandate to enter into TIEAs.

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65. Canada, People's Republic of China, France, Germany, India, Indonesia, Italy, South Korea and Turkey.

66. Algeria, Egypt, Lebanon, Morocco, Sudan, Syria, Tunisia and Yemen.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The UAE has a comprehensive network of EOI arrangements with relevant partners but the issues identified in respect of access powers need to be addressed.	The UAE should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all relevant partners.
	The UAE should continue to develop its EOI network, regardless of its form, to the standard with all relevant partners.

### C.3. Confidentiality

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

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

305. 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.

306. All of the UAE's DTCs require that any information received be treated as secret, though the exact wording differs depending on the age of the agreement. The majority of these DTCs contain the language of Article 26(2) of the *OECD Model Tax Convention*.

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

307. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

308. The UAE's DTCs do not draw a distinction between information received in response to requests and information forming part of the requests themselves. This means that the disclosure of information received by the UAE tax authorities under an EOI arrangement is restricted to the circumstances covered by the agreement.

**Determination and factors underlying recommendations**

Phase 1 determination
The element is in place.

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

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.
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***Exceptions to requirement to provide information (ToR C.4.1)***

309. The large majority of the UAE's DTCs ensure that the contracting states are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. The UAE's DTCs with the Czech Republic, Indonesia, Morocco, Poland and Romania lack a specific reference to trade and business secrets and these agreements are not fully consistent with the international standard and it is recommended that the UAE work with relevant treaty partners to bring these agreements to the standard.

310. The DTC with Austria (Article 27(2)) provides that there is no obligation to supply information that would be contrary to the basic rights granted by a State, in particular in the area of data protection.

311. Legal professional privilege is covered under the limb of "professional secrets" in the DTCs. Considering the provisions of Article 3(2) of the respective tax treaties, for application of the tax treaties by the UAE, this term will derive its meaning that it has under the domestic laws of the UAE. Article 42 of the Legal Profession Law provides that a lawyer shall not reveal any confidential information that is relayed in the course of his professional

practice. Additionally, Article 41 prohibits a lawyer from giving evidence with regards to any information or events which comes to his knowledge in the course of his professional practice, unless he obtains consent from the person to whom the information applies and was provided from. This broad protection afforded to information available with lawyers translates into similar protection under the DTCs. This may prevent providing information held by lawyers to the requesting foreign partners.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
DTCs with the Czech Republic, Indonesia, Morocco, Poland and Romania are not fully consistent with the international standard due to absence of safeguards providing for protection of trade or business secrets.	The UAE should work with relevant treaty partners to ensure that these agreements are brought in line with the international standard.
The definition of information subject to legal professional privilege in the UAE's DTCs follows that of its domestic law, which is wider than the scope accepted under the international standard.	The UAE should ensure that the scope of legal professional privilege in its EOI mechanisms is consistent with the international standard.

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

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

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

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

313. The UAE’s DTCs have no provisions pertaining to timeliness of response or the time frame within which response should be provided.

314. A review of the practical ability of the UAE tax authorities to respond to requests in a timely manner will be conducted in the course of its Phase 2 review.

***Organisational process and resources (ToR C.5.2)***

315. It is important that a jurisdiction have appropriate organisational processes and resources in place to ensure a timely response.

316. The Ministry of Finance is the competent authority for exchange of information. Ministerial Decree 196/03/1989 authorises the Ministry of Finance to negotiate and enter into bilateral treaties on the avoidance of double taxation.

317. A review of the practical application of these processes and the resources available will be conducted in the context of UAE’s Phase 2 review.

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

318. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

319. The UAE does not impose any impose restrictive conditions on exchange of information.

**Determination and factors underlying recommendations**

Phase 1 determination
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>

## Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Foreign companies having their main offices, main activities or effective management in the DIFC (other than those regulated by the DFSA) or other free zones are not consistently obliged to maintain ownership information or provide it to the authorities and thus such information may not be available to the competent authority.	The UAE should ensure that ownership information is available for foreign companies having their main offices, main activities or effective management in the DIFC or other free zones.
	The UAE law does not ensure the availability of information on the participating partners of partnerships limited with shares. Further, the information on all partners of foreign general partnerships and foreign limited partnerships that are registered as recognised partnerships in the DIFC is not available.	The UAE as well DIFC laws should ensure that information on the partners of partnerships limited with shares and foreign general partnerships and foreign limited partnerships is available to its competent authority.
	Identity information may not be consistently available in respect of foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.	An obligation should be established to maintain information in all cases in relation to settlors, trustees and beneficiaries of those foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.
	Not all free zones have effective enforcement provisions in place to ensure availability of ownership information.	The relevant authorities in all free zones should establish effective enforcement provisions to reinforce the availability of information on the ownership of relevant entities.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>The element is not in place.</b>	Foreign companies in the DIFC, other than those regulated by the DFSA, and in other free zones are not obliged to keep accounting records consistent with the standard. Further, entities in the Fujairah Free Zone are not obliged to keep accounting records.	The UAE should ensure that complete and reliable accounting records consistent with the standard are required to be kept by all entities in the free zones, including foreign companies, for at least five years.
	Entities in the DIFC and the other free zones are not obliged to maintain underlying documentation for their accounting records.	The UAE should oblige all entities in the free zones to maintain full underlying documentation in line with the international standard for at least five years.
	UAE and free zones legislation (with the exception of the DIFC) do not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with a resident administrator or trustee.	The UAE and free zones laws should expressly provide for keeping of complete accounting records, including underlying documentation, for at least five years for foreign trusts with resident administrators or trustees.
	General partnerships and limited partnerships in the DIFC, other than those regulated by the DFSA, and some entities in the other free zones are not obliged to retain their accounting records for at least five years.	The accounting record keeping requirements should ensure that all entities in the DIFC and other free zones maintain accounting records for a minimum five year period.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>The element is in place.</b>		



Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
<b>The element is not in place.</b>	The ability of the Ministry of Finance to access foreseeably relevant information for exchange of information purposes, either directly or via other agencies, is unclear and there are no provisions in law providing authorities with the power to collect information on behalf of the Ministry of Finance for the purpose of responding to EOI requests.	The UAE should introduce express statutory provisions ensuring the authorities have access to information for exchange of information purposes.
	Confidentiality provisions in the Central Bank law and the DFSA laws are not explicitly overridden to access banking information for EOI purposes.	The UAE should ensure that the confidentiality provisions in the UAE laws are overridden to permit access to banking information for EOI purposes.
	The scope of legal professional privilege appears to extend beyond that provided for in the international standards.	The UAE should ensure the application of legal professional privilege does not limit or prevent it from responding to a request for information made pursuant to an international exchange of information request.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
<b>The element is in place.</b>		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
The element is not in place.	The UAE's arrangements providing for international exchange of information have not been given effect to through domestic law as there are limitations in the authorities' powers to obtain necessary information for the purpose of international information exchange.	It is recommended that the UAE ensure it has complete legislation enabling it to give full effect to its EOI agreements.
	11 out of the 60 DTCs signed by the UAE do not meet the international standard.	The UAE should work with relevant partners to ensure that these agreements are brought in line with the international standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
The element is in place, but certain aspects of the legal implementation of the element needs improvement.	The UAE has a comprehensive network of EOI arrangements with relevant partners but the issues identified in respect of access powers need to be addressed.	The UAE should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all relevant partners.
		The UAE should continue to develop its EOI network, regardless of its form, to the standard with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. (ToR C.3)		
The element is in place.		

Determination	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 element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	DTCs with the Czech Republic, Indonesia, Morocco, Poland and Romania are not fully consistent with the international standard due to absence of safeguards providing for protection of trade or business secrets.	The UAE should work with relevant treaty partners to ensure that these agreements are brought in line with the international standard.
	The definition of information subject to legal professional privilege in the UAE's DTCs follows that of its domestic law, which is wider than the scope accepted under the international standard.	The UAE should ensure that the scope of legal professional privilege in its EOI mechanisms is consistent with the international standard.
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		



## **Annex 1: Jurisdiction’s Response to the Review Report\***

The UAE is considering all the comments and the recommendations of this review and has already set up a plan of action to address the matters raised and implement the recommendations of the peer review.

The Council of Ministers has issued resolution number 17 for the year 2012 on the 15<sup>th</sup> of May 2012 regarding the full mandate and authorization of the Ministry of Finance to collect and exchange information with tax treaty partners. This is an amendment of the previous resolution number 454 for the year 2010. The new amended resolution gives the UAE the full power to obtain the necessary information for the purpose of international information exchange, including from the free zone areas, which are subject of a request under an exchange of information agreements. A copy of an unofficial translation of resolution 17/2012 is attached.

With respect to paragraph 130, the report notes that service providers (TSPs) and ancillary service providers (ASPs) are supervised by the DFSA and they must have verified documentary evidence of the settlors, trustees (in addition to the TSP itself) and principal named beneficiaries of trusts for which they provide services (DFSA Conduct of Business Rule 5.10.1). By way of clarification, “principal named beneficiary” in the Conduct of Business Rules refers to the first-in-line beneficiary (or beneficiaries). In the DIFC, both TSPs and ASPs are also under an obligation in the anti-money laundering rules to identify all beneficiaries. Please see the AML Module of the DFSA Rulebook at AML 3.4.2 and guidance at Appendix 1 of the AML Module at 1.1.6 for TSPs, and the ASP Module of the DFSA Rulebook at ASP 6.5.2 and guidance in Appendix 2 of the ASP Module at A2.2.2.p for ASPs. We believe that these provisions provide a complete obligation to identify beneficiaries.

This will resolve many of the points raised by the Forum. On the other hand, the Ministry of Finance will provide the Forum with a comprehensive supplementary report in the near future indicating the implementation of the recommendations made by the Forum.

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

## UNOFFICIAL TRANSLATION

Council of Ministers Resolution No. (17) for the year 2012 on the collection and exchange of information for the purposes of international tax agreements

The Cabinet:

Having reviewed the Constitution,

And the Federal Law No. (1) for the year 1972 on the functions of the ministries and powers of Ministers and its amendments,

And the decision of the Ministerial Council for Services No. (45/4 خ/4) for the year 2010 on the commitment to the principle of transparency in the exchange of information for the purposes of taxes in accordance with the G20 resolutions.

And Based on the proposal of the Minister of Finance, and the approval of the Council of Ministers,

Decided

### Article 1

The Ministry of Finance is authorised to collect and exchange information and data on natural persons and legal entities licensed to operate in the UAE, including the free zones, in implementation of the obligations of the State provided for in international tax agreements.

### Article 2

The Ministry of Finance when exercising the powers conferred upon it under Article 1 of this resolution shall coordinate with federal and local authorities concerned in all matters relating to specifying the type and nature of the information and data to be collected and the mechanism to provide it, and these authorities shall cooperate with the Ministry in implementing the provisions of this decision.

### Article 3

This decree shall be put into effect from the date of its issuance, and published in the official gazette.

Mohammed bin Rashid Al Maktoum

Prime Minister

## Annex 2: List of All Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of arrangement	Date signed	Date in force
1	Algeria	Double taxation convention (DTC)	24/04/2001	28/11/2001
2	Armenia	DTC	22/04/2002	29/12/2004
3	Austria	DTC	23/09/2003	27/04/2004
4	Azerbaijan	DTC	20/11/2006	30/04/2007
5	Bangladesh	DTC	17/01/2011	Not in force
6	Belarus	DTC	27/02/2000	02/01/2001
7	Belgium	DTC	30/09/1996	26/06/1997
8	Bosnia & Herzegovina	DTC	18/09/2006	30/04/2007
9	Bulgaria	DTC	26/06/2007	22/01/2008
10	Canada	DTC	09/06/2002	07/01/2004
11	China, People's Republic of	DTC	01/07/1993	05/06/1994
12	Cyprus <sup>67</sup>	DTC	12/02/2011	Not in force
13	Czech Republic	DTC	30/09/1996	26/06/1997

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

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

	<b>Jurisdiction</b>	<b>Type of arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
14	Egypt	DTC	12/04/1994	26/03/1995
15	Estonia	DTC	20/04/2011	Not in force
16	Finland	DTC	12/03/1996	24/02/1997
17	France	DTC	19/07/1989	15/11/1989
18	Georgia	DTC	24/11/2010	28/04/2011
19	Germany	DTC	01/07/2010	01/02/2011
20	Greece (Hellenic Republic)	DTC	18/01/2010	Not in force
21	Guinea	DTC	13/11/2011	Not in force
22	India	DTC	29/04/1992	21/08/1993
23	Indonesia	DTC	30/11/1995	17/06/1996
24	Ireland	DTC	01/07/2010	06/07/2011
25	Italy	DTC	22/01/1995	05/11/1997
26	Kazakhstan	DTC	22/12/2008	30/06/2009
27	Kenya	DTC	21/11/2011	Not in force
28	Korea, Republic of	DTC	22/09/2003	04/05/2004
29	Lebanon	DTC	17/05/1998	25/10/1998
30	Luxembourg	DTC	20/11/2005	07/05/2006
31	Malaysia	DTC	28/11/1995	17/06/1996
32	Malta	DTC	13/03/2006	13/08/2006
33	Mauritius	DTC	18/09/2006	20/06/2007
34	Mongolia	DTC	21/02/2001	29/11/2002
35	Morocco	DTC	09/02/1999	26/09/1999
36	Mozambique	DTC	24/09/2003	04/05/2004
37	The Netherlands	DTC	08/05/2007	29/11/2007
38	New Zealand	DTC	24/09/2003	04/05/2004
39	Pakistan	DTC	07/02/1993	29/01/1994
40	The Philippines	DTC	22/09/2003	29/12/2004
41	Poland	DTC	31/01/1993	29/01/2004
42	Portugal	DTC	17/01/2011	06/07/2011
43	Romania	DTC	11/04/1993	09/01/1996
44	The Seychelles	DTC	19/06/2006	06/02/2007
45	Singapore	DTC	01/12/1995	17/06/1996



	<b>Jurisdiction</b>	<b>Type of arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
46	Spain	DTC	05/03/2006	13/08/2006
47	Sri Lanka	DTC	07/07/1992	04/05/2004
48	Sudan	DTC	15/03/2001	28/11/2001
49	Switzerland	DTC	6/10/2011	Not in force
50	Syria	DTC	26/01/2000	11/06/2000
51	Tajikistan	DTC	17/12/1995	29/01/2000
52	Thailand	DTC	01/03/2000	12/11/2000
53	Tunisia	DTC	10/04/1996	24/02/1997
54	Turkey	DTC	29/01/1993	29/01/1994
55	Turkmenistan	DTC	09/06/1998	24/11/1999
56	Ukraine	DTC	22/01/2003	28/02/2004
57	Uzbekistan	DTC	26/10/2007	28/09/2008
58	Venezuela	DTC	11/12/2010	28/03/2011
59	Vietnam	DTC	16/02/2009	11/10/2009
60	Yemen	DTC	13/02/2001	25/08/2001

## **Annex 3: List of all Laws, Regulations and Other Material Received**

### **Commercial laws**

- Federal Law 8/1984 Commercial Companies Law – CCL
- Federal Law 2/2008 – National Societies and Associations of Public Welfare
- Federal Law 29/1999 on Formation of Public organisation of Endowments
- Federal Law 18/1993 – Commercial Transactions Law (CTL)

### **Tax laws**

- Abu Dhabi Income Tax Decree 1965
- Dubai Income Tax Decree 1969
- Sharjah Income Tax Decree 1968

### **Banking and financial regulation laws**

- Union Law 10/1980 Concerning the Central Bank, the Monetary System and Organisation of Banking – Central Bank Law
- Federal Law 6/1985 – Islamic Banks, Financial Institutions and Investment Companies
- Federal Law 6/2010 on Credit Information
- Federal Law 6/2007 –Insurance Law

### **AML laws**

- Federal Law 4/2002 – Criminalization of Money Laundering (AML law)
- Federal Law 1/2004 – Combating Terrorism Offences
- Central Bank Decision 17R/2010 on Procedures for AML CFT

Central bank Regulation 24/2000 – Procedure for Anti Money Laundering Provisions applicable to financial institutions

Addendum to Circular No. 24/2000 dated 17 June 2008

Ministry of Justice Circular 8/2010 issued by Ministry of Justice applicable to Lawyers

Ministry of Economy Circular of 16 July 2002 on AML Procedures for Auditors

DIFC Financial Anti- Money Laundering and Anti -Terrorist Financing Regulation 2007

## **DIFC**

Federal Law 8/2004 – Financial Free Zones

DIFC Law 1/2004 – Regulatory Law

DIFC Companies Law 2/2009 – DCL

DIFC Companies Regulations – DCR

DIFC Law 11/2004 – General Partnership Law (GPL)

DIFC General Partnership Regulations (GPR)

DIFC Law 5/2004 – Limited Liability Partnership Law (LLPL)

DIFC Limited Liability Partnership Regulations (LLPR)

DIFC Law 4/2006 -Limited Partnership Law (LPL)

DIFC Limited Partnership Regulations (LPR)

DIFC Law 11 2005 – Trust Law

DIFC Law 2/2010 – Collective Investment Law

DIFC Law 5/2006 – Investment Trust Law

DSFA – Conduct of Business Rules

DSFA – Ancillary Service Providers Rules

DSFA – The Rule Book- General Module -GEN

## **Free zones**

Law 1/1980- Creation of Jebel Ali Port Free Zone

Decree 1/1985- Creation of Free Zone Authority at Jebel Ali Port Zone

Law 9/1982 – The formation of Establishments with Legal Personality at Jebel Ali Port Implementation Regulation 1/1992-issued by Jebel Ali Free Zone Authority – Free Zone Establishment

Implementation Regulation 1/1999 – issued by Jebel Ali Free Zone Authority – Free Zone Company

Offshore Companies Regulations 2003 – Jebel Ali Free Zone Authority

Implementation Regulation 1/2000 – Free Zone Company – Dubai Airport Free Zone Authority

Law 25/2009 concerning the Free Zone in Dubai International Airport

Implementing Regulation 1/1998 – Dubai Airport Free Zone Establishment issued by Dubai Airport Free Zone Authority

Law 1/2004- Free Zone Law – Emirate of Fujairah

Operation Manual –Fujairah Free Zone Authority

RAK International Business Companies Regulations 2006 – RAK Offshore

RAK- International Companies Regulations 2006

RAK- International Companies – Anti Money Laundering Policies and Procedures

Rules and Regulations – Ras Al Khaimah Free Trade Zone Authority

## **Other**

Ministerial Decree 196/03/1989 – Empowering the MOF to negotiate and sign bilateral treaties for the Avoidance of Double Taxation with Arab and Foreign States

Ministerial Circular 454/2010

Abu Dhabi Emiri Decree 4/1971

Cabinet Resolution 42/2009

Dubai Law 12/2004

Dubai Law 9 as amended by Law 7

Federal Decree 35/2004

Federal Law 17/2004 (Anti-Fronting Law)

Federal Law 22/1995 Regulation of the Auditing Profession

Ministerial Decision 377/2010- Licensing of branches and representative offices of foreign companies in the UAE

Customers Guide – For opening a branch or office of Facility established abroad or in the UAE free zones

Decision 33R/2009 regulation on the keeper of private shareholding companies register

SCA Board of Directors Resolution 3/R/2000 – Transparency Rules for Listed Companies in the UAE Market

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## Global Forum on Transparency and Exchange of Information for Tax Purposes

# PEER REVIEWS, PHASE 1: UNITED ARAB EMIRATES

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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