

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 2**  
**Implementation of the Standard**  
**in Practice**

**UNITED ARAB EMIRATES**



# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: United Arab Emirates 2016**

PHASE 2:  
IMPLEMENTATION OF THE STANDARD IN PRACTICE

July 2016  
(reflecting the legal and regulatory framework  
as at May 2016)

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## *Table of Contents*

<b>About the Global Forum</b> .....	5
<b>Executive summary</b> .....	7
<b>Introduction</b> .....	13
Information and methodology used for the peer review of the United Arab Emirates .....	13
Overview of the United Arab Emirates .....	14
General information on legal system and the taxation system .....	16
Overview of the financial sector and relevant professions .....	18
Recent developments .....	21
<b>Compliance with the Standards</b> .....	23
<b>A. Availability of information.</b> .....	23
Overview .....	23
A.1 Ownership and identity information .....	25
A.2 Accounting records .....	67
A.3 Banking information .....	85
<b>B. Access to information</b> .....	91
Overview .....	91
B.1 Competent Authority’s ability to obtain and provide information .....	93
B.2 Notification requirements and rights and safeguards .....	119
<b>C. Exchanging information</b> .....	121
Overview .....	121
C.1 Exchange of information mechanisms .....	122
C.2 Exchange of information mechanisms with all relevant partners .....	132
C.3 Confidentiality .....	134

C.4 Rights and safeguards of taxpayers and third parties . . . . .	136
C.5 Timeliness of responses to requests for information. . . . .	137
<b>Summary of determinations and factors underlying recommendations . . . . .</b>	<b>149</b>
<b>Annex 1: Jurisdiction’s response to the review report . . . . .</b>	<b>157</b>
<b>Annex 2: List of all exchange-of-information mechanisms in Force. . . . .</b>	<b>162</b>
<b>Annex 3: List of all laws, regulations and other material received. . . . .</b>	<b>166</b>
<b>Annex 4: Persons interviewed during on-site visit . . . . .</b>	<b>170</b>



## About the Global Forum

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

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

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

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

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

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](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. 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 one of the 38 free zones located in the different Emirates, which mostly focus on commercial and industrial activities with the exception of the two financial free zones. The report includes analysis of the framework that applies in the UAE in general as well as that in the different free zones.

3. It is important to note that in the first two years of the review period (1 January 2012-31 December 2014), the UAE did not have an organised process for the handling of EOI requests. This resulted in only very few EOI requests being processed at that time. Although early 2014 an EOI Unit was established, there remains a significant backlog of unanswered requests, with only 94 of the 323 EOI requests having been finalised. The UAE should continue with its efforts to fully establish its EOI Unit, particularly with its plans to increase the staffing of the unit, and to address the backlog of requests on an urgent basis.

4. The fact that the UAE only started in 2014 with the systematic processing of EOI requests meant that it encountered more difficulties related to inexperience and setting up the domestic and international framework. The UAE’s EOI partners have reported difficulties in communicating with the UAE Competent Authority. Status updates were never sent, and even where

partial responses were sent no explanation was offered on the status of the missing information. The UAE has made efforts to facilitate discussions with key partners since the establishment of the EOI Unit. The UAE should increase its efforts to discuss and understand issues raised by its EOI partners through direct communication, including the provision of status updates.

5. Until the end of 2015 it was standard practice for the UAE to include a reference to the equivalent of paragraph 26(3) of the OECD Model Tax Convention in its response letters to signal that certain information was not obtainable in the normal course of administration. This occurred irrespective of whether information was in fact not obtained and generally without further explanation. Declining to provide certain information on “face value” because it would fall under Article 26(3) does not match with the objective to ensure that all foreseeably relevant information gets exchanged. It is not unlikely that in many of the cases additional information is available with the requesting jurisdiction which would enable the UAE to obtain the information. The UAE should only decline to provide information on the basis of the equivalent of Article 26(3) of the OECD Model Tax Convention where this has been clearly established after consultation of the requesting jurisdiction.

6. Domestically, the process of obtaining information through local authorities is still being further developed. These local authorities are not used to dealing with EOI requests for tax purposes. It may therefore be very difficult for them to determine which information and documents are meant to be obtained, and the use of templates which did not always fit the specific case may have contributed to the confusion. Although the UAE has already taken steps to improve the situation, this is still work in progress. The UAE should ensure that the collaboration with the local authorities does not impede effective EOI, and in particular that its Competent Authority includes all relevant details in its request to a local authority to obtain information for EOI purposes (without compromising confidentiality), so all requested information can be obtained. In addition, the UAE should monitor that its access and compulsory powers are effective in all cases where information should be obtained under the relevant tax information agreement.

7. 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 generally available for relevant entities in the Dubai International Financial Centre (DIFC) and other free zones. Information on the settlors, trustees and beneficiaries of trusts (including foreign trusts) in the DIFC is also generally 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. In addition, it is not clear that foreign companies in the Dubai Airport Free Zone are required to keep ownership information or provide it to the authorities.

8. In practice, ownership information regarding entities operating in the UAE must be provided to the authorities upon registration. Entities operating in one of the free zones are required to notify any change in ownership when it occurs and in many cases the change is only valid upon its registration. With respect to most entities operating outside the free zones, the Departments of Economic Development of each Emirate monitor the availability of ownership information, mainly through checking annual returns. The Securities and Commodities Authority (SCA) supervises public joint stock companies and the service providers which keep share registers of private joint stock companies.

9. With respect to the availability of accounting information, relevant entities in the UAE are required to keep reliable accounting records, including underlying documentation, for a period of at least five years, as provided for in the Commercial Transactions Law (CTL). The rules of the CTL also directly apply to companies and establishments in the Fujairah Free Zone, since no local rules on the keeping of accounting records have been issued. Although the CTL also applies to entities in the other free zones (except the DIFC), the legislation in most of the free zones which are reviewed contains separate obligations to keep accounting records which does not entirely satisfy the Terms of Reference. Given the variation between the CTL and the legislation in most free zones analysed, it is recommended that further clarification on the interaction between the CTL and the free zone legislation be provided. Entities in the DIFC are, since December 2013, required to keep reliable accounting records, including underlying documentation, for a period of at least six years.

10. Almost all entities in the UAE must have their accounts audited, and in most cases the audited financial statements must be submitted to the relevant authorities. However, in respect of partnerships in the UAE as well as offshore companies in the Jebel Ali Free Zone and the RAK Free Zones there is no such framework and the monitoring of compliance with accounting record keeping obligations is very limited. It is recommended that the UAE implements a system of oversight to ensure that these entities keep reliable accounting records, including underlying documentation, in practice.

11. No peers have mentioned that the UAE had indicated that information could not be exchanged because it was not available. Nevertheless, it is a matter of fact that the UAE has not exchanged information in every case where it was requested and it is not clear in these cases that the requested information would have been available. It is therefore recommended that the UAE monitors the availability of ownership and accounting information, and in particular underlying documentation, where this is requested by an EOI partner.

12. 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. The legal and regulatory framework in the DIFC is also adequate. In practice, bank information has been exchanged and no instances were reported where the information was not available while it should have been.

13. Prior to 2012 there was some ambiguity as to whether there were access powers available to the relevant UAE authorities for collecting information for EOI purposes. As a result, it was also found likely that the confidentiality of bank information could not be lifted for EOI purposes. The issuance of Council of Ministers Resolution No. 17 of 2012 in May 2012 means that these other authorities are now required to co-operate with the Ministry of Finance. However, the process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance when requested to do so is not specified in respect of the authorities with which the Ministry of Finance has not concluded an MoU. MoUs are in place between the Ministry of Finance and most other relevant authorities, but not directly with the Departments of Economic Development of the different Emirates, which would be requested to collect information from and in respect of many UAE entities. In addition, access powers in the Fujairah Free Zone have not been identified. It is therefore recommended that the UAE further clarifies its legal and regulatory framework in this respect. The scope of professional privilege for lawyers who are asked to produce information by the DIFC authorities is in accordance with the international standard since a legislative amendment in December 2012, however the scope of professional privilege appears to extend beyond that provided for in the international standard where a lawyer is asked to produce information for EOI purposes by another authority.

14. The UAE has an exchange of information relationship with 104 jurisdictions. Most agreements are in the form of a DTC, but since November 2015 the UAE has signed eight TIEAs. However, it has taken up to four years since the UAE was first approached for it to sign the first TIEAs. A number of jurisdictions, including the ones that are have been waiting for their TIEA to be concluded, expressed their dissatisfaction with the delays in negotiating EOI agreements and/or the time taken by the UAE between initialling and signing an EOI agreement. It is recommended that the UAE should, expeditiously, enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

15. The UAE has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are

based on the analysis in the text of the report, taking into account the Phase 1 determinations, any recommendations made in respect of the UAE's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, the UAE has been assigned the following ratings: Compliant for elements A.3, B.2, C.3 and C.4, Largely Compliant for elements A.1 and C.2, Partially Compliant for elements A.2, B.1 and C.1, and Non-Compliant for element C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the UAE is Partially Compliant.

16. A follow up report on the steps undertaken by the UAE to answer the recommendations made in this report should be provided in accordance with the process outlined under the Methodology for the second round of reviews (2016 Methodology).





## Introduction

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

17. The Phase 1 and supplementary assessments of the legal and regulatory framework of the United Arab Emirates (the UAE) were 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 were prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The Phase 1 report 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.

18. The supplementary peer review report, which followed the Phase 1 report of the UAE, was prepared pursuant to paragraph 58 of the Global Forum's Methodology. The supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 7 February 2014, and information supplied by the UAE. The following analysis reflects the integrated Phase 1 and supplementary assessments of the legal and regulatory framework of the UAE as at 7 February 2014.

19. The Phase 2 review assessed the legal and regulatory framework as at 13 May 2016, as well as the practical implementation of this framework during a three year period (1 January 2012 to 31 December 2014). The following analysis reflects the integrated Phase 1 and Phase 2 assessments. The assessment is based on the laws, regulations and exchange of information mechanisms in force or effect as at May 2016, as well as other information, explanations and materials supplied by the UAE, information supplied by partner jurisdictions and explanations provided by the UAE during the on-site visit that took place from 6-9 December 2015 in Dubai, UAE. During the on-site visit, the assessment team met a wide range of officials and

representatives of the Ministry of Finance, the Central Bank and free zone authorities (for a complete list see Annex 4).

20. 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.

21. The Phase 1 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. For the supplementary Phase 1 assessment, Ms Idris Fidela Clarke was replaced by Mrs Heidi-Lynn Sutton, Financial Services Regulatory Commission, Nevis Branch, Saint Kitts and Nevis, and Mr Sanjeev Sharma was replaced by Mr Mikkel Thunnissen from the Global Forum Secretariat.

22. The Phase 2 assessment was conducted by the same two expert assessors as for the supplementary Phase 1 assessment: Mr Daniel Ruffi, Deputy Head of Mutual Administrative Legal Assistance, Division for International Affairs, Swiss Federal Tax Administration, Berne, Switzerland; and Ms Heidi-Lynn Sutton, Financial Services Regulatory Commission, Nevis Branch, Saint Kitts and Nevis. Mr Andrew Auerbach, Mr Mikkel Thunnissen and Mr Yusef Alyusef of the Global Forum Secretariat were also part of the assessment team.

## Overview of the United Arab Emirates

23. 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, 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 population are expatriates.

The capital is Abu Dhabi. The currency of the UAE is the Emirati Dirham (AED): AED 1 = EUR 0.24 as at 17 May 2016.<sup>1</sup>

24. With a gross domestic product (GDP) in 2015 of USD 339 billion (estimated),<sup>2</sup> the UAE is one of the most developed economies in the Middle East and North Africa (MENA) region. Approximately half of the GDP comes from services, while industry represents the other half (agriculture only marginally contributes to the GDP). The undivided Emirates aggregate oil reserves represent 7% of the world proved oil reserves. One third of the UAE's GDP comes from oil and gas. In 2014, 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 2014 were; the European Union, India, China, the United States and Japan.<sup>3</sup>

25. The UAE has enjoyed economic benefits and industrial growth partly as a result of its flourishing free zones. As at April 2016, there were 38 free zones throughout the UAE. Most free zones have been established in the Emirate of Dubai. Recently, some of the free zones in Dubai have been clustered and are now managed by one authority (there is one cluster of 4 free zones and one cluster of 10 free zones). 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.

26. Given the different legal and regulatory framework that exists in the free zones regarding areas relevant for the international standards of transparency and exchange of information for tax purposes, this report also examines the frameworks of five of the largest free zones: the Dubai International Financial Centre (DIFC), the Dubai Airport Free Zone, the Fujairah Free Zone, the Jebel Ali Free Zone, and entities in the Ras Al Khaimah Free Trade Zone (RAKFTZ), the Ras Al Khaimah Investment Authority (RAKIA) and the Ras Al Khaimah International Corporate Centre (RAK ICC). Where possible, the three free zones in Ras Al Khaimah together will in this report be referred to as RAK Free Zones.

1. [www.xe.com](http://www.xe.com), accessed 17 May 2016.

2. CIA, The World Fact book, <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html>.

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

27. The RAKFTZ and the RAKIA ultimately fall under the same management, although they are two different free zones. It should be noted that these free zones are currently in transition to streamline the activities. Until December 2015, both free zones allowed for the incorporation of onshore companies (with physical presence and activities in the free zones) and offshore companies (where the activities are exclusively outside the free zones and the companies are represented by a registered agent). On 1 January 2016, new regulations came into force with respect to offshore companies, which can now be established in a third (new) free zone, the RAK ICC. In this new free zone only offshore companies can be incorporated. Existing offshore companies that are established in the RAKFTZ or the RAKIA have a transition period of two years to comply with the new regulations. It is planned to merge the onshore companies of the RAKFTZ and the RAKIA in a similar manner starting in 2017.

28. 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 also engages with the Organisation for Economic Co-operation and Development (OECD), and 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***

29. 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 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.

30. The UAE operates under a civil law system and statutes are the primary source of law. The Dubai International Financial Centre (DIFC), a 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.

31. 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.

32. The Islamic Sharia is also a source of law in the Union. Sharia 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. 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. They are administered locally by the Emirates in which they are located.

### *System of taxation*

33. 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>4</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

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4. 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).

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.

34. 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.

35. 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.

## Overview of the financial sector and relevant professions

36. At the end of 2015, the UAE domestic financial sector comprised: 26 financial companies; 25 investment companies; 23 domestic banks; 6 banks from Gulf Co-operation Council (GCC) States<sup>5</sup>; 26 foreign banks; and 115 representative offices of foreign banks. The total assets of banks operating in the UAE amounted to AED 2.47 trillion (EUR 593 billion).

37. Islamic financial business is allowed to be carried on in the UAE and the Dubai International Financial Centre (DIFC).<sup>6</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 May 2016, the number of Islamic banks operating in the UAE

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

6. 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.

stands at seven. Deposits at Islamic banks in the UAE were AED 273 billion (EUR 65.5 billion) as at the end of 2014, which represents approximately 20% of total deposits of the banking system. As at May 2016, 29 institutions with an Islamic endorsement (10 wholly Islamic institutions and 19 institutions conducting business via an Islamic window) operate from within the DIFC.

38. 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 and the Abu Dhabi Global Market (ADGM).<sup>7</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>8</sup>

39. The full range of service providers (lawyers<sup>9</sup>, accountants, auditors<sup>10</sup>, notaries<sup>11</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>12</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.

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7. Financial institutions in the DIFC are regulated by the DIFC Financial Services Authority.
  8. 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.
  9. The legal profession is governed by Federal Law 23/1991, as amended by Federal Law 5/2002.
  10. The auditing profession is governed by Federal Law 22/1995.
  11. Notaries are governed by Federal Law 22/1991.
  12. 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.

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

40. The Dubai International Financial Centre (DIFC)<sup>13</sup> is a financial free zone situated in the geographical boundaries of Dubai. It has a common law legal framework with its own set of rules and regulations with respect to civil and commercial matters separate from that of the UAE. The DIFC also houses its own court house and an arbitration center. 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, as a financial free zone, is distinct and separate from other free zones. Entities in the DIFC are subject to licensing and supervision by the DIFC authorities, including the DFSA.

41. 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.

42. The Dubai Financial Services Authority (DFSA) is the independent regulator of financial services conducted in or from the DIFC. The DFSA's regulatory mandate includes asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic finance, insurance, an international equities exchange, and an international commodities derivatives exchange.

43. As of 21 April 2016, the DFSA's remit included 546 regulated entities. This total includes 422 firms authorised to conduct financial services in or from the DIFC, including: 123 firms that provide advice and/or arrange transactions in financial products; 66 firms undertaking asset management; 18 brokerage firms; 55 entities undertaking commercial/investment/private banking activities; 20 Insurers; 46 Insurance Intermediaries; and 62 Representative Offices. The DFSA also has a regulatory responsibility with 16 Registered Auditors. Finally, the DFSA monitors the activity of 108 Designated Non-Financial Businesses and Professions (DNFBPs), which were previously known as ancillary service providers. The DFSA's regulatory role with respect to the DNFBPs is limited to combating money laundering and terrorist financing.

44. The total assets of banking, investment and insurance intermediation firms reported at 31 December 2015 were just under USD 88 billion (EUR 78 billion), with deposits of USD 55.5 billion (EUR 49 billion).

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



45. Until recently, the DIFC was the only operational financial free zone in the UAE. Early 2016, the ADGM, which is a financial free zone in the Emirate of Abu Dhabi, started issuing its first licenses.

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

46. Federal Law 9/2014 (the AML Law), concerning the combatting of money laundering crimes, applies to entities in the UAE, the DIFC, the ADGM and other non-financial 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 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.

47. 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, while the Financial Services Regulatory Authority has the equivalent role in the ADGM. The Ministry of Economy is responsible for supervision of audit firms' and insurance businesses' compliance with AML obligations.

## **Recent developments**

48. A new Commercial Companies Law (CCL) came into effect on 1 July 2015 to replace the previous law which dated back to 1984. Most changes are meant to facilitate investment, although the rule that 51% of the capital of a company incorporated in the UAE must be held by UAE nationals still remains. The objective of the new CCL is to continue the UAE's development into a global standard market and business environment and, in particular, raise levels of good corporate governance, protection of shareholders and promotion of social responsibility of companies. Notable features of the new CCL include the recognition of the concept of holding companies, procedures for pledging shares, expert valuation of shares in kind (i.e. non-cash) and the requirement to rotate auditors (for Public Joint Stock Companies) every three years. All existing entities are required to amend their existing memoranda and articles of association to comply with the changes introduced in the new CCL, and entities failing to do so by 30 June 2016 will be dissolved.



## Compliance with the Standards

### A. Availability of information

#### Overview

49. 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, as well as its application in practice.

50. 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 generally available for relevant entities in the DIFC and other free zones. Information on the settlors, trustees and beneficiaries of trusts (including foreign trusts) in the DIFC is also generally 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. In addition, it is not clear that foreign companies in the Dubai Airport Free Zone are required to keep ownership information or provide it to the authorities.

51. In practice, ownership information regarding entities operating in the UAE must be provided to the authorities upon registration. Entities operating

in one of the free zones are required to notify any change in ownership when it occurs and in many cases the change is only valid upon its registration. With respect to most entities operating outside the free zones, the Departments of Economic Development of each Emirate monitor the availability of ownership information, mainly through checking annual returns. The SCA supervises public joint stock companies and the service providers which keep share registers of private joint stock companies.

52. Bearer shares were only allowed in the RAKFTZ, but are no longer authorised in practice. Any companies that had issued bearer shares in the past have either converted them into registered shares or have been voluntarily or involuntarily dissolved.

53. The Commercial Transactions Law (CTL) contains provisions requiring relevant entities in the UAE to keep reliable accounting records, including underlying documentation, for a period of at least five years. The rules of the CTL also directly apply to companies and establishments in the Fujairah Free Zone, since no local rules on the keeping of accounting records have been issued. In respect of entities in the other free zones (except the DIFC), the CTL also applies. However, the legislation in most of the free zones which are reviewed contains separate obligations to keep accounting records which does not entirely satisfy the Terms of Reference. Given the variation between the CTL and the legislation in most free zones analysed, it is recommended that further clarification on the interaction between the CTL and the free zone legislation be provided. Entities in the DIFC are, since December 2013, required to keep reliable accounting records, including underlying documentation, for a period of at least six years. It should be noted, however, that the type of underlying documentation to be kept is not specified in all cases.

54. Almost all entities in the UAE must have their accounts audited, and in most cases the audited financial statements must be submitted to the relevant authorities. However, in respect of partnerships as well as off-shore companies in the Jebel Ali Free Zone and the RAK Free Zones there is no such framework and the monitoring of compliance with accounting record keeping obligations is very limited. It is recommended that the UAE implements a system of oversight to ensure that these entities keep reliable accounting records, including underlying documentation, in practice.

55. No peers have mentioned that the UAE had indicated that information could not be exchanged because it was not available. Nevertheless, it is a matter of fact that the UAE has not exchanged information in all cases where it was requested and it is not clear in all cases that the information would have been available. It is therefore recommended that the UAE monitors the availability of ownership and accounting information, and in particular underlying documentation, where this is requested by an EOI partner.

56. 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. The legal and regulatory framework in the DIFC is also adequate. In practice, bank information has been exchanged and no instances were reported where the information was not available while it should have been.

## 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.

57. As mentioned above in the Introduction, there are almost 40 operational free zones in the UAE which may issue their own regulations on commercial entities, although harmonisation efforts are being made to have the same basic administrative requirements for entities in the different free zones, in particular where they are clustered and administered by one authority. This section therefore analyses the availability of ownership and identity information on relevant entities separately with respect to entities established in five of the largest free zones, in addition to the entities that do not fall under any free zone regime.

### *Companies (ToR A.1.1)*

#### *UAE (excluding the free zones)*

58. A new Commercial Companies Law (CCL) came into effect on 1 July 2015. It replaced the previous law which dated back to 1984. Most changes are related to facilitating investment, and the rules that are relevant with respect to ensuring the availability of ownership information have generally remained the same.

59. The CCL defines a company as *a contract under which two or more persons are committed to participate in an economic enterprise with the objective of profit realisation by contributing a share in capital or work, and dividing between themselves the profit or loss resulting from the enterprise* (Art. 8). Three types of companies may be established in the UAE:

- **public joint stock companies** (Arts. 105-254 CCL): This type of company has capital (at least AED 30 million (EUR 7.2 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 December 2015, the UAE had 162 public joint stock companies;

- ***private joint stock companies*** (Arts. 255-265 CCL): Such a company must have between 2 and 200 members or a single legal person as a member, and a minimum capital of AED 5 million (EUR 1.2 million). 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 December 2015, the UAE had 160 private joint stock companies; and
- ***limited liability companies*** (Arts. 71-104 CCL): In this type of company, shareholders (from one to fifty) are liable for the debts of the company to the extent of the value of their shares. No minimum capital requirement has been set (although this may be done by Cabinet decision at a later stage), but the company must have sufficient capital to achieve the purpose of its incorporation. They cannot seek public subscription for capital. As at December 2015, the UAE had 206 073 limited liability companies.

60. All companies incorporated in the UAE hold its nationality but this does not necessarily entitle them to privileges reserved to UAE nationals (Art. 9(3) CCL). All companies incorporated in the UAE must have a registered address in the State to which notices and correspondences shall be sent (Art. 13). Companies established in the UAE must have one or more UAE nationals holding at least 51% of the capital of the company (Art. 10 CCL). This means that despite the introduction of the possibility for private joint stock companies and limited liability companies to have only one shareholder, this one shareholder must be a UAE national.

61. Certain companies are exempted from the application of the CCL (Art. 4). These would normally be companies with a high degree of government ownership and/or involvement. Such companies must be registered in the exempted companies register at the relevant government authority and their registration must be renewed on an annual basis, following the same process as other entities.

62. Finally, the new CCL recognises two types of companies with a specific structure. Firstly, the concept of holding companies was introduced for any joint stock company or limited liability company that holds shares or stocks enabling such company to control the management of the subsidiary and to have influence its decisions. A holding company is not allowed to conduct any activities other than through its subsidiaries. The rules with respect to joint stock companies and limited liability companies apply equally where they are classified as holding companies.

63. Second, the new CCL codifies the concept of an investment fund, which can be incorporated with separate legal personality. Rules applicable to investment funds had already been issued by the SCA in 2012. They must

be joint stock companies (or branches of foreign companies) and must be duly licensed following the rules in the CCL (Art. 4 SCA Resolution No. 37 of 2012).

### *Information held by government authorities*

64. All companies must register their Memoranda of Association and subsequent amendments in the Commercial Register (Art. 15 CCL). Companies acquire corporate personality on the date of entry in the Commercial Register (Art. 21 CCL). At the same time, the company's trade license will be issued. The trade license must be renewed on an annual or sometimes bi-annual basis.

65. 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. 305 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. 322 CCL).

66. The Commercial Register is kept by the Departments of Economic Development of each of the Emirates separately, resulting in seven different registers kept by seven different competent authorities. With the introduction of the new CCL in 2015, a Business Name Register was created in order to avoid having companies with the same or very similar name. The Business Name Register is kept by the federal Ministry of Economy, but is not yet in full operation, as it is awaiting regulations to be issued. It is therefore still possible to incorporate a company with a name that already exists in another Emirate.

### Public joint stock companies

67. The memorandum and articles of association of a public joint stock company must contain particulars of the founder(s) name(s), place of residence, address, date of birth and nationality (Art. 110(1)(c) CCL). Information on the total capital, number of shares and value of each share must also 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. 110(1)(g) CCL). The founder members must subscribe to a minimum of 30% and a maximum of 70% of the share capital of the company (Art. 117(1) CCL).

68. Incorporation requires approval from different government authorities at various times. Before offering shares for public subscription, the founders must obtain initial approval from the competent authority (the Department of Economic Development of the Emirate where the company is being incorporated) and the SCA (Arts. 113 and 114 CCL). After the public subscription

process, the Board of Directors must apply for a certificate of incorporation at the SCA, and the application must be accompanied, among other documents, by a statement of the names and nationalities of the subscribers and the number of shares subscribed by each of them (Art. 133 CCL). This allows the SCA to check whether the requirement that one or more UAE nationals must hold at least 51% of the capital of the company, is met. Once the SCA has issued the certificate of incorporation, the company must complete the registration procedures for registration in the Commercial Register before the competent authority, which includes the furnishing of the memorandum and articles of association (Arts. 135 and 136 CCL).

69. Shares in public joint stock companies shall be transferred by the entry of such transfer in the register of shareholders or, where the shares are listed on a financial market, in accordance with the procedures issued by the SCA or other relevant authority (Arts. 211 and 212 CCL). Until July 2015, public joint stock companies were required to provide a copy of the particulars recorded in the share register to the competent authority as well as the Ministry of Economy. This obligation has been replaced by the possibility for the SCA to inspect the register of shareholders at any time (Art. 141(2) CCL).

#### Private joint stock companies

70. The incorporation process for a private joint stock company is similar to that for a public joint stock company. Initial approval must be obtained from the competent authority with input from the Ministry of Economy (Arts. 258 and 259 CCL). Subsequently, an incorporation certificate must be requested from the Ministry of Economy, and the application should include a certificate confirming that the register of shareholders has been delivered to the “share register secretariat” of the company (Art. 261(1)(f) CCL). Once the Ministry of Economy has issued the certificate of incorporation, the company must complete the registration procedures for registration in the Commercial Register before the competent authority (Art 162 CCL).

71. Unlike public joint stock companies, private joint stock companies do not have an obligation to provide the names and nationalities of the prospective shareholders to the authorities, although until July 2015 they were required to provide a copy of the particulars recorded in the share register to the competent authority as well as the Ministry of Finance. In addition, following a Decision by the SCA in 2009, this authority holds the share registers of all private joint stock companies and these companies are required to provide the SCA all necessary details.

72. This arrangement is to be replaced by a mechanism whereby the shares in private joint stock companies shall be transferred by the entry of such transfer in the register of shareholders which must be kept by a share



register secretariat (Arts. 260 and 263 CCL). The share register secretariat will be a service provider licensed and supervised by the SCA. The expectation is that this new mechanism will enter into force in mid-2016.

### Limited liability companies

73. The memorandum of association of a limited liability company must contain, among other particulars, (i) the full name of each shareholder, as well as its nationality, date of birth and domicile, and (ii) the capital of the company and the estimated value of the shares as attributed to each shareholder (Arts. 42 and 73 CCL).

74. Incorporation of a limited liability company includes an application for a trade license at the competent authority of the Emirate where the company is being incorporated (Arts. 43 and 73 CCL). The memorandum of association must be attached to this application (Art. 15 CCL), allowing the competent authority to check whether the requirement that one or more UAE nationals must hold at least 51% of the capital of the company, is met. In practice, most competent authorities have developed standard forms and guidance for the application process. Once the competent authority has issued the trade license, the company must provide a copy of this license and the memorandum of association to the Companies Registrar at the Ministry of Economy (Arts. 43(7) and 73 CCL) for publication.

75. In January of each year, limited liability companies must also provide the particulars recorded in the register of members and any developments which have occurred to the Companies Registrar at the Ministry of Economy and the competent authority in the relevant Emirate (Art. 74(3) CCL). 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.

### *Information held by companies*

76. The CCL prescribes all types of companies formed in the UAE to keep and maintain ownership information by keeping a register of shareholders. Joint stock companies (public and private) must keep such register in accordance with conditions published by the SCA, if any (Art. 141(1) CCL).

77. The shareholder register of a private joint stock company must contain the shareholder's names, number of shares held by each shareholder and all share transfers. Since July 2015, the register must be kept by a licensed share register secretariat (Art. 260(1) CCL).

78. With respect to limited liability companies, the shareholder register must contain the full name, nationality, date of birth and place of residence

or address of the head office of each shareholder, as well as all share transfers (Art. 74(1) CCL). The managers of the company are responsible for ensuring that the shareholder register is accurate and up-to-date (Art. 74(2) CCL). Shares in a limited liability company may only be transferred after notifying the other shareholders (through the company management), who then have the right to buy the shares (Art. 80 CCL).

### *Foreign companies*

79. Foreign companies may only conduct activities in the UAE once they are registered in the Foreign Companies Register kept by the Ministry of Economy (Art. 330(1) CCL). 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 and also obtain registration from the Ministry of Economy. The relevant licensing and registration obligations have been harmonised and can be found in the CCL and related Ministerial Decisions.<sup>14</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.

80. 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).

81. 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

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14. 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).

Register, maintained by the Ministry of Economy, and the Commercial Register, maintained by the Departments of Economic Development in the different Emirates. Registration must be renewed each year. The UAE authorities have advised that, as at December 2015, a total of 3 963 foreign companies were registered with the Ministry of Economy.

82. 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).

### *Anti-money laundering laws*

83. Federal Law 4/2002 on the Criminalisation of Money Laundering (the AML law), which was substantially supplemented in 2014 by Federal Law 9/2014, 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>15</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>16</sup>

84. 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, and they must update this information

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15. 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.

16. 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.

regularly and periodically (Arts. 4 and 5 Federal Law 9/2014). 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 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*

85. 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.

86. Article 10 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.

87. 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".

88. 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.

89. 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. In practice, the authorities that monitor service providers have not encountered instances where the service provider was not able to identify the person it represents acting as a nominee. In addition, peers did not flag any issues regarding nominees during the period under review.

### *Companies in the free zones*

90. As mentioned above, this report examines the legal and regulatory framework of five of the 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 Zones. As at December 2015, there were almost 14 000 registered in the Jebel Ali Free Zone, approximately 1 600 in the Dubai Airport Free Zone, around 2 000 in the Fujairah Free Zone, and approximately 22 000 in the RAK Free Zones. A total of 1 512 companies were operating in the DIFC as at April 2016.

91. Each of the free zone authorities keeps its own register of entities established therein. Although it is generally a requirement to have the acronym FZ (Free Zone) or FZE (Free Zone Establishment) in the name of the entity, the name does not have to indicate in which of the free zones it is registered. It may therefore be possible that entities with the same or very similar names exist in different free zones. There is no central register which holds the names of all entities registered in the free zones (see further analysis regarding this issue under element B.1).

### *Information provided to government authorities*

#### DIFC

92. As mentioned in the Introduction, the DIFC has its own laws and regulations regarding commercial matters. The UAE Commercial Companies Law does not apply to companies in the DIFC under any circumstance. Instead, 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.

93. 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 1 512 companies were registered with the DIFC Registrar of Companies as at April 2016 and, out of these, 431 are supervised by the DFSA. The remaining 1 081 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. All companies must have a registered office, or in the case of recognised companies a place of business, which is physically located in the DIFC (Arts. 22 and 116(1)(b) DCL and Art. 3 DCR).

94. 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 April 2016, there were 902 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 April 2016, there were 240 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 April 2016, there were 291 recognised companies in the DIFC.

95. The practical process for incorporation and registration of a company starts with a preliminary assessment by the authorities of whether the applicant fits the objectives of the DIFC and its growth strategy going forward. This is usually a desk-based assessment, but where an applicant wishes to engage in providing financial services, the preliminary assessment also includes an interview. If the preliminary assessment is positive, the applicant can start the formal incorporation and registration procedure, which includes the furnishing of all required documentation.

96. 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 DCL 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. The articles of association must be executed in person by a duly authorised person before the Registrar of Companies in the DIFC.

97. 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). In practice, the Registrar requires identity information on all directors and shareholders to be submitted through sections J and M of the registration form, which is to be accompanied by a copy of the passport in the case of an individual and a certified copy of the certificate of incorporation in the case of a body corporate.

98. Every domestic company is obliged to file with the Registrar an annual return, before the end of March every year, stating at a minimum in respect of each class of shares or membership interests in the company the name and address of each shareholder or member as at 1 January of that year that held at least 5% of the shares or membership interests as well as the total number of other shareholders or members (Art. 22 DCL). Alternatively, a complete list of all shareholders or members may be provided. The authorities indicated that in practice most companies provide the complete list of all shareholders.

99. Article 114 of the DCL provides for the possibility to incorporate a specific type of company if this is provided for in the DCL or relevant regulations. Currently, three specific types of companies may be formed:

- a. Protected Cell Companies (PCCs): these are governed by Chapter 12 of the DCR. 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. A PCC can issue cell shares in respect of any of its cells, and 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 to. The index must be kept at the place where the general register of shareholders is kept. As of April 2016, two PCCs were registered.
- b. Single Family Offices (SFOs): specific SFO Regulations apply. An SFO provides services (asset management) only to a single family, which must have minimum investable/liquid assets of USD 10 million. The assets are not, however, transferred into the SFO and it is therefore to be distinguished from a trust. Nevertheless, the authorised representative of the SFO must conduct due diligence on the members of the family to whom services are provided. As of April 2016, 31 SFOs were registered.

- c. Special Purpose Companies (SPCs): specific SPC Regulations apply. An SPC may only be used for structured finance transactions which include, without limitation, any type of securitisations or other capital markets transactions. They are typically formed to separate certain assets or transactions from other business to mitigate risks of possible liabilities affecting other assets or transactions. As of April 2016, 152 SPCs were registered.

100. As a general rule, the DCL applies to these specific types of companies in the same way it applies to other companies, except where the provisions of or the context of the DCL or relevant regulations provide otherwise (Art. 114(3) DCL). With respect to ownership information, PCCs, SFOs and SPCs are all subject to the obligation to keep a register of shareholders under Art. 39 or 95 of the DCL.

101. 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). Upon registration, details of the beneficial owners of the recognised company must also be provided (Section X of the registration form). Where the beneficial owners are not individuals directly owning more than 10% of the shares, details of the shareholding structure must be provided. Since 2012, any change in this information must be submitted to the Registrar within 14 days of such change taking place (Art. 116A DCL). In addition, any change in the shareholders or members of the recognised company must also be filed with the Registrar (Art. 116(c)(iv) DCL).

### Other free zones

102. 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.



103. 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 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). 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

- in the RAK Free Zones both onshore and offshore companies may be incorporated. Offshore companies that were established before 1 January 2016 are currently covered by the RAK International Companies Regulations 2006 as well as the RAK International Business Companies Regulations 2006 and Implementing Regulation 1/2000). Under these regulations companies had to register with the free zone authority and as part of registration had to 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) or the names and addresses of all members (Arts. 8 and 22 RAK International Business Companies Regulations 2006). This information must be updated with annual re-registration.

Offshore companies that are established on or after 1 January 2016 must comply with the RAK ICC Business Companies Regulations 2016. Upon incorporation, they must submit to the Registrar a document with the full name and address of the initial member(s) (Art. 6(1)(e)). Subsequently, the Registrar shall keep a register of members for all offshore companies (Art. 54(1)). The company or its registered agent shall file any changes in its register of members with the Registrar in the approved form within five days of such change, and the changes will take effect upon the register of members being updated by the Registrar (Art. 54(4)). By 31 December 2017, all offshore companies that were incorporated before 1 January 2016 will also have to comply with these obligations.

Onshore companies are currently subject to similar rules as (onshore) companies in the Jebel Ali Free Zone and the Dubai Airport Free Zone. Revised regulations are expected to be finalised by the end of May 2016, but these will still include obligations on onshore companies to keep ownership information and provide it to the authorities.

104. In respect of the Dubai Airport Free Zone, all entities established in that free zone (and indeed any other free zone other than a financial free zone) are subject to the federal Commercial Companies Law (CCL), as the federation has exclusive legislative jurisdiction in the area of company law following Article 121 of the Constitution. Nevertheless, Article 5 of the CCL states that:

“The provisions of this law shall not apply to companies established in the free zones of the State if a specific provision to this effect is contained in the laws or regulations of the free zone.”

105. The UAE authorities explained that the effect of this provision is such that the CCL shall apply to companies operating in UAE free zones, unless the laws and regulations of the relevant free zone contain an explicit provision on an issue addressed under the CCL. In that case the provision in the legislation of the respective free zone shall apply. In the absence of an explicit provision on an issue under the laws and regulations of a given free zone and which issue is addressed under the CCL, the relevant provisions of the CCL shall apply to companies established in a free zone.

106. The free zones generally have legislation that applies to the different types of entities that may be incorporated there. In many instances the free zone legislation provides for rules on issues which are also covered by the CCL, and in that case it seems that the free zone legislation should apply. In practice, entities incorporated or established in the free zones follow the free zone legislation as primary guidance and are not registered with the federal authorities. The oversight and monitoring is also carried out exclusively by the free zone authorities and compliance with the CCL does not seem to be included in these monitoring programmes.

107. As most free zone legislation contains rules that require entities to keep ownership information, and in most cases also to provide such information to the authorities, this does not raise any issues. However, the availability of ownership and identity information on foreign companies in the Dubai Airport Free Zone is not ensured under free zone legislation. These companies must register with the free zone authority, but it is not clearly established in the free zone legislation that they are required to submit ownership information in that process or at a later stage.

108. Under the CCL a Ministerial Decision has been issued that foreign companies must register with the federal Ministry of Economy and provide ownership information when doing so. Following the view of the UAE authorities this would mean that a foreign company setting up business in the Dubai Airport Free Zone would have to register with the free zone authority while also providing the information as required by the Ministerial Decision. In practice, foreign companies operating from within the Dubai Airport Free Zone are subject to the same administrative requirements as companies formed in that free zone. According to the authorities, requirements to provide full ownership information are in practice applied to foreign companies. Nevertheless, it remains the case that the inter-connection between the free zone rules and the CCL in this case is not clearly established. It is therefore recommended that the UAE clarifies that ownership information on foreign companies having their main office in the UAE is available in all instances.

109. As mentioned above, offshore companies can be incorporated in the Jebel Ali Free Zone and RAK Free Zones. The relevant authorities report that the most common activity of these offshore companies is to function as holding companies. Offshore companies in both free zones must at all times have a registered office and a registered agent in the UAE which must have been approved or licensed by the free zone authorities (Arts. 30 and 31 Jebel Ali Offshore Companies Regulations 2003, Arts. 37 and 38 RAK International Companies Regulations 2006, Arts. 76 and 77 RAK International Business Companies Regulations 2006 and Arts. 91 and 92 RAK ICC Business Companies Regulations 2016). The registered agents are subject to the federal AML legislation.

110. 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

111. 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 may be kept at the offices of the agent as long as a copy of the register is kept at the company's registered office.

112. 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 DCL).

### Other free zones

113. 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>17</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).

114. Dubai Airport Free Zone Authority Regulations 1/2000 and 1/1998 contain provisions identical to those applicable to companies and establishments in the Jebel Ali Free Trade Zone.

115. Neither the Fujairah Free Zone Law of 2004 nor the Operational Manual specifies the ownership information to be maintained by companies and establishments. However, the federal CCL also applies to entities incorporated in the free zones, unless explicitly stated otherwise (which is not the case in the Fujairah Free Zone). Thus the obligations which apply in the UAE, outlined previously, to maintain shareholder registers, apply to companies and establishments in the Fujairah Free Zone.

116. In the RAK Free Zones, all offshore companies incorporated before 1 January 2016 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. 53 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). Under the RAK ICC Business Companies Regulations 2016, the register of members is kept by

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17. 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.

the Registrar which is dependent on the information being provided by the company or its registered agent. This implies that the company or the registered agent itself should also keep a register of members, although this is not explicit in the regulations.

### *Nominees*

#### DIFC

117. 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).

118. 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. All service providers are supervised by the DFSA and they must verify the identity of the customer and any beneficial owner on the basis of original or properly certified documents, data or information issued by or obtained from a reliable and independent source (DFSA AML Rules, Chapter 7). Detailed guidance has been issued by the DFSA on the pieces of information that need to be collected.

119. 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, which are designed to attract businesses only, it is likely that only a very limited number of nominees may be performing nominee services gratuitously. In practice, no peer raised any issues regarding nominees during the period under review.

#### Other free zones

120. 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.

121. 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.

122. In the RAK Free Zones, 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 Trade 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 Trade 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***

123. All companies incorporated in the UAE, whether in or outside a free zone, are required to keep ownership and identity information. This is supplemented by various obligations to submit information to government authorities ensuring availability of ownership information with them, which must generally be updated annually. The only exception are offshore companies in the Jebel Ali Free Zone, where no regular monitoring of the obligation to keep a register of members is taking place. Ownership information is also available for foreign companies operating in the UAE. However, foreign companies registered in the Dubai Airport free zone are not explicitly required to keep or provide information on their owners to any authority, although according to the authorities this is being done in practice.

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

124. Pursuant to Articles 104, 208 and 265 of the CCL, in the UAE both public and private joint stock companies as well as LLCs are prohibited from issuing bearer shares.

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

126. 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.

127. According to the law, 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.

128. In practice, it is no longer authorised for international companies to have bearer shares. The authorities issued an official notification in April 2014 to all registered agents stating that international companies were no longer permitted to have bearer shares and that all companies with bearer shares must convert these to registered shares or be liquidated. Companies that did not comply have been struck off over the course of two years (the last nine companies were struck off on 31 March 2016). The following table shows how the companies that previously had issued bearer shares responded to the notification:

**International companies with bearer shares in the RAKFTZ:  
how did they address the prohibition imposed by the authorities?**

Total number of international companies that had issued bearer shares on 1 April 2014	161
Converted bearer shares into registered shares	77
Companies liquidated	9
Companies struck off by the Registrar	75

129. Since the notification was sent in April 2014, the RAKFTZ Authority also does not accept new international companies if their articles of association allow for the issuance of bearer shares. It may therefore be concluded that it is no longer allowed in practice for international companies in the RAKFTZ to have bearer shares. In addition, by 31 December 2017 all



international companies must be re-registered in the RAK ICC (as explained in the Introduction) and must then comply with the RAK ICC Business Companies Regulations 2016. These regulations explicitly prohibit companies from issuing bearer shares (Art. 50).

130. No peers have raised specific issues related to bearer shares in the UAE (including its free zones) related to the three-year review period.

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

#### *UAE*

131. As partnerships are, like companies, considered legal entities they are governed by the CCL, which distinguishes two types:

- **general partnerships** (Arts. 39-61 CCL): All partners (two or more) are jointly liable for the partnership's debts to the extent of all their assets. Partners' shares 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; and
- **simple limited partnerships** (commandite) (Arts. 62-70 CCL): This partnership consists of one or more general partners 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 December 2015, there were 477 simple limited partnerships in the UAE.

132. Until July 2015, all partners in a partnership had to be UAE nationals. However, with the entry into force of the new CCL the general rule that one or more UAE nationals must hold at least 51% of the capital also applies to partnerships. This means that foreigners can now own up to 49% of partnerships established in the UAE. The partners in a general partnership can only be natural persons (Art. 39 CCL), while the partners in a limited partnership may be either natural or corporate persons. It is no longer possible to establish a partnership limited with shares – under the previous companies law no such partnerships had been formed.

133. The memorandum of association of all partnerships must include, amongst other things, the full name of each partner, its nationality, date of birth and domicile, as well as their shares in the partnership (Arts. 42 and 65 CCL).

*Ownership information held by government authorities*

134. Partnerships are required to register their memorandum of association and any amendment thereto in the Commercial Register, and can only conduct business after registration (Art. 15 CCL). Incorporation and registration procedures include obtaining a trade license from the competent authority of the Emirate where the partnership is being established, which also keeps the Commercial Register. This is followed by providing the Ministry of Economy with a copy of the trade license (Art. 43 CCL). Any change in the memorandum of association, which includes information on the partners, needs to be registered in the Commercial Register (Arts. 15(1) and 15(3) CCL).

135. The partnership's trade license issued by the competent authority must be renewed on an annual or sometimes bi-annual basis. This process does not encompass the furnishing of ownership information to the authorities, but any change in the information on the partners must be provided at an ongoing basis by registering any changes to the memorandum of association (Art. 15 CCL). In addition, a person shall not become a partner until its assignment is registered with the competent authority and notified to the Ministry of Economy (Arts. 56(1) and 65(1) and 70 CCL).

*Information held by partnerships*

136. All partnerships must keep at their head office a register including the names and addresses of the partners (Arts. 44(1) and 65(1) CCL). Shares in partnerships may not be assigned without the consent of all partners (Arts. 56(1) and 65(1) and 70 CCL), which ensures that the partnership will be able to keep an up-to-date register.

*Information held by service providers*

137. In accordance with the AML Law, regulations and circulars, obliged entities<sup>18</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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18. 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.

138. 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*

139. Provisions in the CCL dealing with foreign companies (Arts. 327-332 CCL) 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*

140. Information on the identity of all partners of general partnerships and simple limited partnerships is available with the partnerships themselves and with the Commercial Register. Foreign partnerships follow the same rules as foreign companies, and must therefore provide ownership information upon registration in the UAE and when a change occurs.

### *Partnerships in the free zones*

#### *DIFC*

141. 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 April 2016 was two;
- ***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 22 registered limited liability partnerships in the DIFC as at April 2016; 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 April 2016, there were three registered limited partnerships in the DIFC.

142. 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). The practical process for incorporation and registration of a partnership is the same as for companies. It includes a preliminary assessment by the authorities of whether the applicant fits the objectives of the DIFC and its growth strategy going forward. If the preliminary assessment is positive, the applicant can start the formal incorporation and registration procedure, which includes the furnishing of all required documentation.

143. 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).

144. 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).

145. 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

146. 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

147. 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. 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.

148. Prior to 2012, general partnerships and limited partnerships needed 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. There is now a requirement to provide to the Registrar the details of the identity of all partners of foreign general partnerships and foreign limited partnerships which are registered as recognised partnerships (Art. 13(2)(d) DIFC General Partnership Law, Art. 5.5.1(d) DIFC General Partnership Regulations and Art. 5.1.1(d) DIFC Limited Partnership Regulations) upon registration. Any changes in ownership must be notified to the Registrar within 14 days of such change (Art. 14(a) DIFC General Partnership Law and Art. 46(1)(c)(iv) DIFC Limited Partnership Law).

149. Foreign limited liability partnerships applying for registration must also provide a list of names and addresses of all partners in the application (Art. 7.1.1 DIFC LLPR). In addition, they are required to notify the Registrar of any changes in the constitution of the partnership, by the incoming or outgoing of a partner, within 14 days of this change (Arts. 37(1)(c)(iv) and 37A LLPL).

### *Other free zones*

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

### *Conclusion*

151. 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, and information on all partners is also required to be maintained and updated.

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

#### *UAE (excluding the free zones)*

152. 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>19</sup>

153. 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.

154. 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>20</sup>

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19. [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.

20. 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

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 in the AML laws and AML provisions do not specifically apply to all trustees. For example, a 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.

155. 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.

156. 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 Sharia compliant deeds. A waqf can be created for the benefit of specifically designated individuals or for general charitable purposes.

157. 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.

158. 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

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owned), as well as all institutions in the securities and insurance sectors and lawyers when they are providing specified financial services.

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. No issues have been raised by peers with respect to the three-year review period in relation to waqfs.

### *Conclusion*

159. 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. 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.

160. No peers have indicated that they requested information with respect to waqfs or trusts administered in the UAE (other than the DIFC) in the three-year review period, or raised other issues in this regard.

### *Trusts in the free zones*

#### *DIFC*

161. 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.

162. 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>21</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.

### Information held by government authorities

163. 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>22</sup> to provide custody or depository services. A public domestic fund must be registered with the DFSA (Art. 28 Collective Investment Law). As at 1 January 2016, none of the investment funds in the DIFC had the form of a trust. There is no requirement of registration in the DIFC of other trusts.

### Information held by trustees and service providers

164. 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.

165. The AML Law applies in the DIFC, and 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.

166. The DFSA is responsible for the supervision of service providers operating in the DIFC with respect to their compliance with AML obligations. The DFSA has issued extensive guidance regarding the practical requirements that should be met in order to comply with the different regulatory obligations,

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21. 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).
  22. 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.

including the AML Law. For trust service providers, the AML Module and section 5 of the Conduct of Business Module are the most relevant.

167. Pursuant to the DFSA Law, any person that wishes to perform financial services or ancillary services in or from the DIFC must obtain a license from the DFSA (Part 3). The provision of trust services<sup>23</sup> or acting as a trustee of a fund constitutes financial services. Provision of legal services or accountancy services is considered an ancillary service. There were six entities licensed to provide trust services in the DIFC as at 1 January 2016, five of which are banks. Together, these entities had created 28 express trusts.

168. Trust service providers (TSPs) 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). The authorities indicated that the term “principal named beneficiaries” refers to the beneficiaries named in the trust deed. In the case of discretionary trusts with the capacity for the trustee to add further beneficiaries, the TSP must also have verified documentary 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.

### Foreign trusts

169. 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.

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23. 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.

170. 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 other licensed service providers provide services must be available with such service provider. The AML laws also oblige service providers 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*

171. 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.

172. 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>24</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 above the information on the constituents of foreign trusts may not be fully ensured.

### *Conclusion*

173. 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

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24. 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.

would require them to identify their customers. No peers have indicated that they requested information with respect to trusts administered in one of the free zones in the three-year review period, or raised other issues in this regard.

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

#### *UAE*

174. 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.

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

176. 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).

177. 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*

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

### ***Conclusion***

179. 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 (excluding the free zones)*

180. Failure to register in the Commercial 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. 15 CCL).

181. As described under A.1.1 and A.1.3 above, all companies and partnerships are required to keep an up-to-date register of members. Any failure to comply with this obligation may lead to a monetary fine between AED 10 000 and AED 100 000 (between EUR 2 400 and EUR 24 000) (Art. 360 CCL), which may be imposed either on the entity itself or on one or more responsible individuals.

182. The memorandum of association of a limited liability company, which must be provided to the authorities upon registration, contains the names of the owners. In January of each year, limited liability companies must provide the particulars recorded in the register of members and any developments which have occurred to the Companies Registrar at the Ministry of Economy and the competent authority in the relevant Emirate. This will generally take place in the context of renewing the trade license with the competent authority. Most competent authorities have developed standard forms and guidance for such renewal, which include the provision of details of the members.

183. The competent authorities check whether the information provided by the company is complete, which includes a check for ownership information. A renewal of the trade license will not be issued until all required information has been received. Without a valid trade license, banks and other service providers, as well as private parties, would refuse to do business with the company. Companies are generally granted a grace period to renew an expired commercial license, following which the license of the company will be cancelled. Once the commercial license of a company has been cancelled, the company may not continue to carry out activities.

184. The registration and annual license renewal process of limited liability companies ensures that the authorities have ownership information at all times. An important reason for this is so that checks can be performed with respect to the ownership structure, as it is not allowed for foreigners to hold more than 49% of the shares. No specific statistics are available with respect to the application of penalties related to the breach of the 49% rule. With respect to the cancellation of licenses, the Dubai Department

of Economic Development reported that from January to September 2015, 17 169 new licences were issued, 100 556 were renewed, and 2 456 cancelled. The authorities indicated that, in general, compliance with registration and renewal requirements is high as companies cannot do business without a valid license. Overall, the Ministry of Economy has issued 8 946 penalties in 2015 across the board, including for late license renewal and non-submission of required information.

185. Until July 2015, public and private joint stock companies were also required under the CCL to provide their register of members to the competent authority and the Ministry of Economy on an annual basis, which conducted checks similar to the ones for limited liability companies. The share register of private joint stock companies must now be kept by a share register secretariat, which must be an entity licensed by the SCA. The SCA will perform checks to ensure that the share register secretariats keep up-to-date share registers. It is recommended that the UAE monitors that this new regime continues to ensure the availability of ownership information on private joint stock companies.

186. With respect to partnerships, there is an obligation to provide full details of the partners to the competent authority and the Ministry of Economy at registration, and any change in the partners will only be valid after registration.

187. 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 48) a month, to a maximum of AED 2 000 (EUR 480) within a year (Ministerial Decision 377/2010 and UAE Cabinet Decision 30/2004 as amended by Decision 5/2005).

188. Non-compliance with any provisions of the Anti-Fronting Law are sanctionable by a fine not exceeding AED 100 000 (EUR 24 000). Repeated non-compliance may lead to imprisonment for a period not exceeding two years in addition to a fine of AED 100 000 (EUR 24 000). The sanctions are applicable to both parties in an illegal fronting relationship (Art. 3).

189. Any violations of the registration or record keeping obligations for associations is sanctionable by a fine not exceeding AED 10 000 (EUR 2 400) (Art. 57 Federal Law 2/2008).

190. 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 2 400 to 24 000) 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*

191. 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 22 072) (Art. 13(4) DCL);
- failure to lodge an annual return is punishable with a fine of USD 2 000 (EUR 1 766) (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 (EUR 1 766);
- Article 116A of the DIFC Companies Law, requires recognised companies to submit changes in registered details within 14 days of such change. Non-compliance with this provision can result in a maximum fine of USD 2 000 (EUR 1 766) (Schedule 1 DIFC Companies Law); and
- a company violating the prohibition on issuance of bearer shares is liable for a fine of USD 5 000 (EUR 4 415).

192. Schedule 2 of both the DIFC General Partnership Law and DIFC Limited Partnership Law stipulate a fine of USD 20 000 (EUR 17 659) for carrying on business as a partnership in the DIFC without registration. General partnerships or recognised partnerships may be fined for USD 2 000 (EUR 1 766) 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, although it is considered an offence not to notify the Registrar of a change of partners (Art. 25(4) DIFC LLPL).

193. The Registrar of Companies sits within the DIFC Authority and is tasked with the supervision of companies and partnerships in the DIFC in respect of their compliance with obligations to register, file annual returns and notices of changes of registered details. The registered details for all types of companies and partnerships incorporated or operating in the DIFC include information on all owners.

194. Before issuing the certificate of incorporation and/or the business license to a company or partnership, the DIFC Authority performs a quick background check on the (prospective) directors and owners, including by

asking the Dubai Police to do a security verification and requesting copies of their passports. Entities must also provide an annual return with up-to-date ownership information, which is then checked by the Registrar against the information on record.

195. The Registrar maintains an inspection programme to check the compliance of registered entities with the requirements of the relevant governing law and regulations. This includes a check of whether all required documentation is kept, such as the register of directors and the register of shareholders or members, as well as a check of whether information has been submitted to the Registrar as required.

196. During the three-year review period, the Registrar has conducted inspections, which included an on-site visit, of 167 entities. In total, the following enforcement actions were taken (not necessarily all connected to an on-site inspection), almost all in the form of financial penalties as set out above:

**Number of enforcement actions imposed by the DIFC Registrar of Companies on companies and partnerships**

	2012-14
Failure to submit annual return	90
Failure to submit annual report	3
Failure to renew commercial license	57
Conducting business without proper registration	1

197. The obligations on companies and partnerships in the DIFC to keep and provide ownership information combined with the inspection programme of the Registrar of Companies sufficiently ensures the availability of ownership information for these entities in practice.

198. In addition to the inspection programme of the Registrar of Companies, the DFSA supervises all entities which provide financial services as well as other designated non-financial businesses and professions in the DIFC. Together, these amount to more than 500 entities, representing more than  $\frac{1}{3}$  of the entities registered in the DIFC. In accordance with the practical procedures and rules issued by the DFSA (see in particular section 11.8 of the General Module of the DFSA Rulebook), these entities must provide their ownership structure to the DFSA upon application for a license so that it explains which person(s) control(s) at least 10% of the entity. This information must be updated on an annual basis and, where the entity was incorporated in the DIFC, the persons controlling 10% or more of the entity must be approved by the DFSA. This provides additional assurance that ownership information is available in practice with respect to these entities.



199. 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 (EUR 4 415) for a natural person and USD 25 000 (EUR 22 072) 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).

200. 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.

201. With respect to financial and non-financial service providers, an important monitoring and enforcement tool of the DFSA are the on-site risk assessments, which are inspections where the DFSA checks compliance by that service provider with its legal and regulatory obligations. An important area in all the assessments is compliance with AML/CFT legislation. Selection of which service providers will be assessed in any given year is based on (i) policy that certain types of service providers should receive an on-site risk assessment at least once in a certain period (for example, the risk assessment cycle for banks is one year), (ii) the general risk profile of the service provider, as compiled from intelligence gathered through the issuance and renewal of the license as well as AML Returns (reporting by service providers on the measures taken to comply with AML/CFT legislation) and previous on-site risk assessments, and (iii) specific events, such as the submission of suspicious activity reports or complaints.

202. In each of the years from 2012-15, between 20-25% of the service providers were subject to an on-site risk assessment. The DFSA prepared a post-inspection report for each assessment, containing recommendations for improvement and actions to be taken by the service provider within a specified time. In a number of cases, enforcement actions have been taken. The total number of enforcement actions taken in the years 2012-15 is as follows:

**Number of enforcement actions imposed by the DFSA on financial and non-financial service providers**

Year	Number of enforcement actions
2012	7
2013	5
2014	1
2015	9

203. The enforcement actions include financial penalties, prohibiting persons from performing financial services in the DIFC and appointing an external compliance expert. All enforcement actions are published on the website of the DFSA. The number of enforcement actions in 2014 is relatively low, as the DFSA focused on analysing the newly introduced AML Returns as submitted by service providers. As mentioned above, the information from the AML Returns is an important source for selecting service providers for an on-site risk assessment.

### *Other free zones*

#### **Jebel Ali Free Zone**

204. In the Jebel Ali Free Zone, companies and establishments are subject to a general penalty of AED 10 000 (EUR 2 400) per day of non-compliance with any provision in the relevant regulations, which includes the obligation to keep a register of members and to provide ownership information to the Jebel Ali Free Zone Authority (Art. 70 Regulation 1/92 and Art. 71 Regulation 1/99). Failure by an offshore 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 240) and a daily default fine of AED 200 (EUR 48) (Art. 22 Offshore Companies Regulations 2003).

205. The Jebel Ali Free Zone Authority keeps a register of all entities operating within its jurisdiction. Upon incorporation of a company or establishment, details of all owners must be provided to the Authority and are registered. The Authority issues share certificates to all owners. Subsequently, any change in ownership must be notified to the Authority within seven days and is only effective from the date the transfer is registered in the Authority's register (Art. 23 of Regulation 1/92 and Art. 24 of Regulation 1/99). Share transfers are invalid unless they are so registered and the Authority has issued a share certificate to the new shareholder. The same process is applied with respect to offshore companies. The Authority therefore always has up-to-date ownership information on companies and establishments incorporated in the Jebel Ali Free Zone.

206. In addition, offshore companies must have a registered office and registered agent in the Free Zone or in Dubai at all times, and communication between the Authorities and the company would generally take place through them. Compliance by the registered agents with their obligations under the regulations is also supervised by the Authorities, most importantly through checks upon the annual license renewal. These checks may be a paper exercise or an on-site inspection.

## Fujairah Free Zone

207. 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. However, it follows from Article 5 of the federal CCL that this law also applies to entities incorporated in the free zones, unless explicitly stated otherwise (which is not the case in the Fujairah Free Zone). The CCL therefore requires companies and establishments in the Fujairah Free Zone to keep an up-to-date register of members. Non-compliance with this obligation is punishable with a fine between AED 10 000 (EUR 2 400) and AED 100 000 (EUR 24 000) (Art. 360 CCL).

208. The Fujairah Free Zone Authority keeps a register of all entities operating within its jurisdiction. Upon registration, details of all owners must be provided to the Authority and their names appear on the license issued by the Authority. In practice, for every establishment or company that is incorporated in the Fujairah Free Zone, the Authority issues the share certificate(s) directly to the owner(s). The owners or their representatives are usually physically present to sign the necessary papers with the Authority.

209. The Registrar Office is responsible for monitoring compliance with the registration and license renewal obligations. The Registrar Office consists of three officers supervised by the Head of the Licensing Division. Licenses are issued for a maximum of one year and expire on 31 December, upon which they must be renewed. Reminders are sent at regular times and any non-compliance is followed up immediately.

210. Most of the procedures in the Fujairah Free Zone are not based on specific laws or regulations. However, an Operational Manual is in place which clearly sets out that the details of all owners and their percentage of ownership must be provided upon incorporation or, in case of a branch of a foreign company, upon registration. The Operational Manual also states that any change in ownership will be treated as a new incorporation, meaning that such changes must be reported to the Authority. As an example, in 2014 there were 79 transfers of ownership recorded where at least one owner transferred all its shares, as well as two changes in the percentage of ownership held.

## Dubai Airport Free Zone

211. In the Dubai Airport Free Zone, Regulations 1/1998 and 1/2000 contain a general penalty provision for failing to comply with any provision in these regulations. Domestic companies failing to keep a register of members and providing ownership information and updates to the authorities are therefore subject to a fine between AED 500 (EUR 120) and AED 5 000 (EUR 1 200) per day of non-compliance (Art. 71 Regulation 1/2000). Other

establishments failing to comply with these obligations are subject to a fine of AED 10 000 (EUR 2 400) per day in default (Art. 70 Regulation 1/1998).

212. The Dubai Airport Free Zone Authority keeps an electronic register of all entities operating within its jurisdiction. Upon incorporation, details of all owners must be provided to the Authority and are registered. In practice, the Authority issues the share certificate(s) directly to the owner(s) of each entity that is incorporated in the Dubai Airport Free Zone.

213. The Leasing and Licensing Department is responsible for monitoring compliance with the registration and license renewal obligations. Licenses must be renewed on an annual basis. If the license is not renewed in time, the Authority's system automatically blocks the license and imposes a penalty fee of AED 1000 per month. In the period 2013-15, on average 190 entities (approximately 12% of all registered entities) have been subject to this penalty fee. Entities of which the license is blocked cannot use any of the services of the Authority which in practice means they can no longer operate.

214. Ownership cannot be transferred without prior approval of the Authority and is only effective from the date the transfer is registered in the Authority's register (Arts. 23 and 24 of Regulations 1/1998 and Arts. 24 and 25 of Regulations 1/2000). The Authority therefore always has up-to-date ownership information on all entities incorporated in the Dubai Airport Free Zone.

### RAK Free Zones

215. In the RAK Free Zones, various fines, ranging from AED 200 to AED 50 000 (EUR 48 to 12 000), are proscribed for failures to comply with the regulations applicable to international 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 240) plus a daily fine of AED 200 (EUR 48). For international business companies, failures to comply with the RAK International Business Companies Regulations 2006 attract fines ranging from AED 1 000 to 50 000 (EUR 240 to 12 000) (Schedule 2 RAK International Business Companies Regulations 2006). Companies that are covered under the RAK ICC Business Companies Regulations 2016 and that do not ensure that the register of members as kept by the Registrar is up to date, are liable to a fine not exceeding AED 1 000 (EUR 240) (Art. 54(3) and Schedule 7).

216. The RAKFTZ and RAKIA Authorities keep a register of all onshore entities incorporated within its jurisdiction. Details of all owners must be provided to the Authority upon incorporation, which are then registered. In practice, the Authorities issue the share certificate(s) directly to the owner(s) of each onshore entity that is incorporated in the RAK Free Zones. In

addition, any change in ownership must be approved by the Authorities and is subsequently registered. The Authorities therefore always have up-to-date ownership information on all onshore entities incorporated in the RAK Free Zones.

217. The Registration and Licensing Authority is responsible for monitoring compliance with the registration and license renewal obligations of onshore entities. Licenses must be renewed on an annual basis. Every year, approximately 20% of the entities do not comply with all renewal requirements in a timely manner; these entities may incur penalties or, where non-compliance persists, are struck off. For example, in each of the years 2012-15 between 890 and 1 650 onshore entities registered in the RAKFTZ paid a late renewal fee.

218. The RAKFTZ and RAKIA Authorities also keep a register of all offshore companies in the RAK Free Zones that were incorporated before 1 January 2016. These registers will eventually be transferred to the RAK ICC Authority, which is responsible for registering offshore companies established on or after 1 January 2016. Full ownership information must be provided upon initial registration and any change in those details must be provided to the Authority, using the different forms as can be found on the Authorities' website. Changes in ownership are not valid unless they are registered by the Authorities.

219. Offshore companies must have a registered office and registered agent at all times, and communication between the Authorities and the company would generally take place through them. Compliance by the registered agents with their obligations under the regulations is also supervised by the Authorities, most importantly through checks upon the annual license renewal. These checks may be a paper exercise or an on-site inspection.

### ***Conclusion and practice with respect to ownership and identity information***

220. 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 Dubai Airport Free Zone, the Jebel Ali Free Zone and the RAK Free Zones also contain penalty provisions concerning the availability of ownership information, while the penalty provisions of the CCL apply to companies in the Fujairah Free Zone.

221. In practice, with respect to almost all entities in the UAE (including the free zones) ownership information must be provided to the relevant authorities upon registration and when a change occurs and/or upon annual renewal of the license. This framework ensures that in practice ownership information is readily available with the authorities.

222. Of the 323 EOI requests received during the three-year review period, the vast majority included a request for ownership and identity information, which generally relate to companies (not partnerships, trusts or other entities). Most peers indicated that ownership information was not received in at least some cases, and the UAE's main EOI partner stated that ownership information was only received in a very limited number of cases. The UAE authorities stated that they have exchanged ownership information in many cases, including with its main EOI partner.

223. From the peer input, it is clear that ownership and identity information has not been exchanged in a number of cases during the three-year review period. As explained below under elements B.1 and C.5 in this report, several issues have been identified in the way the UAE Competent Authority has processed EOI requests received in the three-year review period. These include, most importantly, (i) the large number of unprocessed EOI requests from 2012 and 2013, which means that information has not been exchanged at all yet in these cases, and (ii) difficulties in obtaining information (such as not being able to identify the company) for reasons which were not communicated with the EOI partner.

224. The legal framework and its practical implementation domestically, mainly through filing obligations to the authorities, seem to ensure the availability of ownership and identity information with respect to most relevant entities. In addition, no peers have mentioned that the UAE had indicated that information could not be exchanged because it was not available. Nevertheless, it is a matter of fact that the UAE has not exchanged such information in all cases where it was requested and it is not clear in all cases that the information would have been available. It is therefore recommended that the UAE monitors the availability of ownership and identity information where this is requested by an EOI partner.

**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>
It is not clear that foreign companies having their main offices or effective management in the Dubai Airport Free zone are 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 clarify that ownership information is available for foreign companies having their main offices or effective management in the UAE in all cases.
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.
<b>Phase 2 rating</b>	
<b>Largely Compliant</b>	

**A.2 Accounting records**

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

225. 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 (excluding the free zones)*

226. 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).

227. 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.

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

229. The provisions of the CTL are complemented by similar obligations included in the CCL. A general obligation exists in Article 26 CCL that applies to all companies and partnerships:

“1. Every company shall keep accounting records showing its transactions to accurately reveal at any time the financial position of the company and enabling the partners or shareholders to confirm that the accounts of the company are properly kept in accordance with the provisions of this Law.



2. Every company shall keep its accounting books in its head office for a period of at least 5 (five) years from the end of the financial year of the company.”

230. In addition, joint stock companies and limited liability companies must have their account audited every year (Art. 27 CCL). A copy of the annual accounts and the auditor’s report must be provided to the competent authority of the relevant Emirate, as well as to the Ministry of Economy (for private joint stock companies and limited liability companies) or the SCA (for public joint stock companies), within seven days from the date of the general assembly to which these were provided (Art. 236(2) in conjunction with Arts. 104 and 265 CCL).

231. 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; a copy of the balance sheet and the final accounts, together with the auditor’s report, must be provided to the competent authority of the relevant Emirate as well as to the Ministry of Economy on an annual basis (Art. 331 CCL). 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).

232. Failure by a domestic or foreign company or partnership to keep accounting records may result in a fine between AED 50 000 and AED 500 000 (between EUR 12 000 and EUR 120 000), while a failure to retain these accounts for the minimum period provided for in the CCL may result in a fine between AED 20 000 and AED 100 000 (between EUR 4 800 and EUR 24 000) (Arts. 348 and 349 CCL). Finally, providing false statements or omitting information with the purpose of concealing the true financial position of a company may result in a fine between AED 100 000 and AED 500 000 (EUR 24 000 and EUR 120 000) and/or imprisonment for a period between six months and three years (Art. 364 CCL).

233. The Central Bank Law contains provisions relating to organisation of banks in the UAE. The entities governed by this law<sup>25</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

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25. 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).

its accounts (Art. 103). These requirements ensure that the licensed and regulated entities maintain adequate accounting records.

234. 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.

235. 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, which is headed by the Minister of Islamic Affairs and Endowments. As the General Authority of Islamic Affairs and Endowments administers all waqf property, all relevant accounting records are directly available with this government authority, including information on the type of property endowed, the location and size of the property endowed, the type of investment made as well as the property's yield and endowment identification documents. The UAE authorities indicate that the federal state's auditing agency performs audits of the accounts administered by the General Authority. In addition, the Board of Directors which supervises all waqfs.

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

237. 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.

### *Practice*

238. All companies are required to have their accounts audited and to provide their annual financial statements, together with the auditor's reports, to the Ministry of Economy or the SCA. Apart from specific penalties for not keeping reliable accounting records, the non-provision of audited financial statements would lead to cancellation of the license. Without a valid trade

license, banks and other service providers, as well as private parties, would refuse to do business with the company. Companies are generally granted a grace period to renew an expired commercial license, following which the license of the company will be cancelled. Once the commercial license of a company has been cancelled, the company may not continue to carry out activities. No specific statistics are available with respect to the application of penalties related to not keeping accounting records, nor with respect to the cancellation of licenses. The authorities indicated that, in general, compliance with these requirements is high as companies cannot do business without a valid license. Overall, the Ministry of Economy has issued 8 946 penalties in 2015 across the board, including for late license renewal and non-submission of required information.

239. With respect to partnerships, the obligation to keep reliable accounting records is not complemented by any system of monitoring. It may be noted that until July 2015, only UAE nationals could be partners in a partnership and they were used mostly for doing business locally. It is therefore less likely that other jurisdictions would have been interested in information in this respect. However, with the entry into force of the new CCL foreign nationals may own up to 49% of the partnership's shares. It is recommended that the UAE implements a system of oversight to ensure that all partnerships in practice keep reliable accounting records, including underlying documentation.

### *Conclusion*

240. 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. The audit of accounts and the provision of the annual financial statements and auditor's reports to the authorities ensure a high level of compliance by entities. However, for partnerships the obligation to keep reliable accounting records is not complemented by any system of monitoring and it is recommended that the UAE introduces such a system.

### *Free zones*

#### *DIFC*

241. 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. Failure to keep accounting records by companies as prescribed in Article 101 is punishable by a fine of USD 15 000 (EUR 13 243). Failure to maintain accounting records for six years may be fined by an amount of USD 2 000 (EUR 1 766).

242. 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).

243. Following legislative amendments in the DIFC in December 2013, foreign companies allowed to do business in the DIFC ("recognised companies") are now under the obligation to keep accounting records including underlying documents which are sufficient to show and explain their transactions so as to disclose with reasonable accuracy the financial position of the recognised company at any time and to enable any accounts to be prepared (Art. 116B(1) DIFC Companies Law). These records must be kept for at least six years (Art. 116B(2)(b) DIFC Companies Law). Failure to keep reliable accounting records by a recognised company may result in a maximum penalty of USD 15 000 (EUR 13 243), while non-compliance with keeping these records for at least six years may result in a maximum penalty of USD 2 000 (EUR 1 766) (Schedule 1 DIFC Companies Law).

244. 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). Failure to keep accounting records by any partnership may result in a fine of USD 15 000 (EUR 13 243) (Schedule 2 of the LLPL, LPL and GPL).

245. The same requirements to keep accounting records including underlying documents for a period of at least six years that have been introduced in respect of foreign companies (“recognised companies”) have also been introduced for foreign partnerships doing business in the DIFC. The penalties for non-compliance are also the same as for recognised companies. The new provisions can be found in Article 13A DIFC General Partnership Law, Article 46B DIFC Limited Partnership Law and Article 37B Limited Liability Partnership Law.

246. 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.

## Practice

247. The supervision of entities within the DIFC is shared between the DIFC Authority, mainly through the Registrar of Companies, and the DFSA. The DFSA is responsible for supervising all regulated entities (in practice, financial and certain non-financial service providers, approximately  $\frac{1}{3}$  of the entities operating in the DIFC), while the DIFC Authority covers all other entities.

248. The entities that are supervised by the DFSA must have their accounts audited and provide the audit report to the DFSA within four months of their financial year. Entities incorporated in the DIFC must have their accounts audited by a Registered Auditor, which is an audit firm with a DFSA license to act as an auditor in the DIFC, while foreign entities may

also appoint another auditor. The DFSA monitors that regulated entities keep reliable accounting records in three ways.

249. Firstly, the audit reports submitted by the regulated entities are reviewed to ensure that they are aligned with any other information that these entities may have submitted to the DFSA. Second, as part of the on-site risk assessments (see under element A.1.6 for more details) the presence and reliability of the accounting records are checked. Finally, the Registered Auditors are separately inspected with respect to compliance with the rules set for them (Auditor Module of the DFSA Rulebook), which are meant to ensure that the auditors perform their activities adequately. A small number of audit files are also reviewed during these inspections. There are currently 16 Registered Auditors, which are on average subject to inspection every two years, but at least once every four years:

#### **Inspections by the DFSA of Registered Auditors**

Year	Number of inspections	Number of audit files reviewed
2012	8	28
2013	8	24
2014	7	22
2015	7	24

250. Compliance by the Registered Auditors is very high, and it has not been necessary to revert to any enforcement measures. More generally, the DFSA has found that regulated entities generally keep reliable accounting records. No penalties have therefore been imposed in this respect during the period 2012-15 by the DFSA.

251. Most non-regulated entities incorporated in the DIFC, except for general and limited partnerships (there are less than ten of these partnerships currently registered) must also have their accounts audited. In addition to the Registered Auditors, the DIFC Authority has issued a list of 72 recognised auditors which may be appointed to perform these audits.

252. As described under element A.1.6, the Registrar of Companies maintains an inspection programme to check the compliance of registered entities with the requirements of the relevant governing law and regulations. The inspections include a check of whether reliable accounting records are kept and have been audited in accordance with the rules. In the 167 on-site inspections carried out in the three-year review period, the Registrar has not encountered non-compliance with these requirements.

253. Through the combination of audited accounts for almost all entities and the inclusion of checks for reliable accounting records in on-site

inspections, as well the inspection of Registered Auditors themselves, it is ensured in practice that reliable accounting records are kept by the entities incorporated in the DIFC.

### *Other free zones*

254. 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); non-compliance with these obligations may lead to a fine of AED 10 000 (EUR 2 400) per day of the non-compliance (Art. 71 Implementing Regulation 1/99 and Art. 70 Implementing Regulation 1/92);
- the account keeping obligations and accompanying penalties 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 by the Fujairah Free Zone. The Fujairah Free Zone Authority is empowered to issue regulations concerning accounting records but has not yet done so. However, the obligations contained in the CCL and CTL do apply (see also below); and

- offshore companies in the RAK Free Zones that were established before 1 January 2016 are likely still covered by the old regulations. If so, international business companies 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, the assets and liabilities of the company, the balance sheet and profit and loss account of the company and other books and statements which reflect the financial position of the company (Arts. 154-158 Regulations on the International Business Companies). Non-compliance may lead to a fine not exceeding AED 15 000 (EUR 3 600) (Schedule 1). International companies 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 480) (Schedule 1).

Offshore companies that are covered by the new RAK ICC Business Companies Regulations 2016 must keep records and underlying documentation that are sufficient to show and explain the company's transactions and will, at any time, enable the financial position of the company to be determined with reasonable accuracy (Art. 103). Non-compliance with this obligation may result in a fine not exceeding AED 2 000 (EUR 480).

Onshore companies are currently subject to similar rules as (onshore) companies in the Jebel Ali Free Zone and the Dubai Airport Free Zone. Revised regulations are expected to be finalised by the end of May 2016, but these will still include obligations on onshore companies to maintain accounting information.

255. 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.

256. As described above, the (federal) Commercial Transactions Law (CTL) contains provisions requiring relevant entities in the UAE to keep reliable accounting records, including underlying documentation, for a period of at least five years. The CTL applies to all traders and persons carrying out commercial activities in the free zones (except financial free zones), as the federation has exclusive legislative jurisdiction in the area of commercial



law following Article 121 of the Constitution. The definition of the term “trader” includes all companies which have a legal form as stipulated in the CCL, which includes all companies established in the free zones as they can only be set up in a legal form under the CCL. This would then ensure that all entities in the free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years under the CTL.

257. In the Fujairah Free Zone, no rules whatsoever are issued regarding the keeping of accounting records by entities established in that free zone. It is therefore clear that the CCL and CTL apply to companies and establishments in the Fujairah Free Zone, requiring them to keep reliable accounting records, including underlying documentation, for a period of at least five years.

258. However, the legislation in most of the free zones which have been reviewed contains separate obligations to keep accounting records which does not entirely satisfy the Terms of Reference, most importantly with respect to underlying documentation and document the retention period. Given the variation between the CTL and the legislation in most free zones analysed, further clarification on the interaction between the CTL and the free zone legislation should be provided.

## Practice

259. Most entities incorporated in the free zones are required to have their accounts audited and to provide their annual financial statements, together with the auditor’s reports, to the relevant free zone Authority. This obligation is generally included in the regulations issued by the Authority except in the case of the Fujairah Free Zone, which relies on the federal legislation. All auditors practicing within the UAE must register with the Ministry of Economy (Federal Law 22/1995 – Auditors Law), and are supervised by that Ministry.

260. The monitoring of the obligation to keep and provide accounting records is carried out in a similar manner as for ownership information, and is linked to the process of annual renewal of the license of the entity. If the financial statement and audit report are not received by the Authority, the license will not be renewed and all services provided by the Authority will be suspended until the required documentation has been received. This is a big incentive for compliance, since the operations of the entity will have to be ceased without a valid license. The relevant authorities report that compliance with providing the documentation for annual renewal of the license has indeed been high.

261. Through the combination of audited accounts and the obligation to provide the financial statement and auditor's reports to the relevant Authority, it is ensured in practice that reliable accounting records are kept by most entities incorporated in the free zones.

262. However, offshore companies in the Jebel Ali Free Zone, and international companies and international business companies in the RAK Free Zones are not required to provide any accounting information to the relevant Authority unless they are specifically requested to do so. In addition, the regulations for offshore companies in the RAK Free Zones do not require the companies' accounts to be audited. Although under the federal CTL these companies would be required to have their accounts audited, this is an example of a situation where there is a discrepancy between the federal UAE law and the free zone legislation. It seems that in practice the free zone legislation is followed and accounts of offshore companies in the RAK Free Zones are not systematically audited. Accounts of offshore companies in the Jebel Ali Free Zone are required to be audited (Art. 6(2)(d) and Part 11 Jebel Ali Offshore Companies Regulations 2003) but no further checks in this respect are carried out by any authority.

263. Having only a single layer of "monitoring" (by the auditors) without any regular checks by a free zone or federal government authority, does not provide sufficient assurance that reliable accounting records are kept by offshore companies in the Jebel Ali Free Zone. With respect to offshore companies in the RAK Free Zones, compliance with accounting record keeping obligations is not monitored at all. It is recommended that the UAE implements a system of oversight to ensure that these companies in practice keep reliable accounting records, including underlying documentation.

### *Conclusion*

264. All entities incorporated in and foreign companies operating in the DIFC are obliged to keep reliable accounting records consistent with the standard. There are also 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. With respect to the other free zones, the (federal) Commercial Transactions Law (CTL) contains provisions requiring relevant entities in the UAE to keep reliable accounting records and this would apply to all UAE entities operating in the free zones other than financial free zones. However, the legislation in most of the free zones which have been reviewed contains separate obligations to keep accounting records which does not entirely satisfy the Terms of Reference. Given the variation between the CTL and the legislation in most free zones analysed, it is recommended that further clarification on the interaction between the CTL and the free zone legislation be provided.

265. The monitoring and enforcement in practice of the obligations of free zone entities to keep reliable accounting records takes place through requirements that the accounts must be audited in combination with additional checks by free zone authorities. This can be considered sufficient. However, with respect to offshore companies in the Jebel Ali Free Zone, and international companies and international business companies in the RAKIA Free Zone, there is no additional check by the free zone authority. It is recommended that the UAE implements a system of oversight to ensure that these companies in practice keep reliable accounting records, including underlying documentation.

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

#### ***UAE (excluding the free zones)***

266. 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***

267. The legislation governing the different entities which may be established in the DIFC was amended in December 2013 to introduce an express obligation to keep underlying documents (Art. 101 DIFC Companies Law, Art. 19 DIFC General Partnership Law, Art. 18 DIFC Limited Partnership Law and Art. 26 Limited Liability Partnership Law). Failure to comply with this obligation may result in a maximum penalty of USD 15 000 (EUR 13 243) (Schedule 1 DIFC Companies Law, Schedule 2 DIFC General Partnership Law, Schedule 2 DIFC Limited Partnership Law and Schedule 2 DIFC Limited Liability Partnership Law).

268. The type of underlying documents to be kept is not further specified except for regulated entities (DFSA Rulebook General Module Chapter 8 and Glossary Module Chapter 2). It is noted that the accounts of companies and limited liability partnerships must be audited (Art. 103(4)(b) DIFC Companies Law and Art. 28(4)(b) DIFC Limited Liability Partnership Law) and are to be prepared in accordance with the International Financial Reporting Standards (Art. 6.2.1 DIFC Companies Regulations and Art. 6.2.1 DIFC Limited

Liability Partnership Regulations). Although it may therefore be expected that complete underlying documentation will be kept, the lack of specificity may cause entities to apply the rule unevenly. It is recommended that the UAE clarifies the legal requirement in the DIFC to keep underlying documentation in respect of the non-regulated entities.

269. The authorities advised that in practice underlying documentation is expected to be kept by non-regulated entities in a consistent manner and in accordance with international accounting standards. Nevertheless, the DIFC is currently preparing an amendment to the relevant laws to include a definition of accounting records which would more clearly specify which underlying documentation should be kept. This is expected to become effective from 2017 onwards.

### *Other free zones*

270. As noted above, the obligations in the CTL to maintain accounting information, including underlying documentation, apply to all relevant entities in the free zones (except in financial free zones). However, given the variation between the CTL and the legislation in most free zones analysed, further clarification on the interaction between the CTL and the free zone legislation should be provided.

### **Conclusion**

271. Obligations to keep underlying documentation are included in the general requirements for relevant entities to keep accounting records, and are further specified in the CTL (for entities incorporated in the UAE or a free zone other than the DIFC) and the DFSA Rulebook (for regulated entities in the DIFC). DIFC is currently preparing an amendment to the relevant laws to include a definition of accounting records which would more clearly specify which underlying documentation should be kept. This is expected to become effective from 2017 onwards. Nevertheless, it is recommended that further clarification be provided regarding non-regulated entities in the DIFC and with respect to the interaction between the CTL and free zone legislation.

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

#### *UAE (excluding the free zones)*

272. 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).

273. 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).

274. Claims against the liquidator of a company may be made for three years from the registration of liquidation (Art. 326(1) CCL). Accordingly, the liquidator would in practice keep records of the liquidated company for at least three 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. Before July 2015, claims against the liquidator could be made for up to five years under the CCL. Although during the three-year review period no specific issues have been encountered with companies which had been liquidated less than five years prior and the provision in the Civil Code is still valid, it is recommended that the UAE monitors that the change in the CCL from five to three years does not have an impact on the availability of accounting information of companies liquidated less than five years ago.

275. 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*

276. In December 2013, the retention periods for accounting records were harmonised for DIFC entities. In respect of general and limited partnerships, a retention period of six years was introduced (Art. 19(2)(b) DIFC General Partnership Law and Art. 18(2)(b) DIFC Limited Partnership Law). Failure to comply with this obligation may result in a maximum penalty of USD 2 000 (EUR 1 766) (Schedule 2 of the DIFC General Partnership Law and the DIFC Limited Partnership Law). In addition, the retention period for accounting records in respect of companies and limited liability partnerships was changed from ten years to six years (Art. 101(2)(b) DIFC Companies Law and Art. 26(3)(b) DIFC Limited Liability Partnership Law). The same penalty of USD 2 000 (EUR 1 766) may be applied in case of non-compliance by companies or limited liability partnerships (Schedule 1 DCL and Schedule 2 LLPL).

277. Regulated entities must also keep their accounting records for a period of six years (DFSA Rulebook GEN 8.3.3). DFSA-regulated trust service providers must maintain accounting records for each trust for a minimum of six years (DFSA Rulebook COB 3.6.1 and 5.9.1). Enforcement actions, which include financial penalties, may be applied by the DFSA under Part 7 of the DFSA Law in case of non-compliance with any provision in the DFSA Rulebook.

### *Other free zones*

278. As noted above, the obligations in the CTL to maintain accounting information, including underlying documentation, for at least 5 years apply to all relevant entities in the free zones. However, given the variation between the CTL and the legislation in most free zones analysed, further clarification on the interaction between the CTL and the free zone legislation should be provided.

### **Conclusion**

279. Accounting records must be maintained for at least five years by all relevant entities in the UAE. Companies, partnerships and trust service providers in the DIFC must maintain accounting records for at least six years. As noted above, the obligations in the CTL to maintain reliable accounting information, including the obligation to keep this information for at least five years, apply to all relevant entities in the free zones (except in financial free zones). However, given the variation between the CTL and the legislation in most free zones analysed, further clarification on the interaction between the CTL and the free zone legislation should be provided.

280. The arrangements in place to ensure the availability of reliable accounting information for at least five years in practice, are described and analysed above under A.2.1.

### ***EOI practical experience***

281. Of the 323 EOI requests received during the three-year review period, the vast majority included a request for accounting information. Most peers indicated that accounting information was not received in at least some cases. The UAE's main EOI partner stated that accounting information was not received in most cases; although in a few cases some accounting information was received, but that complete accounting information was not provided in one single case.

282. The UAE authorities stated that they have exchanged accounting information in many cases, including with its main EOI partner. This includes, for example, cases where in response to a request for "accounting and financial statements", audited financial statements were provided. In such cases, the

UAE may have considered the EOI request as fulfilled, while it seems that its main EOI partner expected more information to be exchanged.

283. As explained below under elements B.1 and C.5 in this report, several issues have been identified in the way the UAE Competent Authority has processed EOI requests received in the three-year review period. These include, most importantly, (i) the large number of unprocessed EOI requests from 2012 and 2013, which means that information has not been exchanged at all yet in these cases, (ii) difficulties in obtaining information for reasons which were not communicated with the EOI partner, and (iii) not asking certain specific information to be obtained by the local authorities. The latter may have had a significant impact on accounting information, as underlying documentation is not directly available with the local authorities, while in most cases the (audited) financial statements are. It seems likely, therefore, that in many cases financial statements have been exchanged while the underlying documentation, where this was also requested, was not exchanged.

284. As described above under element A.2, some deficiencies have been identified in the legal framework and its practical implementation domestically, including insufficient monitoring of accounting record keeping obligations by certain entities. Even though no peers have mentioned that the UAE had indicated that information could not be exchanged because it was not available, it is a matter of fact that the UAE has not exchanged such information in all cases where it was requested and it is not clear that the information would have been available. It is therefore recommended that the UAE monitors the availability of accounting information, and in particular underlying documentation, where this is requested by an EOI partner.

#### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendation
Under the federal Commercial Transactions Law (CTL) entities in the free zones other than financial free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years. However, the legislation in most free zones analysed varies from the CTL.	The UAE should clarify that all entities in the free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years.

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendation</b>
The requirements to keep underlying documentation by DIFC entities other than entities regulated by the financial regulator are worded in a general way and do not go into detail regarding the type of underlying documentation to be kept, which could result in an uneven application of the obligation to keep underlying documentation.	The UAE should elaborate its requirements that underlying documentation must be kept in respect of all relevant entities and arrangements in the DIFC.
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.

<b>Phase 2 rating</b>	
<b>Partially Compliant</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
There is no regular oversight with respect to the obligation on partnerships to keep reliable accounting records, including underlying documentation.	The UAE should implement a system of oversight to ensure that all partnerships keep reliable accounting records, including underlying documentation, in practice.
Even though they are required to have their accounts audited, without any regular checks by a free zone or federal government authority there is insufficient assurance that reliable accounting records are kept by offshore companies in the Jebel Ali Free Zone. With respect to offshore companies in the RAK Free Zones, compliance with accounting record keeping obligations is not monitored at all.	The UAE should implement a system of oversight to ensure that offshore companies in the Jebel Ali Free Zone and the RAK Free Zones keep reliable accounting records, including underlying documentation, in practice.



Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	Recommendations
The UAE has not exchanged accounting information in all cases where it was requested and it is not clear that the information would have been available.	The UAE should monitor the availability of accounting information, and in particular underlying documentation, where this is requested by an EOI partner.

### A.3 Banking information

Banking information should be available for all account-holders.

285. As mentioned above, the UAE Central Bank is responsible for licensing and supervision of all financial institutions operating within the UAE, including its free zones, except those institutions operating from within the financial free zones. In the DIFC, the DFSA is the licensing and supervisory authority in this respect. In the UAE all banking information which is in the possession or control of a bank is obtained by the UAE's EOI unit from the UAE Central Bank or the DIFC (through the DFSA or the DIFC Registrar of Companies). Therefore, an MOU was signed between the Ministry of Finance and the Central Bank of the UAE on 11/6/2013 and an MOU was signed between the Ministry of Finance and the DIFC on 6/3/2013. In order to respond to requests from EOI partners and to avoid difficulties in obtaining the requested information, the UAE's EOI unit regularly holds meetings with the UAE Central Bank and DIFC who are important in terms of the volume of processed requests.

286. As of the December 2015, 56 banks (22 locally incorporated, 28 branches of foreign banks, 4 wholesale banks and 2 investment banks) are registered with the Central Bank of the UAE, as well as 7 Islamic banks. There are also 32 (25 branches and 7 subsidiaries) banks are registered in the DIFC, as well as 10 wholly Islamic banks. With respect to relevant obligations, there is no difference in legal obligations and supervision between conventional and Islamic banks.

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

287. 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.

288. 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).

289. 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).

290. 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.

291. 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).

292. With respect to financial institutions in the DIFC, detailed rules on customer and transaction record keeping requirements can be found in the AML Rules and the Conduct of Business Rules issued by the DFSA. These rules ensure that full account information, including information on customers and transactions, is kept.

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

293. Banks and financial institutions supervised by the Central Bank of the UAE are monitored for compliance by the Banking Supervision Department (BSD) of the Central Bank of the UAE, which comprises approximately 130 staff. As mentioned above, banks and other financial institutions operating in the DIFC are supervised by the DFSA. It may be mentioned as a general observation that the UAE is considered to be largely compliant at a minimum with the recommendations on customer due diligence and record keeping of the Financial Action Task Force (see 7<sup>th</sup> Follow-Up Report for the United Arab Emirates as published by the Middle East and North Africa Financial Action Task Force).

294. The BSD has put in place a supervisory mechanism that covers all regulatory aspects, including compliance with AML obligations under the law and Regulation 24/2000. An examination plan is prepared annually and includes at least one full-fledged on-site inspection of each bank. Thematic inspections may also take place. In preparing the annual examination plan, consideration is given to findings during previous inspections, reporting by financial institutions (such as suspicious transaction reports) and any other available intelligence.

295. The full-fledged inspections are carried out by a team of 4-6 people, which may be on site for up to two weeks. They will examine 12 main areas, two of which are related to AML obligations such as keeping records of customer due diligence and transactions. The examination team takes samples of customer files, which are selected on a risk basis, to verify whether sufficient identity, transactional and other relevant information is being kept. An examination report is drawn up by the BSD after the on-site, and any shortcomings must be addressed by the bank and actions must be reported within two months. This report is then reviewed by the BSD. Where shortcomings remain, enforcement actions may be taken.

296. The Central Bank reported that it operates a zero tolerance policy with respect to non-compliance with AML obligations. This has resulted in high compliance. With respect to deficiencies identified in the initial examination report, appropriate actions are generally taken by the banks within the two months given. The last enforcement action in respect of a bank in this regard was in 2006, when the Central Bank imposed a financial penalty on

a branch of a foreign bank for non-compliance with AML regulations. Also, the Central Bank of the UAE revoked a license of an exchange house in 2013 for non-compliance with AML regulations.

297. As mentioned under element A.1.6, the DFSA conducts on-site risk assessments on service providers. With respect to banks, the assessment cycle is annual, and some banks may receive more than one assessment in a year, for example if they are selected for a thematic assessment or if their previous assessment gave rise to serious issues. It should be noted that in 2015 only about half of the banks received an on-site risk assessment, as the DFSA was in the process of revising its strategy based on the newly introduced AML Returns. However, in the years 2012-14, all banks were subject to an on-site risk assessment. The DFSA reports that this will be the case again for 2016 and subsequent years.

298. The assessment is finalised with a post-inspection report with recommendations for actions to be taken within a specific time. The DFSA has a zero tolerance policy in respect of the AML risk areas, which has resulted in the fact that compliance has been found very high and very few enforcement actions needed to be taken in this regard. More generally, most enforcement actions taken in recent years (see for the numbers under element A.1.6) do not relate to banks. One exception is the imposition of a fine of USD 10.5 million (reduced to USD 8.4 million for early settlement) on a bank in 2015 which partly related to a breach of AML rules.

299. In the three-year review period, banking information was requested in approximately 25% of the cases (approximately 75 cases). Almost all of these related to banks in the federal UAE so not in the DIFC. The UAE authorities report that information has been exchanged in all cases that were processed. No issues regarding availability were encountered, apart from a few cases where no accounts were found under the name indicated in the EOI request.

300. Most peers reported that bank information has been received. Although the UAE's main EOI partner indicated that bank information was not received in most cases where this was requested, this does not seem to be related to issues of availability. Rather, this can be attributed to the fact that there are many cases that have not yet been processed (see element C.5) and issues around the practical application of access powers (see element B.1). The Central Bank reports that up to December 2015, records of 153 account holders have been provided to the UAE Competent Authority in relation to EOI requests.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>



## B. Access to information

### Overview

301. 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. It also assesses the effectiveness of this framework in practice.

302. The UAE Ministry of Finance acts as the competent authority for tax information exchange, but reliance is placed on other authorities to provide and, if necessary, collect the information. Before May 2012, the UAE authorities based their domestic powers to obtain information for EOI purposes on the Ministerial Council for Services Circular 454/2010. However, this Circular only contains very general wording and did not clearly establish such powers.

303. The issuance of Council of Ministers Resolution No. 17 of 2012 means that these other authorities are now required to co-operate with the Ministry of Finance. However, the process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance when requested to do so is not specified in respect of the authorities with which the Ministry of Finance has not concluded an MoU. MoUs are in place between the Ministry of Finance and most other relevant authorities, but not directly with the Departments of Economic Development of the different Emirates, which would be requested to collect information from and in respect of many UAE entities. In addition, access powers in the Fujairah Free Zone have not been identified. It is therefore recommended that the UAE further clarifies its legal and regulatory framework in this respect.

304. In practice, in a significant number of EOI requests received during the three-year review period not all of the information was obtained. This was partly because a number of EOI requests have not been processed at all, as described under element C.5. In addition, information may not have been obtained because it would not have been obtainable in the normal course of administration in the UAE (see also element C.1). In many cases, only partial information was obtained. This raises questions about the process of obtaining information through local authorities, which are not used to dealing with EOI requests for tax purposes and have little or no expertise in this area. It may therefore be very difficult for them to determine which information and documents are meant to be obtained, and the use of templates may have contributed to the confusion. Although the UAE has already taken steps to improve the situation, this is still work in progress. The UAE should ensure that the collaboration with the local authorities does not impede effective EOI, and in particular that its Competent Authority includes all relevant details in its request to a local authority to obtain information for EOI purposes (without compromising confidentiality), so all requested information can be obtained. In addition, the UAE should monitor that its access and compulsory powers are effective in all cases where information should be obtained under the relevant tax information agreement.

305. A specific issue has arisen regarding the identification of entities registered in one of the free zones. All free zones keep a separate register and there may be entities with the same name in different free zones, which means that if information is requested regarding a free zones entity where the requesting jurisdiction only provides the name as identifying information, the UAE Competent Authority does not know which free zone to approach. This has led to delays in obtaining information, as the UAE had to request further identifying information from the requesting jurisdiction. It is the responsibility of the jurisdiction where the entity is incorporated to ensure that information can be accessed by its Competent Authority. In the current set-up, in which the information is not kept in a centralised manner, the amount of specificity necessary for the Competent Authority to access information that relates to free zone entities forms an impediment to effective EOI in some cases. It is recommended that the UAE ensures that information is accessible to its Competent Authority in all cases where the name of the company has been clearly identified by the requesting jurisdiction.

306. In respect of bank information, the Council of Ministers Resolution No. 17 of 2012 does provide sufficient basis to lift the confidentiality of bank information for EOI purposes. Such disclosure is allowed where this is required by law, and the Resolution is part of the UAE law. Clear guidance on the extent of co-operation under the Resolution with the two authorities which may have to collect information from banks, the Central Bank and the DIFC, is provided in the MoUs concluded with the Ministry of Finance. Together the



Central Bank and the DIFC (through its regulatory body for banks) can obtain information from all banks in the UAE, including all free zones.

307. 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 international agreements. The scope of professional privilege for lawyers who are asked to produce information by the DIFC authorities is in accordance with the international standard, however the scope of professional privilege appears to extend beyond that provided for in the international standard where a lawyer is asked to produce information for EOI purposes by another authority.

308. 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)*

309. 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). In addition, the Ministerial Council for Services Circular 454/2010, under which “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”, is regarded as authorising the UAE to enter into TIEAs with relevant partners.

310. Before May 2012, the UAE authorities also based their domestic powers to obtain information for EOI purposes on the Ministerial Council for Services Circular 454/2010. However, this Circular only contains very general wording and did not clearly establish such powers. On 15 May 2012, Council of Ministers Resolution No. 17 of 2012 (“the Resolution”) was issued containing the following provisions:

#### “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 a mechanism to provide it, and these authorities shall cooperate with the Ministry of Finance in implementing the provisions of this decision.”

311. The Council of Ministers has the power to supervise the implementation of international agreements (Art.60(7) of the Constitution) and on this basis has issued this Resolution which is then binding on all authorities within the UAE. The Resolution clearly provides the Ministry of Finance with the power to collect and exchange information on all persons in the UAE, including the free zones, in implementation of international tax agreements. The term “international tax agreements” is not defined in the Resolution, but is broad enough to cover both Double Tax Conventions and TIEAs. The UAE authorities confirmed that the Resolution covers all international agreements providing for the exchange of information for tax purposes. In addition, the definition of the term “international tax agreement” in the MoUs concluded between the Ministry of Finance and other relevant authorities (see below), includes “any agreement which the UAE has entered into with another jurisdiction for the exchange of information for tax purposes”.

312. In respect of the manner in which the access powers should be used, Article 2 of the Resolution provides that the Ministry of Finance shall co-ordinate with the relevant federal and local authorities, and that these authorities are required to co-operate with the Ministry of Finance when it exercises its powers. In respect of the (non-financial) free zones, the requirement to co-operate finds its basis in Article 125 of the Constitution, which directs the governments of the Emirates (which are responsible for these free zones) to implement federal laws and international agreements under the supervision of the federal authorities, in this case the UAE Ministry of Finance.

313. It is noted that the extent of co-operation by other authorities is not fully elaborated in the Resolution, as the provision does not specify that the federal and local authorities are allowed or obliged to use their access powers for EOI purposes. Nevertheless, the Resolution provides a mandatory legal basis for all federal and local authorities to co-operate with the Ministry of Finance in implementing the provisions of international tax agreements, and the UAE authorities interpret and apply the provision as requiring any federal

or local authority, including any free zone, to use their own access powers for the collection of information from persons within their jurisdiction, if information is requested by the Ministry of Finance pursuant to an EOI request.

314. This interpretation is supported by a number of Memoranda of Understanding (“MoUs”) concluded between the Ministry of Finance and relevant federal and local authorities. In these MoUs, the other authorities commit to provide any information from within their jurisdiction at the request of the Ministry of Finance pursuant to an EOI request. MoUs have so far been concluded with the Fujairah Free Zone Authority, the DIFC, the Jebel Ali Free Zone Authority, the RAK Free Trade Zone Authority, the RAKIA Free Zone Authority, the Dubai Multi Commodities Centre Free Zone Authority, the Umm Al Quwain Free Zone Authority and the Central Bank. The Ministry of Finance is currently working with other authorities to conclude similar MoUs, in particular with the largest Departments of Economic Development.

315. Through the different authorities, the Ministry of Finance should be able to obtain different types of information which could be requested by an EOI partner. Information in respect of entities established in one of the free zones will be collected by the authority of the respective free zone. Regarding information in respect of other companies established in the UAE or having their main office in the UAE, as well as in respect of partnerships, reliance is placed on the Ministry of Economy. Information in respect of individuals will be obtained through the Ministry of Interior or the Ministry of Justice, depending on the type of information. Information from banks will be collected by the Central Bank, or the DFSA where it relates to a bank in the DIFC. If any information is not available through one of these authorities, other authorities may also be requested by the Ministry of Finance to collect information, for example the Ministry of Justice if information is needed from a lawyer acting as a trustee of a foreign trust. Finally, the Ministry of Finance may directly request a person to provide them with information, although it is not envisaged that this will occur in many instances.

### ***Information gathering powers of UAE’s authorities***

316. The various information gathering powers at the disposal of the UAE’s different authorities are described below.

#### ***Bank information – the Central Bank***

317. 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)).

318. 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.

319. 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).

320. 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.

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

321. The UAE Ministry of Economy is the ultimate federal regulatory body charged with regulating and overseeing the commercial sector of the UAE in accordance with the CCL, however ownership information and

accounting records of entities operating in the different Emirates are retained by the respective Department of Economic Development of each Emirate. The UAE Ministry of Economy continues to retain jurisdiction over the regulation and governance of private joint stock companies and the Securities and Commodities Authority is granted jurisdiction over the regulation and governance of public joint stock companies.

322. Law 13/2011 of Dubai, where the vast majority of entities are located, contains powers for the Dubai Department of Economic Development. For example, Article 19(6) requires all entities falling under its responsibility to provide the Department with any information, data or statistics it may require. Not doing so may result in a fine between AED 100 (EUR 24) and AED 100 000 (EUR 24 000) (Article 29). The authorities indicated that similar laws exist with respect to the powers of the Departments of Economic Development in the other Emirates. 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.

323. 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).

324. 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).

325. 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.

### *Information gathering powers of DIFC authorities*

326. 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).

327. The use of access powers for EOI purposes by the DIFC authorities is specifically addressed by amendments to the DIFC Companies Law in December 2013. Article 126A was introduced to provide the Registrar with the power to require by written notice any person registered under legislation administered by the Registrar, to give or produce specified information and documents as required by the Registrar in the performance of its powers and functions. In addition, Article 8(3) of the DIFC Companies Law now specifically requires the Registrar to assist the UAE in complying with its obligations under any international agreement to which the UAE is a party through the exercise of its powers and functions. This means that the Registrar can use its own access powers for EOI purposes if requested by the Ministry of Finance. Article 127(A) has also been introduced, which gives the ROC the right to require any person incorporated or registered in the DIFC (including any director, officer, partner, employee or agent of such person, by written notice, to: (a) give, or procure the giving of, such specified information; or (b) produce, or procure the production of, such specified document(s) as the ROC may consider necessary or desirable in the performance of its powers and functions under the DIFC Companies Law and such person shall comply with such request.

328. The Registrar is responsible for administering the legislation for all types of entities, but not for trusts. Trusts can be created in the DIFC and the Dubai Financial Services Authority (“DFSA”) is responsible for their supervision. Under Article 73 of the DIFC Regulatory Law the DFSA may require any trust service provider to give or produce specified information and documents as required by the DFSA as considered necessary to meet the DFSA’s objectives. Article 39 DIFC Regulatory Law then authorises the DFSA to use its powers if so requested by the Registrar. Any EOI request relating to information on trusts administered in the DIFC could therefore be obtained through the DFSA as requested by the Registrar, which in turn would be requested by the Ministry of Finance to provide such information.

329. More generally, the 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(1)(e) requires a person to give the DFSA any assistance in relation to an investigation which the person is able to give.

330. 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).

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

331. 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.

332. 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), which will include powers to request information for EOI purposes where needed.

333. 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.

334. However, Fujairah Law 1/2004 does not indicate the access powers available to the authority in this free zone, although in practice compliance with requests from the free zone authority is very high (see also below). Where information must be obtained from entities in the Fujairah Free Zone, the Ministry of Finance could alternatively use the power of the Resolution to directly request the information from the entity, however there are no compulsory powers that can be applied in the case of non-compliance. It would also be outside of the intended framework, which is to request the Fujairah Free Zone Authority to collect the information under the MoU that has been concluded. The authorities have indicated that explicit access powers for the Fujairah Free Zone Authority will be introduced shortly.

335. 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).

### *Information from auditors*

336. 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 official authority has obtained permit from the competent judicial authority.

337. 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*

338. The Central Bank, the DIFC and other free zones as well as other relevant authorities, have access powers to fulfil their supervisory or regulatory functions. The Resolution issued in May 2012 introduced an obligation for relevant federal and local authorities to co-operate with the UAE competent authority, and has provided a legal basis for mandating these authorities to use their own access powers to collect information for EOI purposes if requested by the Ministry of Finance. MoUs concluded between the Ministry of Finance and some of these authorities further strengthen the legal and regulatory framework in this context, and within the DIFC specific legal provisions have been put in place in December 2013 arranging for access powers which can be used for EOI purposes.

339. The language of the Resolution provides a general architecture for co-operation without specifying in detail the process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance. MoUs clarifying such process and procedures have, to date, been concluded between the Ministry of Finance and the most important free zones as well as with the Central Bank. However, no such MoUs have been concluded directly with the Departments of Economic Development in the different Emirates, which would be requested to collect information from and in respect of many UAE entities. In addition, general access powers in the Fujairah Free Zone have not been identified. It is therefore recommended that the UAE specifies the process and procedures by which the most relevant government authorities (which should include the Ministry of Economy or the Departments of Economic Development in the Emirates where most entities are registered) are required to provide information for EOI purposes to the Ministry of Finance when requested to do so and clarify that access powers are available in all instances.

### *Gathering information in practice*

340. While the EOI unit has the power to contact persons directly and compel the production of information, the practice of the EOI unit is to assign a request to the specific UAE Authority which has, or has more direct access to, the information. As per Article 2 of the Resolution, in order to carry out

its role for information requests provided under DTCs, the EOI Unit requests information from the following UAE Local Authorities:

<b>Central Bank of UAE</b>	Banking data
<b>Economic Development Department from all seven (7) Emirates: Abu Dhabi, Dubai, Sharjah, RAK, Ajman, Um Al Quwain, Fujairah</b>	Trade License, Ownership, Financial/Accounting Records
<b>Free Zone Authorities from all Emirates</b>	Trade License, Ownership, Financial/Accounting Records
<b>Dubai International Financial Center (DIFC) (through the Dubai Financial Services Authority (DFSA) and DIFC Registrar of Companies)</b>	Trade License, Ownership, Financial/Accounting Records
<b>Land Department for all seven (7) Emirates</b>	Real Estate
<b>Emirates Identity Authority (EID)</b>	Civil Registry
<b>Ministry of Economy</b>	Trade License, Ownership, Financial/Accounting Records
<b>General Directorate of Residency and Foreigners Affairs</b>	Visa, permits
<b>Or any other federal or local authority as per the nature of the request and UAE laws.</b>	As per request

341. The Ministry of Finance has signed a specific EOI Memorandum of Understanding with UAE Authorities. Each UAE Authority has dedicated a contact Officer for the EOI purposes.

342. After the EOI Unit receives a request and it is registered, the EOI Expert assigns the request to the appropriate local authority or authorities based on the type of information required. The EOI unit has developed a predefined template for each UAE local authority and the request is approved by the Head of EOI and sent electronically. The local authority has thirty (30) days to respond to the EOI Unit.

343. Approximately 90 per cent of requests are for more than one type of information and so information is sought from multiple authorities. The EOI unit has template request forms for each local authority for this purpose, which detail the information required and state that it is being sought for the purposes of “federal law”. Local authorities are given thirty (30) days to provide a response to the EOI Unit.

344. The UAE EOI unit collaborates closely with the local authorities and regular meetings are held with the authorities providing the largest amount of information, including the UAE Central Bank, the Dubai Economic Development Department and the DIFC.

*Obtaining information from Local Authorities and Free Zones*

345. The UAE EOI unit receives on average 100 or more requests per year with an increasing forecast trend due to the new DTC agreements that are coming into effect and more requests from other treaty partners. Depending on the nature of the request, the EOI Unit obtains detailed information from the UAE Local Authorities (e.g. Central Bank, local Emirates Departments of Economic Development, Free Zone Authorities, local Emirates Departments of Land, Ministry of Labour, Economy, Immigration, etc.). The Ministry of Finance has signed a specific EOI Memorandum of Understanding with a number of the local authorities. Many authorities have a dedicated contact officer for EOI purposes.

346. For requests to local authorities the request letter is never attached, but rather the template is used. The EOI Unit is currently using an excel sheet to manage the requests sent and monitor the timeliness of responses on a weekly basis. Where there is a delay a reminder is sent. The local authority might explain that it is a complex case and it needs more time. Contact is generally by email, but could also be by phone where appropriate.

347. As mentioned above under A.1 and A.2, peers have indicated that they only received partial information in many cases, in particular with respect to accounting information. This raises questions with respect to the effectiveness of the process of obtaining information through local authorities, which are not used to dealing with EOI requests for tax purposes and have little or no expertise in this area. It may therefore be very difficult for them to determine which information and documents are meant to be obtained. Clear and detailed communication between the EOI Unit and the local authorities is therefore essential.

348. The EOI Unit uses predefined templates in requesting information from local authorities. In particular with respect to accounting information, the template only refers to the “balance sheet, profit and loss statements for the COMPANY for the following years”. Whenever more specific information is requested, such as underlying documentation or information on identified transactions, this needs to be requested outside of the template. Considering the peer input, it is likely that this has not always been done during the three-year review period, resulting in obtaining only part of the requested information.

349. The UAE authorities recognised that certain challenges have been identified in relation to the nature and description of the information requested from the local authorities, particularly in relation to accounting information and underlying documents. Efforts are underway to provide clear guidance to the local authorities on the nature and description of this documentation to aid in expediting the collection and transmission of this

information for EOI purposes. These include ongoing dialogue and training, mostly by the Ministry of Finance (EOI Unit), where appropriate.

350. As a result of these challenges, not all of the information has been immediately obtained from the local authorities by the Competent Authority in many cases. The UAE authorities indicated that in these cases the (partial) information that was collected, was sent to the requesting jurisdiction. In addition, the UAE would undertake to collect the remaining information. However, the status of the EOI request was often not communicated by the UAE Competent Authority to the requesting jurisdiction (see element C.5 for further analysis).

351. It is recommended that the UAE ensures that the collaboration with the local authorities does not impede effective EOI, and in particular that its Competent Authority includes all relevant details in its request to a local authority to obtain information for EOI purposes (without compromising confidentiality), so all requested information can be obtained.

352. The following sections describe the organisation and processes within certain local authorities and Free Zones for liaising with the UAE EOI Unit in responding to requests for information.

#### *Ministry of Economy/Departments of Economic Development*

353. Under the current framework, requests for information from UAE entities which are not under the authority of a free zone, are directed to the Ministry of Economy which in turn addresses these requests to the relevant Department of Economic Development. The UAE has recognised that this has not proven to be the most efficient mechanism to ensure the timely transmission of requested information. In order to better address this challenge, the Ministry of Finance is in the process of executing MOUs directly with the respective Departments of Economic Development of each Emirate. In addition, efforts are being made to train their staff in relation to the UAE's obligations under international agreements which include tax information exchange entered into by the UAE.

354. The Dubai Department of Economic Development (Dubai DED) is one of the more important authorities given the size of the Dubai economy and the fact that it is the source of all information on LLCs.

355. The Dubai DED is in the process of setting up a dedicated resource to deal with requests. Currently, requests are dealt with on a case-by-case and *ad hoc* basis. However, they are directed to the CEOs of the Business Registration and Licensing Department and the Legal Department.

356. The Dubai DED receives a number of requests from the EOI Unit and this has increased over the past years. In 2013, DED received 13 requests; 36 requests in 2014 and 42 requests in 2015.

357. The Dubai DED reports that requests for ownership information are quite routine. The CEO of the Legal Department does an initial review to ascertain the nature of the request and to determine whether the information is within the Dubai DED or if it must be accessed from another person, which may be another local authority or a private person.

358. A significant amount of information is held by the Dubai DED. Registration and filing information is on the public website. In addition, changes to ownership must be made by board resolution and notified to the DED. Companies must also provide audited financial statements on an annual basis.

359. Where the information must be sought from a private person then the first step is a phone call explaining the request followed by a letter stating that the person is being inspected and the nature of the information that is needed.

360. One issue that has posed difficulty is obtaining information when the retention period for the type of information sought has expired (which is 5 years for ownership and accounting information). In these cases the information is requested, and if it is still available with the information holder then it would be obtained. However, if it is not available then there is no recourse. The UAE authorities indicated that, for requests received during the three-year review period, information older than five years has been obtained in several cases.

### Dubai International Finance Center

361. The Dubai International Finance Center Authority (DIFCA) has oversight of all activities in the DIFC. In this capacity, the DIFCA processes requests for information from the UAE EOI unit. During the review period the DIFCA received ten requests for information, mostly for accounting and ownership information. For information on companies the request for information is sent by the Registrar of Companies (ROC) and the reply sent to the DIFC. The timelines for the ROC to send its request for information and the response to the DIFC is very quick (less than a week at both stages) and the response to the EOI unit forwarded generally the same day.

362. With respect to obtaining information in respect of companies in the DIFC, any order by the Registrar of Companies under article 127A of the DIFC Companies Law (Power to Obtain Information) can be enforced by court order if necessary and fines may also be imposed. If the entity concerned is regulated, then the assistance of the DFSA can be enlisted.

### Jebel Ali Free Zone

363. Companies formed in the Jebel Ali Free Zone (JAFZ) are under the supervision of the Jebel Ali Free Zone Authority (JAFZA). Companies formed in the JAFZ may be on-shore or off-shore and there is no restriction on non-UAE ownership. As noted in section A.1, all companies must register and the register is public and can be consulted on-line.

364. The JAFZA has received 32 requests from the EOI Unit in the review period. These were sent directly to the Registrar of Companies. The Registrar is empowered to ask for information at any time with sanctions for non-compliance. These requests have mainly been for accounting and ownership information. The JAFZA does not indicate that there have been any issues in obtaining the information to respond to these requests. However, the UAE's partners have noted that the information received in these cases was unsatisfactory.

### *Fujairah FZA*

365. Requests from Ministry of Finance are transmitted to the office of the Director General (CEO), but the business development officer government point of contact that processes the requests on a day-to-day basis. During the review period the Fujairah FZA has only had a couple of requests from Ministry of Finance, but has also had a number of requests from the Ministries of Justice and Immigration. The Fujairah FZA is establishing MOUs with each Ministry in order to further facilitate co-operation with these authorities.

366. The Authority maintains all information related to the company's payments towards their registration, utilities and all related services in its books through the Accounts Department. All companies are required to pay for their registration, renewal, amendments, and all related business matters to the Accounts Department of the Fujairah Free Zone Authority where it is kept.

367. On the other hand, Fujairah Free Zone Authority reports that it has no direct access to the company's financial books. The Fujairah FZA reports that there have been no issues with respect to accessing information, as persons within its jurisdiction do in practice provide information to the authority upon request despite the lack of a formal access power in the local legislation. This may be attributed by the underlying compulsory power which is of a practical nature, namely the power that the FZA holds over the issuance of licences, leases, visas, customs certificates. The FZA has not had to use any compulsory measures to obtain information as information holders have been co-operative.

### *Dubai Airport Free Zone*

368. The Dubai Airport Free Zone Authority (DAFZA) has processed 8 requests from the Ministry of Finance and has been able to respond based

on information already within its possession. The DAFZA has a staff of 220 employees that frequently deal directly with persons operating in the free zone and often on a daily basis. The DAFZA does not report having any difficulty securing co-operation from businesses in the free zone generally. The DAFZA's compulsory powers are both legislative and stem from its practical authority over a person's ability to conduct business (such as the power over the issuance of the business's licence to operate).

### *RAK Free Zones*

369. MoUs have been signed between the UAE Ministry of Finance and the RAK Free Trade Zone Authority and the RAKIA Free Zone Authority, and is planning to conclude an MoU with the (new) RAK ICC as well. They have established a designated contact to deal with requests for information from the Ministry of Finance. The process is very simple and the information requested is mainly within the authorities' database. Where information must be obtained from a person within the free zone then the power to do so is contained in the free zone regulations and the RAK Free Zone Authorities can impose sanctions for non-compliance. The RAK Free Zone Authorities report that companies are co-operative.

### *Identifying the free zone entity*

370. As described under element A.1.1, each free zone maintains its own register of entities that operate in and/or from within its jurisdiction, and there is no single register compiling all free zone entities. In practice, the UAE has received EOI requests relating to entities which were named in the requests and had the acronym FZ (Free Zone) or FZE (Free Zone Establishment) in their name. However, there was no indication in the EOI requests of the exact free zone where the entity was registered, and the UAE Competent Authority could therefore not proceed with processing these requests without asking for additional information from the requesting jurisdiction, such as the registration number, the year of incorporation and/or the entity's address.

371. It would be possible in these cases for the UAE competent authority to request all free zone authorities to check for the specific company name, but it should be noted that non-publicly available information should not be provided unless there is a sufficiently clear connection with the EOI request. Where more than one company with that name would be identified, the UAE Competent Authority would therefore not be able to exchange any information, and asking all free zone authorities for information could then be regarded as disproportionate.

372. On the other hand, the system in the UAE with many different free zones which all keep a separate register is not favourable to the identification of entities. It is the responsibility of the jurisdiction where the entity is incorporated to ensure that information can be accessed by its Competent Authority. In the current set-up, in which the information is not kept in a centralised manner, the amount of specificity necessary for the Competent Authority to access information that relates to free zone entities forms an impediment to effective EOI in some cases. It is recommended that the UAE ensures that information is accessible to its Competent Authority in all cases where the name of the company has been clearly identified by the requesting jurisdiction.

373. It may be mentioned that the Emirate of Dubai, which has the most free zones, has established the Dubai Free Zones Council. Its objectives are to create mechanisms for co-operation and unity between the various free zones in Dubai, particularly with respect to the transfer of knowledge, information and best practices. It is intended to create one central register of entities for all free zones in Dubai, which would facilitate the identification of the relevant entity which is the subject of an EOI request.

#### *Peer input*

374. A number of peers have reported that the UAE was unable to provide information in response to requests. The UAE encountered three main difficulties in responding to requests. First, in many cases the EOI Unit felt that it was unable to seek information that was not a specific transaction record or document or other objective fact or data. In these cases, the EOI Unit has responded that the information is not obtainable in the normal course of its administration and declined to provide the information on the basis of the reciprocity conditions consistent with article 26(3) of the OECD Model Tax Convention. In other cases the UAE reports that information was not available as the retention period had expired. Finally, in a number of cases the EOI unit did not have sufficient information in order to obtain the information requested. This was the case, for example, where only a name was provided without any other identifying information.

#### Retention period

375. One peer noted that the UAE had indicated that it was not able to obtain information that relate to periods beyond the retention period for that type of information even if the information was still in the possession of the information holder. However, the EOI Unit and local authorities confirmed that there was no restriction in this regard. While in some cases requests for older information could not be fulfilled because the information was no



longer in the possession of the information holder, in all cases it would be pursued and there was no legal restriction or impediment to compelling the production of such information. All relevant retention periods are at least five years in the UAE.

### Immovable property information

376. Two peers indicated that they had requested information regarding immovable property in the UAE, and had not received this information. The UAE authorities indicated that immovable property information has been obtained and exchanged from the Land Registries in different Emirates in 15-25 cases so far (including for requests received in 2015) and that it has not encountered major difficulties in this regard. The only reason for delays in some cases is that the Land Registries are in Arabic, which may cause translation issues since translating from another language into Arabic is not an exact science. The UAE Competent Authority therefore usually asks the requesting jurisdiction for the passport numbers of individuals where these are not provided in the initial EOI request. The passport details of individuals owning immovable property are included in the Land Registries and avoid any mistakes in obtaining the requested information. The cases referred to by peers may therefore mainly be related to delays of this nature and/or to the fact that a significant number of EOI requests have not yet been processed (see under element C.5).

### Normal course of Administration

377. The EOI Unit reports that a number of requests, or parts of requests, posed questions that did not reference a specific transaction record or document or other objective fact or data. The UAE has not executed any access powers where it concluded that this was the case, based on the provision in the relevant treaty which is the equivalent of Article 26(3) of the OECD Model Tax Convention. A comprehensive analysis of these cases is contained under element C.1 of this report. As a reference to Article 26(3) was included in all responses between 2014 and the end of 2015, it is not clear whether in all cases where the UAE should have obtained the information, it would have been able to do so. It is recommended that the UAE monitors that its access powers are effective in all cases where information should be obtained under the relevant tax information agreement.

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

378. 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.

379. The UAE's power to obtain information for EOI purposes has not in practice been affected by any domestic tax interest.

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

#### *UAE (excluding the free zones)*

380. 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).

381. 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).

382. 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 24 000).

383. 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 2 400 to 24 000) (Art. 15 AML Law).

384. 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 2 400) (Art. 18).

385. 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.

386. Non-compliance with the provisions of the Auditors Law is punishable by a fine ranging between AED 5 000 to AED 10 000 (EUR 1 200 to EUR 2 400) (Art. 47).

387. 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).

388. Law enforcement authorities have powers to search, seize and retain records in accordance with the provisions in the Criminal Procedure Code.

### *DIFC*

389. 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.

390. 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*

391. 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 2 400) 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 120 to EUR 1 200) 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.

392. 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 and practice*

393. 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. With the introduction of the Resolution and the conclusion of MoUs, the legal and regulatory framework has been strengthened on this point. Although many MoUs are currently in place, no MoUs exist yet with the Departments of Economic Development, which collect information on UAE entities that are not in the free zones.

394. As the system in the UAE relies on other authorities than the UAE Competent Authority for EOI to obtain information, these other authorities

would have to apply compulsory powers where the information holder does not comply with a request to provide information. As described above under section B.1.1. the UAE federal administration as well as local authorities and free zones are disposed of a variety of powers to compel the production of information both pursuant to statute and the exercise of practical, commercial pressure over persons operating in the UAE.

395. The relevant authorities have universally reported that information is provided when requested, and that there have been no cases where information holders have contested the authorities' power to demand information. Nevertheless, it is clear from peer input that in a significant number of cases during the three-year review period not all information was obtained, for example because of the issues raised under element B.1.1. Given the scale of the EOI requests and the fact that the access powers and accompanying compulsory powers are not designed for this purpose, it is recommended that the UAE monitors that its authorities use their compulsory powers to compel the production of information where necessary.

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

#### *UAE (excluding the free zones)*

396. 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.

397. 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 1 200), or either of these, and the person must be dismissed from service.

398. 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 24 000) 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).

399. 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).

### *DIFC*

400. 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).

401. 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.

402. 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>26</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).

403. 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

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26. 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.

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.

### *Application of the secrecy provisions for EOI purposes*

404. With the issuance of the Resolution, an obligation was introduced on the relevant authorities to co-operate with the Ministry of Finance in implementing the obligations of the UAE provided for in international agreements. In the view of the UAE authorities, this includes a requirement to lift the confidentiality of bank information where such information is requested under an EOI agreement. This view is shared by the DFSA. In the MoU between them and the Ministry of Finance, the DIFC (also representing the DFSA) agreed to provide the Ministry of Finance with details of any bank account within their jurisdiction (Articles 7(1) and 14 of the respective MoUs). The DFSA's jurisdiction comprises all banks licensed to operate within the DIFC. The access powers of the DFSA are laid down in Articles 73 and 80 of DIFC Law 1/2004.

405. A Council of Ministers Resolution forms part of the law of the UAE, as it is based on the Constitution (Article 60(7)). Although the Resolution does not clearly specify to what extent the other authorities are required to co-operate with the Ministry of Finance, the MoU with the DIFC provides clear guidance in the area of obtaining bank information. On this basis, the confidentiality of bank information may be lifted for EOI purposes, as its disclosure is required by law in this case, which is one of the exceptions to the confidentiality of bank information in the DIFC Law 5/2005 (Article 37(5)(b)).

### *Free zones*

406. 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.

### *Professional privilege*

407. Lawyers are not permitted to reveal any confidential information which is relayed in the course of professional practice (Art. 42 Federal Law 23/1991). The profession of a lawyer in the context of professional privilege is limited to “the legal profession in view of providing judicial and legal assistance” (Article 2 Federal Law 23/1991). Information that comes to the attention of lawyers when they act in a different capacity, such as trustees, is

therefore not privileged. Nevertheless, there still is a concern that any legal assistance, and not only legal advice, would be covered by professional privilege and in that respect the professional privilege appears to extend beyond that provided for in the international standard. It may be noted that this applies to lawyers operating throughout the UAE, including the free zones, except lawyers operating in the financial free zones.

408. For lawyers who are asked to produce information by the DIFC authorities, the professional privilege extended to any advice given by the lawyer to a client under the definition of the term “privileged communication” which was considered not to be in accordance with the international standard in the 2012 Report. However, in December 2012, the definition of the term “privileged communication” in the DFSA Law was amended and now reads as follows:

“a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law, but does not include a general duty of confidentiality.”

409. It seems that no other privileges applicable at law currently apply within the DIFC, and therefore the legal professional privilege within the DIFC is now in accordance with the international standard. Nevertheless, as explained above, the scope of the professional privilege in the rest of the UAE is too broad, and it is recommended that the UAE ensures that its application does not limit or prevent it from responding to a request for information made pursuant to an international exchange of information request.

410. 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 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.



*EOI practice*

411. During the three-year review period, information has been obtained from banks both through the UAE Central Bank and the DIFC. No bank has claimed that they could not provide the information on the basis of secrecy obligations.

412. It has not been necessary yet to obtain information for EOI purposes from a third party other than a bank which was covered by a secrecy obligation, most importantly lawyers. This means that, in practice, no person has invoked legal privilege to refuse the production of information for EOI purposes. Also, no issues were raised by peers in this regard.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
The process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance has not been specified where no MoU has been concluded between the Ministry of Finance and the relevant authority. Although many MoUs are currently in place, no MoUs exist yet with the Departments of Economic Development, which collect information on UAE entities that are not in the free zones. In addition, no access powers have been identified in the Fujairah Free Zone.	The UAE should specify the process and procedures by which the most relevant government authorities are required to provide information for EOI purposes to the Ministry of Finance when requested to do so and clarify that access powers are available in all instances.
Except for lawyers who are asked to produce information by the DIFC authorities, 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>Phase 2 rating</b>	
<b>Partially Compliant</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Information with respect to free zone entities is currently not centralised. As a result, the amount of specificity necessary for the Competent Authority to access information that relates to free zone entities forms an impediment to effective EOI in some cases, as information cannot be obtained only on the basis of the name of the company in these cases.	The UAE should ensure that information is accessible to its Competent Authority in all cases where the name of the company has been clearly identified by the requesting jurisdiction.
Peer input suggests that in many cases only partial information was obtained by the UAE Competent Authority. This raises questions with respect to the effectiveness of the process of obtaining information through local authorities, which are not used to dealing with EOI requests for tax purposes and have little or no expertise in this area. It may therefore be very difficult for them to determine which information and documents are meant to be obtained. Although the UAE has already taken steps to improve the situation, this is still work in progress.	The UAE should ensure that the collaboration with the local authorities does not impede effective EOI, and in particular that its Competent Authority includes all relevant details in its request to a local authority to obtain information for EOI purposes (without compromising confidentiality), so all requested information can be obtained.
It is clear from peer input that in a significant number of cases received during the three-year review period not all information was obtained, for example because of the issues raised under elements C.1 and C.5. It is therefore unclear whether access and compulsory powers could have been exercised in all cases where this would have been required.	The UAE should monitor that its access and compulsory powers are effective in all cases where information should be obtained under the relevant tax information agreement.

## 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)*

413. 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).

414. 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. Where the requesting jurisdiction asks the UAE to refrain from informing the taxpayer, an attempt will be made to obtain the information without doing so. If this is unsuccessful, the UAE Competent Authority will inform the requesting jurisdiction accordingly. It is the responsibility of the Head of the EOI Unit to ensure that the taxpayer is not contacted by any local authority in these cases.

415. Article 27 of the Civil Code prohibits the application of a law where such provisions are contrary to Sharia 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.

416. Peers did not raise any issues regarding rights and safeguards of persons in the UAE related to EOI requests made in the three-year review period.

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

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>



## C. Exchanging information

### Overview

417. 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.

418. The UAE has a broad treaty network, covering 104 jurisdictions, that provides for exchange of information in tax matters. Most of the UAE's agreements are DTCs, but since November 2015 it has also signed its first eight TIEAs. International treaties are ranked at higher level than the national law and in the event of any conflict between the treaty ratified by the Union and national law treaties take precedence over national laws.

419. Almost all of the UAE's international agreements contain provisions which are in line with the international standards.<sup>27</sup> However, the UAE's arrangements providing for international exchange of information have not been given full effect through domestic law as the extent of the authorities' access powers has not been clearly specified in all cases.

420. Until the end of 2015, it was standard practice for the UAE to include a reference to the equivalent of paragraph 26(3) of the OECD Model Tax Convention in its response letters to signal that certain information was not obtainable in the normal course of administration. This occurred irrespective of whether information was in fact not obtained and generally without further explanation. Declining to provide certain information on "face value" because it would fall under Article 26(3) does not match with the objective to ensure that all foreseeably relevant information gets exchanged. It is not unlikely that in many of the cases additional information is available with the requesting

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27. Six DTCs are not fully consistent with the international standards: Austria, Indonesia, Malaysia, Mozambique, Thailand and Ukraine.

jurisdiction which would enable the UAE to obtain the information. It is recommended that the UAE only declines to provide information on the basis of the equivalent of Article 26(3) of the OECD Model Tax Convention where this has been clearly established after consultation of the requesting jurisdiction.

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

422. The UAE's network of information exchange agreements covers its relevant partners, including the GCC countries and important economic partners. However, it has taken up to four years since the UAE was first approached for it to sign the first TIEAs. A number of jurisdictions, including the ones that have been waiting for their TIEA to be concluded, expressed their dissatisfaction with the delays in negotiating EOI agreements and/or the time taken by the UAE between initialling and signing an EOI agreement. It is recommended that the UAE should, expeditiously, enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

423. In the first two years of the review period, the UAE did not have an organised process for the handling of EOI requests. This resulted in only very few EOI requests being processed at that time. Although early in 2014 an EOI Unit was established, there remains a significant backlog of unanswered requests. The UAE should continue with its efforts to fully establish its EOI Unit, particularly with its plans to increase the staffing of the unit, and to address the backlog of requests on an urgent basis.

424. The UAE's EOI partners have reported difficulties in communicating with the UAE Competent Authority. Status updates were never sent, and even where partial responses were sent no explanation was offered on the status of the missing information. The UAE has made efforts to facilitate discussions with key partners since the establishment of the EOI Unit. The UAE should increase its efforts to discuss and understand issues raised by its EOI partners through direct communication, including the provision of status updates. The UAE should also engage in a dialogue in cases where it intends not to provide the information.

## C.1 Exchange of information mechanisms

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

425. 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 process is finalised 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), as well as concluding TIEAs (Ministerial Council for Services Circular 454/2010).

426. As at May 2016, the UAE has an EOI relationship with 104 jurisdictions. For the vast majority of those, information exchange can take place under one of the 97 DTCs, and more recently the UAE signed its first eight TIEAs (one TIEA was signed with a jurisdiction with which the UAE already had a DTC).

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

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

428. Most DTCs and all TIEAs concluded by the UAE provide for the exchange of information that is “foreseeably relevant” or “necessary” for carrying out the provisions of the Convention or of the domestic laws of the Contracting States, or contain language which has similar meaning. The Commentary to Article 26(1) of the OECD Model Tax Convention refers to the standard of “foreseeable relevance” and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary”. In view of this recognition, all DTCs and TIEAs but for the ones mentioned in the next paragraph meet the “foreseeably relevant” standard.

429. Six of the UAE's older DTCs, with Austria, Indonesia, Malaysia, Mozambique, 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.

430. The DTC with Panama contains a provision stating that exchange of information “does not include (i) measures aimed only at the simple collection of pieces of evidence, or (ii) when it is improbable that the requested

information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State (“Fishing Expeditions”). Although this language seems to be targeted at excluding fishing expeditions, it is unclear whether the “simple collection of pieces of evidence” would always constitute a fishing expedition. In addition, information that is “improbable ... [to] be relevant...” could be more narrow than simply “foreseeably relevant” information as contemplated in the OECD Model Tax Convention. No EOI requests were received from Panama during the three-year review period.

431. In practice, the UAE Competent Authority indicated that they have asked for clarifications in a number of cases during the three-year review period, but that most of these clarification requests related to EOI requests where the UAE needed additional information to be able to collect the information requested. The UAE’s main EOI partner has indicated that in a few cases, the additional information sought was already in the original request but was nevertheless provided again. However, this does not seem to have occurred on a regular basis across the board and was probably due to an oversight on the side of the UAE Competent Authority.

432. Only in a few cases, the clarification requests related to the foreseeable relevance of the EOI request. No peer has indicated that, during the three-year review period, the UAE has questioned the foreseeable relevance of a specific EOI request where this was not appropriate.

433. In a number of cases, the UAE Competent Authority has responded that information was not obtainable in the normal course of its administration and declined to provide the information on the basis of the reciprocity conditions consistent with article 26(3)(b) of the OECD Model Tax Convention. These requests include the following:

- Requests to confirm that a person in the UAE sent a “gift” to a person in the requesting jurisdiction or had ever sent a gift to that person: the EOI Unit did not know how to respond as there was no reference to a specific transaction, nor was it obvious how to establish whether a given transaction, were it to be identified, was a “gift” or otherwise. The EOI Unit also queried whether further enquiries could have been made in the requesting jurisdiction to identify a particular transaction that could be the subject of investigation.
- A request to determine how an individual was put in contact with another individual or company: The EOI unit did not know how to go about answering this. While it is possible to interview witnesses under certain circumstances (in particular in criminal matters), this is not a normal practice in the UAE; nor is it in many jurisdictions and the standard does not require that jurisdictions have the power to obtain witness statements.



- A request to find out the reasons a person was promoted in a company: Similar to the previous case it is not clear how this information could be provided without recourse to the interrogation of a person within the company.
- A request to establish the cash flow position for an individual or to identify alternative sources of income: As individuals in the UAE do not file individual tax returns it was not obvious what specific information could be obtained from or in respect of this individual. It is possible to imagine requesting a statement of assets and income from the individual, however, this was not a procedure that is normally followed by any administration in the UAE.
- A request relating to transfer pricing with respect to specified transactions: As the UAE does not impose income tax it therefore does not have rules relating to transfer pricing. However, accounting information (accounts and invoices) could have been provided to the EOI partner in order to assist in determining the arm's length price.
- Requests for bank information where the account number was for a bank outside the UAE.

434. It is clear that the fact that the UAE does not impose income taxes should not allow it to rely on this to say that the information is not obtainable in the normal course of its administration, which would amount to a total bar to exchange on the basis of a lack of domestic tax interest. Jurisdictions should have the powers necessary to facilitate effective information exchange, and should use these powers notwithstanding that they may not need the information for its own tax purposes. This scenario is explicitly addressed by paragraph 26(4) of the OECD Model Tax Convention and which is included in the relevant EOI mechanisms.

435. Nevertheless, most cases identified by the EOI Unit raise difficult problems for any requested jurisdiction. As noted above, the requests cited generally do not ask for the EOI Unit to obtain a specific document or verify a specific transaction. In addition, the absence of an income tax means that information that would normally be in the possession of a tax administration for tax purposes simply does not exist in the UAE.

436. Taking the issues identified above in turn, while it is possible to speculate as to the underlying object of the requests in some cases and thereby identify specific information or documents that could respond to the inquiry, this would go beyond the role expected from the requested jurisdiction and would not in any event appear to be a very efficient manner in which to conduct EOI. However, there may well have been scope for a more productive exchange of information if both the UAE and the requesting jurisdiction had made greater efforts to be more specific about what was possible on the one

hand and what was required on the other. In particular, it would have been good practice for the UAE to engage in a dialogue with the requesting jurisdiction before declining to obtain and exchange the information. It should in this respect be noted that in none of the cases was an explanation offered by the UAE Competent Authority as to why paragraph 26(3) was invoked, and cases were closed unilaterally.

437. The UAE explains that it was standard practice to include a reference to paragraph 26(3) in its response letters, irrespective of whether certain information was not obtained. In general, the objective of information exchange is to ensure that all foreseeably relevant information does get exchanged. Declining to provide certain information on “face value” because it would fall under Article 26(3)(b) does not match with this objective. It is not unlikely that in many of the cases additional information is available with the requesting jurisdiction which would enable the UAE to obtain the information.

438. At the end of 2015, the UAE abandoned the practice of including a reference to paragraph 26(3)(b) in its responses to EOI requests, which is confirmed by peers. It is recommended that the UAE only declines to provide information on the basis of the equivalent of Article 26(3) of the OECD Model Tax Convention where this has been clearly established after consultation of the requesting jurisdiction.

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

439. 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.

440. The TIEAs concluded by the UAE allow for exchange of information in respect of all persons. All of the UAE’s DTCs except those with Armenia, Austria, Bangladesh, Canada, Cyprus<sup>28</sup>, Finland, India, Indonesia, Korea, Malaysia, Mongolia, Mozambique, Pakistan, Thailand, Tunisia, Turkey,

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28. 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”.

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.

441. However, the EOI provisions in the UAE's DTCs with Armenia, Bangladesh, Canada, Cyprus, Korea, Mongolia, Pakistan, 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; in addition, a TIEA was signed with Finland on 27 March 2016. 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.

442. Exchange of information in respect of all persons may not be possible under UAE's DTCs with Austria, Indonesia, Malaysia, Mozambique, 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)***

443. 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.

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

444. As most of the UAE’s DTCs were concluded before the update of the OECD Model Tax Convention in 2005, they generally do not contain a provision corresponding to Article 26(5), which was introduced at that update. The DTCs concluded more recently and the TIEAs signed by the UAE do contain such a provision. However, the absence of this provision does not automatically create restrictions on the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries, as well as ownership information. The Commentary to Article 26(5) indicates that while paragraph 5 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. It appears that the UAE’s domestic laws do not restrict the access to and exchange of information covered by Article 26(5) even in the absence of such provision in the DTC. In practice, no request for information has been declined solely because it was held by a bank or other financial institution.

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

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

446. As most of the UAE’s DTCs were concluded before the update of the OECD Model Tax Convention in 2005, they generally do not contain a provision corresponding to Article 26(4), which was introduced at that update and which stipulates that a domestic tax interest may not be a reason to decline an information request. The DTCs concluded more recently and the TIEAs signed by the UAE do contain such a provision. However, the absence of this provision does not automatically create restrictions on the exchange of information. The Commentary to Article 26(4) indicates that paragraph 4 was introduced to express an implicit obligation to exchange information also in situations where the requested information is not needed by the requested State for domestic tax purposes. No domestic tax interest restrictions exist in the UAE’s laws even in the absence of a provision corresponding with Article 26(4) of the OECD Model Tax Convention.

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

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

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.

448. None of information exchange mechanisms established by the UAE applies the dual criminality principle to restrict exchange of information, and in practice no issue linked to dual criminality has arisen.

***Exchange of information in both civil and criminal tax matters***  
(ToR C.I.6)

449. 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”).

450. All of the UAE’s DTCs and TIEAs provide for exchange of information in both civil and criminal tax matters. As discussed above, 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. In any case, a TIEA was signed between the UAE and Finland on 27 March 2016.

451. It is not recorded by the UAE whether an EOI request relates to a civil or a criminal tax matter, as the procedures to obtain and exchange information are the same. Peers have not raised any issues specifically related to requests pertaining to either civil or criminal tax matters.

***Provide information in specific form requested*** (ToR C.I.7)

452. There are no restrictions in the UAE’s DTCs, TIEAs 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.

453. In practice, no particular problems were raised by peers regarding the form in which the information was exchanged.

***In force*** (ToR C.I.8)

454. 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.

455. Once the text of an agreement has been initialled, it is submitted to the federal Cabinet to obtain authorisation for signing the agreement. For DTCs, this process usually takes up to three months. It is noted that obtaining authorisation to sign the first TIEAs took almost 1.5 years, due to the fact that this was a new type of agreement for the UAE (see also under C.2). It is expected that in the future this process will also take approximately three months. Nevertheless, it is recommended that the UAE monitors that the TIEAs that have been signed as well as any future TIEAs are signed and ratified expeditiously.

456. Once signed, the Supreme Council of the Union (consisting of the Rulers of the seven individual Emirates) ratifies the agreements 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. The UAE authorities indicate that the ratification process generally takes between six and nine months in total.

457. Of the 104 information exchange agreements currently signed, 37 are not in force (see Annex 2). Almost all of these, except for the ones with Benin, Greece, Kenya, Libya and the Palestinian Authority were signed recently (in the second half of 2014, in 2015 or in 2016).

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

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

459. Article 125 of the UAE 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.

460. As discussed in Part B.1 of this report, the UAE's arrangements providing for international exchange of information have not been given full effect through domestic law, as the process and procedures for obtaining and providing information have not been clearly specified in all cases. In addition, no access powers have been identified in the Fujairah Free Zone.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
The UAE's arrangements providing for international exchange of information have not been given full effect through domestic law as the extent of the authorities' access powers has not been clearly specified in all cases.	It is recommended that the UAE ensure it has complete legislation enabling it to give full effect to its EOI agreements.

<b>Phase 2 rating</b>	
<b>Partially Compliant</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
It was standard practice to include a reference to the equivalent of paragraph 26(3) of the OECD Model Tax Convention in its response letters, irrespective of whether all information was exchanged or not. In general, the objective of information exchange is to ensure that all foreseeably relevant information does get exchanged. Declining to provide certain information on "face value" because it would fall under Article 26(3)(b) does not match with this objective. It is not unlikely that in many of the cases additional information is available with the requesting jurisdiction which would enable the UAE to obtain the information.	It is recommended that the UAE only declines to provide information on the basis of the equivalent of Article 26(3) of the OECD Model Tax Convention where this has been clearly established after consultation of the requesting jurisdiction.

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

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

461. 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.

462. The UAE has signed 97 DTCs (72 of which are currently in force) and eight TIEAs allowing for exchange of information in tax matters with a wide range of jurisdictions and this covers:

- 26 out of the 27 members of the European Union;
- 14 out of the G20 countries;<sup>29</sup>
- 12 of the 20 Member States of the Arab League;<sup>30</sup> and
- 64 of the 128 Global Forum members.

463. The People's Republic of China, Germany, India, Islamic Republic of Iran, Japan, Korea, Singapore, Thailand and the United States are the major trading partners of the UAE. The UAE has concluded DTCs with all of these countries except with Iran and the United States. Annex 2 contains a list of all DTCs concluded by the UAE.

464. 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. In 2011, the Nordic jurisdictions of Denmark, the Faroe Islands, Greenland, Iceland, Norway and Sweden indicated that they had approached the UAE seeking to conclude TIEAs and formal negotiations were yet to start, as the UAE Ministry of Finance needed authorisation to conclude TIEAs. After such authorisation was obtained, TIEAs were initialled with the Nordic jurisdictions, now including Finland, in November 2013. Another TIEA was initialled with Colombia in February 2014.

29. Argentina, Canada, People's Republic of China, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Russian Federation, Turkey and the United Kingdom.

30. Algeria, Comoros, Egypt, Jordan, Lebanon, Libya, Mauritania, Morocco, the Palestinian Authority, Sudan, Tunisia and Yemen.



465. On 29 March 2015, a Cabinet Resolution authorised the signing of the TIEAs with the Nordic jurisdictions and Finland, as well as Colombia. Subsequently, in November 2015, three TIEAs were signed with Denmark, Norway, and Sweden. Since then, TIEAs have also been signed with Argentina, Colombia, Faroe Islands, Finland and Iceland.

466. The UAE indicated that the relatively long time between initialling and signing the TIEAs is caused by the fact that these were a new type of agreement for the UAE. The UAE also explained that in accordance with Article 47 of the UAE Constitution, the conclusion of international agreements requires deliberation and agreement by the seven Emirates of the Federation and needs to be approved through the Supreme Council, as the highest authority, which comprises the rulers from each of the seven Emirates of the UAE.

467. Nevertheless, it may be noted that the total time that has lapsed since the UAE was first approached until the TIEAs were signed was four years. This can be considered very long, since TIEAs generally have standard provisions with little room for negotiation. It may also be noted that many other jurisdictions have concluded a lot of TIEAs in a much shorter period of time, while it was also a new type of agreement for them. Finally, it may be mentioned that the UAE has not signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters, which means that other jurisdictions are dependent on the UAE concluding bilateral agreements with them.

468. Comments were sought from Global Forum member jurisdictions in the course of the preparation of this report. A number of jurisdictions, including the ones that have been waiting for their TIEA to be signed, expressed their dissatisfaction with the delays in negotiating EOI agreements and/or the time taken by the UAE between initialling and signing an EOI agreement. It is recommended that the UAE should, expeditiously, enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

469. 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. During the course of the assessment, no jurisdictions have advised that the UAE has refused to enter into negotiations or conclude an EOI agreement.

### 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
Delays have been experienced in negotiating EOI agreements and/or the time taken by the UAE between initialling and signing an EOI agreement.	The UAE should, expeditiously, enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
Phase 2 rating	
Largely Compliant	

## 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)*

470. 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.

471. All of the UAE's information exchange agreements 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, while the TIEAs contain the language of Article 8 of the OECD Model TIEA.

472. Art. 68 of Federal Law 11/2008 prohibits all federal government employees to disclose any confidential information during and after the

end of his service, unless he obtains a prior written approval to do so. Such approval would not be given if it were in violation of an international agreement. Administrative penalties, ranging from a reprimand to dismissal, can be applied in case of non-compliance (Arts. 81 and 83 of Federal Law 11/2008), in addition to any criminal sanctions that may apply, such as under the Law Combating Cybercrimes (Law 5/2012). Under that law, disclosing confidential information may be punished by six months imprisonment or a fine between AED 500 000 and AED 1 million (between EUR 120 000 and EUR 240 000), or both (Art. 22).

473. The Memoranda of Understanding (MoUs) concluded between the Ministry of Finance and other authorities for the purposes of obtaining information for EOI purposes (see Part B of this report), all contain a provision requiring the authorities to keep the EOI requests and its contents confidential.

### *In practice*

474. The requests received by the EOI Unit are registered in a database, which is accessible only by authorised officials. Paper documents are safely stored in secure (locked) cabinets in a separate room next to where the EOI Unit is located. Access to these documents is restricted to persons working in the EOI Unit only.

475. The UAE Ministry of Finance, which houses the Competent Authority, is certified as compliant with the international standard on information security ISO 27001:2013. This means that the information security risks of the Ministry of Finance have been identified and brought under explicit management control, as part of the entire “enterprise” risk management. Security controls are in place with respect to the human resources, physical access, logical access and information systems including the data they hold. On an operational level, checks are carried out to ensure that all security controls remain effective and are amended where appropriate.

476. As explained under element B.1, the UAE Competent Authority uses templates to ask other authorities to collect the requested information. These templates include lines for the name of the person about or from whom information needs to be collected, as well as the most common types of information requested, such as the details of directors and shareholders, company registration information and financial statements. The EOI requests themselves are not shared with these authorities and therefore also not with the holder of the information where another person is asked by these authorities to provide the information.

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

477. 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.

478. The UAE’s information exchange agreements 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.
Phase 2 rating
Compliant

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

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

***Exceptions to requirement to provide information (ToR C.4.1)***

479. The international standard allows requested parties not to supply information in response to a request in certain identified situations. In line with this, the large majority of the UAE’s DTCs (with the exception of the DTCs with the Czech Republic, Indonesia, Morocco and Romania) 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.

480. 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. As described under B.1.5 of this report, the scope of professional privilege within the DIFC is in line with the international standard, but in respect of lawyers covered by UAE law 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, although this does not apply to situations where a lawyer acts in a different capacity, e.g. a trustee, altogether. This broad protection afforded to information available with lawyers translates into similar protection under the DTCs (except under the DTC with Japan). This may prevent providing information held by lawyers to the requesting foreign partners.

481. In practice, legal professional privilege was not invoked during the three-year period under review. More broadly, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the UAE's exchange of information partners.

#### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
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.
Phase 2 rating	
Compliant	

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

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

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

482. 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 co-operation as cases in this area must be of sufficient importance to warrant making a request.

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

484. During the review period the UAE received 323 requests from 28 partner jurisdictions. The UAE EOI unit employs the same methodology and priority to all the requests received from the various Competent Authorities. Requests from India make up a large portion of the total requests, which is understandable given the fact that Indian residents and businesses represent one of the highest numbers of the UAE foreign population. The UAE has also received a significant number of requests from Poland, France, Turkey and the Ukraine.

485. The UAE EOI unit counts each request for information from a separate source as a separate request. Each record has its own “life-cycle” to count and track the processing time. Therefore, if the single request requires banking (Central Bank) and civil registry (Emirates Identity Authority) information, the request will be counted as two requests.

486. The table below shows the timeliness of final responses during the review period.

	2012		2013		2014		Total	
	num.	%	num.	%	num.	%	num.	%
Total number of requests received	67		121		135		323	
Full response: ≤ 90 days	0	-	0	-	24	18%	24	7%
≤ 180 days (cumulative)	0	-	0	-	46	34%	46	14%
≤ 1 year (cumulative)	0	-	2	2%	50	37%	52	16%
> 1 year	17	25%	24	20%	1	1%	42	13%
Declined for valid reasons								
Failure to obtain and provide information requested								
Partial responses sent	1		16		15		32	
Requests still pending at date of review	50	75%	95	78%	84	62%	229	71%

487. It is immediately clear from the statistics that a large percentage of the EOI requests are still pending. This is consistent with the peer input, which stated that no information was received from the UAE in many cases. Peers also generally indicated that no status updates were provided. Where peers have received responses these were generally reported to have been answered after more than one year.

488. As analysed in detail below under section C.5.2, the UAE has only had an established EOI unit since the beginning of 2014, and the bulk of requests received in 2012 and 2013 were not processed until 2014. The UAE continues to have open requests from all years in the review period to which

no responses have been given. More than 70 requests have not yet been processed at all by the UAE Competent Authority, while the others are outstanding with other UAE authorities to collect the information or with its EOI partners for clarification. Consequently, the timeliness of responses has been, and continues to be, an issue.

489. What is not immediately clear from the statistics is that they show requests as answered which were, in fact, not or only partially answered as a result of the issues raised under element B.1 of this report, i.e. the difficulties in identifying some free zone entities, the lack of specificity in requesting other authorities to obtain information and the reference to Article 26(3) of the OECD Model Tax Convention for not having obtained information. Although no exact figures are available, it has been clear from the input from peers that a significant proportion of the requests were answered unsatisfactorily, in the sense that the responses were incomplete and no explanations were given as to why this was the case. This includes cases where the response from the UAE mentioned that the information was not obtainable in the normal course of the UAE's administration in reference to the relevant treaty provision based on article 26(3) of the OECD Model Convention or that the request goes beyond the terms of the relevant treaty. Although this may have been valid in some cases, the UAE offered no explanation as to the exact reasons to its EOI partners. Further issues have been raised by EOI partners regarding the level of specificity that was required in the request in order for the EOI unit to obtain the information requested.

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

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

491. 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.

492. The UAE EOI unit has been fully operational only from the beginning of year 2014. While a core team was established following the issuance of the Council of Ministers resolution in 2012, this was not an organised process. In 2014, the Ministry of Finance worked with an International Organisation to implement the standard of exchange of information on request and in particular to put in place an organisational structure to respond to requests for information under its network of EOI mechanisms. This involved the development of a dedicated EOI unit, processes, policies and IT resources.

### *The EOI Unit*

493. The EOI Unit is staffed by a head of unit, a legal advisor, an EOI specialist, an inter-institutional co-ordinator, and administrative support personnel. The Head of the EOI unit is responsible for overall management of the unit, attending meetings related to EOI with the OECD and Global Forum, approval of responses before they are sent to the UAE Competent Authority to be signed. In particular, the Head of the EOI Unit is responsible for establishing priorities when a requesting State has assigned any particular urgency to a request, and ensuring that the taxpayer will not be contacted or notified when the requesting jurisdiction has asked that the taxpayer not be contacted directly.

494. The Legal Advisor analyses EOI requests in order to determine if they comply with the provisions of the applicable legal instrument, including assessing cases of “fishing expedition”, evaluating specific requests related to DTCs or other legal instruments.

495. The EOI specialist analyses incoming requests to determine the course of action and, in conjunction with the Inter-institutional co-ordinator, is responsible for analysing responses from national or local authorities and determining whether or not further requests are necessary. The EOI specialist prepares all correspondence to be sent for the approval of the Head of the EOI Unit. During the preparation of responses, it will be assessed if the submission of most complex cases to the legal counsel is required. It should be noted that the EOI specialist only started in August 2014.

496. The Inter-institutional Co-ordinator (IC) is responsible for co-ordinating relations with domestic stakeholders/institutions and managing the current network of MOUs, including the workload and time-limits for responding to requests.

497. The EOI specialists and the IC work closely in analysing the responses provided by local authorities to determine if further requests are necessary.

498. The head of the EOI unit continuously monitors and evaluates the EOI unit’s performance and makes strategic decisions regarding expansion plans. As per a three (3) year Ministry of Finance budget plan, the EOI Unit will add one EOI Expert and one administrative staff for year 2016 and 2017 and two (2) EOI Experts in 2018 in anticipation of the implementation of Automatic Exchange of Information.

### *Handling requests*

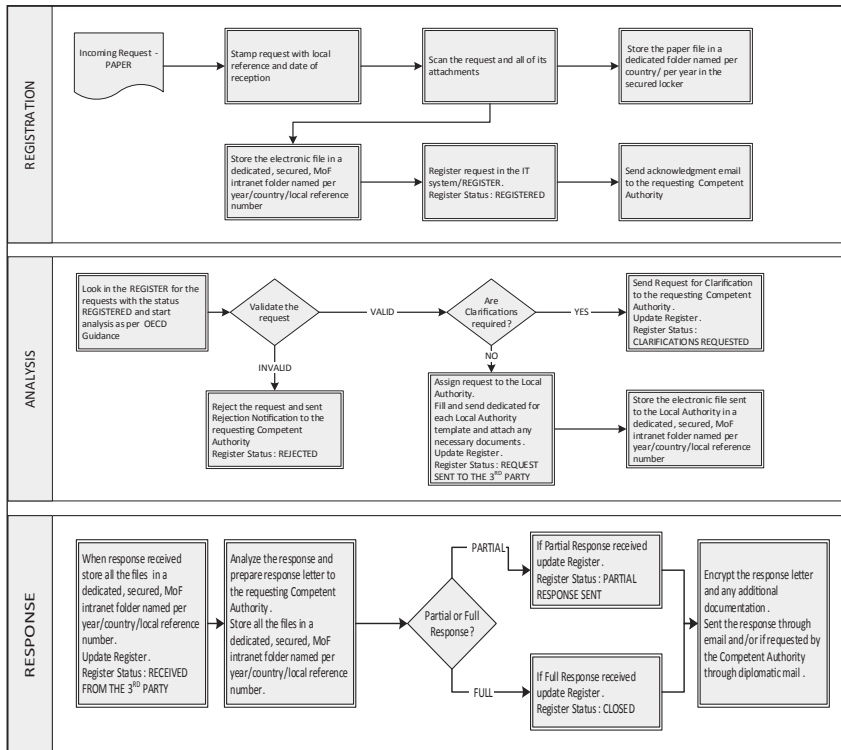
499. The EOI unit follows a standard process for all requests. After the EOI unit receives a request, it is registered in its system and analysed. Where the request is considered valid the EOI Expert assigns the request to the local



authority according to the type of information required. One request can be assigned to more than one local authority. The EOI unit uses predefined templates for requesting information from each local authority. The local authorities are given thirty (30) days to provide their responses to the request from the EOI unit. (See section B.1 *Access to information* for an analysis of the processing of the request by the local authorities). After the response is received, the EOI Expert registers it and creates a final response for the requesting partners.

500. The EOI Unit reports that the time and effort to respond to EOI requests depends on the quality of the information provided by the requesting Competent Authority. One significant issue that has arisen are cases where only the name of an individual or company is provided by the requesting competent authority as there may be many individuals with that name. Moreover, the name must often be translated from a foreign language into Arabic, which is a very unreliable process. The EOI unit considers that precise information regarding individual name, passport number, nationality, company name, company legal type, company address is crucial in order to obtain information in a timely manner.

501. The following flowchart outlines the process of handling the requests:



502. The EOI Expert analyses the response obtained from the local authorities and prepares the final response to the requesting Competent Authority. The response can be partial if the documents obtained are only providing information for some of the questions raised in the request or full. The following checklist of elements to include in the response is applied before the response is approved/signed and sent to the requesting Competent Authority:

- The reference to the legal basis pursuant to which the information is provided (Article on exchange of a DTC, TIEA, international agreements etc.).
- A reference to the request in response to which the information is provided (reference number)
- The information requested, including copies of documents (e.g. records, contracts, invoices) as well as any information not specifically requested but likely to be useful based on the information provided in connection with the request
- Whether this is a partial or full response. If partial, an indication of when the remaining information will be sent,
- If applicable, explanation why certain information could not be provided or could not be provided in the form requested,
- For money amounts the currency, whether a tax has been withheld and if so the rate and amount of tax,
- The type of action taken to gather the information,
- The tax periods for which the information is provided,
- Whether the taxpayer or a third person has been notified about the exchange,
- Whether there are any objections to notifying the taxpayer of the receipt of the information
- Whether feedback is requested on the usefulness of the information
- A reminder that the use of the information provided is subject to the applicable confidentiality rules (this can be done by stamping a reference to the applicable confidentiality rule on the information provided or including a watermark if the information is sent electronically)
- Contact point: The name, phone, fax number and e-mail address of the tax official who may be contacted if needed (that person should have a delegation of competent authority)
- Signature of the response by the competent authority or person having a delegation of competent authority.

503. After the Council Resolution in 2012 but before the EOI unit was established in 2014 some requests were responded to, but it was not an organised process and it is clear that many requests were neither acknowledged nor responded to. However, the records, which were paper-based, had nevertheless been kept in one central location.

504. Once the EOI unit was established in February 2014, its first task was to clear its backlog of requests, beginning with identifying the existing requests. Over 2014, the EOI unit has registered over five hundred (500) EOI requests dating back to year 1998.

505. Once the existing requests were registered, the EOI unit first began processing the most recent requests and moving backwards. To date the EOI unit has started processing (but not necessarily finally responded to) 222 of the requests. This represents 96% of the requests received in 2014, 70% of the requests received in 2013, and 32% of the cases received in 2012. The large number of outstanding requests from 2012 persists in large part by virtue of the fact that new requests receive priority and the volume of requests has not abated. The Head of the EOI unit notes that clearing the backlog is a work in progress and the Ministry is hiring more staff to cope with the workload. The issue of human resources was exacerbated by the fact that one EOI officer was required to complete military service was not replaced.

506. The UAE did not have in place any organised system to respond to requests before 2014 and it is clear that, given the volume of requests received in that time, this has had a significant impact on effective exchange of information. Since then the UAE has worked hard to put a system in place and to work through the backlog of cases dating back to 1998. This continues to be a work in progress, both in terms of implementing the correct policies, finalising the technological infrastructure and putting in place adequate human resources.

507. As the UAE has been a Global Forum member since its restructuring in September 2009, it can be expected that efforts to respond to EOI requests would have started soon after that time, especially considering the fact that more than a few requests had been received. However, only in 2014 an EOI Unit was put in place which started to process requests. Although this was a positive step, two years later there is still a considerable backlog. It is recommended that the UAE continues with its efforts to fully establish its EOI unit, particularly with its plans to increase the staffing of the unit, and to address the backlog of requests on an urgent basis.

### *Communicating with Partner Jurisdictions*

508. The UAE reports that initial contacts are usually established through meetings and exchange of letters. The EOI Unit informs each Competent Authority about its contact details, including the name of the contact person, email address and telephone details. Afterwards, the exchange of information is carried through emails and exchange of letters. Conference calls and/or visits are organised to discuss and improve co-operation between UAE EOI and other OECD Competent Authorities and other treaty partners (internal/external).

509. The EOI unit's contact details are available to all the partners through various channels:

- OECD Global Forum Competent Authorities Website
- Contact Details section of each international agreement
- Ministry of Finance Website.

510. The EOI Unit has a dedicated email address to conduct all communication with its partners.

511. All paper requests are scanned and the paper file placed in the dedicated folders named per country/per year in the secured locker. All the responses are generally sent electronically to the requesting jurisdiction and the document files are password protected. If requested, responses can also be sent through diplomatic or registered mail.

512. Peer input suggests that communications with some partners have presented difficulties. In the case of one partner responses were sent via email using password protected files. The partner in question preferred to receive responses in paper form. The UAE reports that these responses have all been re-sent by registered mail with signature confirmation. The confirmations of receipt are maintained in a postal file by Ministry of Finance.

513. In the case of another partner, the UAE authorities note that requests come not from the central Competent Authority but from regional offices, which posed difficulties in determining the precise identity of the right person to be in contact with. A further issue arose in this relationship due to the inability of the partner to open password protected documents, although the UAE is confident that the password was sent to the partner in these cases. The UAE re-sent the responses by post in these cases. The Head of the EOI Unit also met with this partner in 2015 to work through the issues that had arisen.

514. The EOI unit has also had discussions with a number of partners to explain difficulties in responding to certain requests and report that they have sent detailed letters to request clarification (in 10-20% of cases). Requests are

not rejected in these cases and held open pending response. In these situations the EOI unit reports that it is usually able to provide partial responses.

515. In one case where the UAE was unable to obtain the requested information without further identifying information from its EOI partner, this was communicated in writing and followed up with a meeting in person to explain the requirements.

516. Besides these specific issues, it can be noted that the UAE Competent Authority has generally not engaged in discussions with respect to specific EOI requests. It has already been described under element C.1 that cases have been unilaterally closed on the basis of a provision equivalent to paragraph 26(3) of the OECD Model Tax Convention, where dialogue with the requesting jurisdiction may have helped in identifying possibilities to assist. In these cases, no explanation of the exact reasons was offered. It is recommended that the UAE explains to its EOI partner the reasons why information could not be obtained and engages in a dialogue in cases where it intends not to provide the information.

517. In addition, there has been no or very little communication with respect to requests that were received before the EOI Unit was put in place in 2014. Status updates were not sent and EOI partners did not know whether their requests were being processed. Even though two meetings were held with the UAE's main EOI partner, the discussions at these meetings were of a general nature and no specific EOI requests were discussed.

518. In conclusion, there have been a number of communication issues, including an overall lack of communication in many instances. Communication is key for a good EOI relationship and may increase the understanding with the requesting jurisdictions for delays and reasons for asking clarifications. It can also assist the requested jurisdiction in understanding what exactly is being asked, making obtaining the information more efficient. It is recommended that the UAE increases its efforts to discuss and understand issues raised by its EOI partners through direct communication.

### *Training*

519. The personnel in the EOI Unit each hold advanced university degrees and have strong language skills, particularly English. While direct tax and EOI experience is not predominant, the EOI Unit members have had significant, relevant training.

520. First, the EOI unit staff has received extensive training from an International Organisation team during the project January to November 2014, for advisory assistance in complying with the international agreed standard on tax co-operation in terms of implementing the EOI. In addition,

members of the EOI Unit have also participated in various training seminars provided by the Global Forum, OECD, IBFD, as well as dedicated training on FATCA and AEOI.

### *IT Resources*

521. Currently, the EOI unit uses an excel sheet to manage the requests sent and can monitor the timeliness of responses on a weekly basis by the team. The EOI unit, with the assistance of an international organisation, has developed an XLS based system for logging requests and monitoring progress. The system became operational at the end of 2015. All requests are registered in a portal and are then be sortable by a variety of fields, including requesting country, date or type of information requested. The system and storage of all attached documents is hosted on the Ministry of Finance intranet within a secure environment that is only accessible by authorised members of the EOI unit.

522. Importantly, an option is being developed in order for the portal to allow for direct interaction with the foreign competent authority. It will be possible for a foreign competent authority to request a registration through the portal and, once approved by the EOI Unit, to submit all requests electronically, follow up the “life-cycle” of the request, and obtain the response through the single portal.

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

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

524. 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>

<b>Phase 2 rating</b>	
<b>Non-Compliant</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
<p>The absence of any organised process for the handling of requests in the first two years of the review period had an adverse impact on effective EOI, as only very few EOI requests were processed at that time. The establishment of the EOI unit continues to be a work in progress and there remains a backlog of unanswered requests.</p>	<p>The UAE should continue with its efforts to fully establish its EOI unit, particularly with its plans to increase the staffing of the unit, and to address the backlog of requests on an urgent basis.</p>
<p>The UAE's EOI partners have reported difficulties in communicating with the UAE Competent Authority. This includes cases where the UAE did not provide certain information on the basis of the equivalent of Article 26(3) of the OECD Model Tax Convention. The UAE has made efforts to facilitate discussions with key partners since the establishment of the EOI Unit.</p>	<p>The UAE should increase its efforts to discuss and understand issues raised by its EOI partners through direct communication, including the provision of status updates. The UAE should also engage in a dialogue in cases where it intends not to provide the information.</p>





## Summary of determinations and factors underlying recommendations

Overall Rating		
<b>PARTIALLY COMPLIANT</b>		
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>Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	It is not clear that foreign companies having their main offices or effective management in the Dubai Airport Free zone are 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 clarify that ownership information is available for foreign companies having their main offices or effective management in the UAE in all cases.
	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.
<b>Phase 2 rating: Largely Compliant.</b>		

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> )		
<p><b>Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement.</b></p>	<p>Under the federal Commercial Transactions Law (CTL) entities in the free zones other than financial free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years. However, the legislation in most free zones analysed varies from the CTL.</p>	<p>The UAE should clarify that all entities in the free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years.</p>
	<p>The requirements to keep underlying documentation by DIFC entities other than entities regulated by the financial regulator are worded in a general way and do not go into detail regarding the type of underlying documentation to be kept, which could result in an uneven application of the obligation to keep underlying documentation.</p>	<p>The UAE should elaborate its requirements that underlying documentation must be kept in respect of all relevant entities and arrangements in the DIFC.</p>
	<p>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.</p>	<p>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.</p>

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating: Partially Compliant.</b>	<p>There is no regular oversight with respect to the obligation on partnerships to keep reliable accounting records, including underlying documentation.</p>	<p>The UAE should implement a system of oversight to ensure that all partnerships keep reliable accounting records, including underlying documentation, in practice.</p>
	<p>Even though they are required to have their accounts audited, without any regular checks by a free zone or federal government authority there is insufficient assurance that reliable accounting records are kept by offshore companies in the Jebel Ali Free Zone. With respect to offshore companies in the RAK Free Zones, compliance with accounting record keeping obligations is not monitored at all.</p>	<p>The UAE should implement a system of oversight to ensure that offshore companies in the Jebel Ali Free Zone and the RAK Free Zones keep reliable accounting records, including underlying documentation, in practice.</p>
	<p>The UAE has not exchanged accounting information in all cases where it was requested and it is not clear that the information would have been available.</p>	<p>The UAE should monitor the availability of accounting information, and in particular underlying documentation, where this is requested by an EOI partner.</p>
<p>Banking information should be available for all account-holders (<i>ToR A.3</i>)</p>		
<b>Phase 1: The element is in place.</b>		
<b>Phase 2 rating: Compliant.</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> )		
<p><b>Phase 1:</b> The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p>The process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance has not been specified where no MoU has been concluded between the Ministry of Finance and the relevant authority. Although many MoUs are currently in place, no MoUs exist yet with the Departments of Economic Development, which collect information on UAE entities that are not in the free zones. In addition, no access powers have been identified in the Fujairah Free Zone.</p>	<p>The UAE should specify the process and procedures by which the most relevant government authorities are required to provide information for EOI purposes to the Ministry of Finance when requested to do so and clarify that access powers are available in all instances.</p>
	<p>Except for lawyers who are asked to produce information by the DIFC authorities, the scope of legal professional privilege appears to extend beyond that provided for in the international standards.</p>	<p>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.</p>
<p><b>Phase 2 rating:</b> Partially Compliant</p>	<p>Information with respect to free zone entities is currently not centralised. As a result, the amount of specificity necessary for the Competent Authority to access information that relates to free zone entities forms an impediment to effective EOI in some cases, as information cannot be obtained only on the basis of the name of the company in these cases.</p>	<p>The UAE should ensure that information is accessible to its Competent Authority in all cases where the name of the company has been clearly identified by the requesting jurisdiction.</p>

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating:</b> <b>Partially Compliant</b> <i>(continued)</i>	<p>Peer input suggests that in many cases only partial information was obtained by the UAE Competent Authority. This raises questions with respect to the effectiveness of the process of obtaining information through local authorities, which are not used to dealing with EOI requests for tax purposes and have little or no expertise in this area. It may therefore be very difficult for them to determine which information and documents are meant to be obtained. Although the UAE has already taken steps to improve the situation, this is still work in progress.</p>	<p>The UAE should ensure that the collaboration with the local authorities does not impede effective EOI, and in particular that its Competent Authority includes all relevant details in its request to a local authority to obtain information for EOI purposes (without compromising confidentiality), so all requested information can be obtained.</p>
	<p>It is clear from peer input that in a significant number of cases received during the three-year review period not all information was obtained, for example because of the issues raised under elements C.1 and C.5. It is therefore unclear whether access and compulsory powers could have been exercised in all cases where this would have been required.</p>	<p>The UAE should monitor that its access and compulsory powers are effective in all cases where information should be obtained under the relevant tax information agreement.</p>
<p>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>)</p>		
<b>Phase 1:</b> <b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant.</b>		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<p><b>Phase 1:</b> The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p>The UAE's arrangements providing for international exchange of information have not been given full effect through domestic law as the extent of the authorities' access powers has not been clearly specified in all cases.</p>	<p>It is recommended that the UAE ensure it has complete legislation enabling it to give full effect to its EOI agreements.</p>
<p><b>Phase 2 rating:</b> Partially Compliant.</p>	<p>It was standard practice to include a reference to the equivalent of paragraph 26(3) of the OECD Model Tax Convention in its response letters, irrespective of whether all information was exchanged or not. In general, the objective of information exchange is to ensure that all foreseeably relevant information does get exchanged. Declining to provide certain information on "face value" because it would fall under Article 26(3)(b) does not match with this objective. It is not unlikely that in many of the cases additional information is available with the requesting jurisdiction which would enable the UAE to obtain the information.</p>	<p>It is recommended that the UAE only declines to provide information on the basis of the equivalent of Article 26(3) of the OECD Model Tax Convention where this has been clearly established after consultation of the requesting jurisdiction.</p>
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<p><b>Phase 1:</b> The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p>Delays have been experienced in negotiating EOI agreements and/or the time taken by the UAE between initialling and signing an EOI agreement.</p>	<p>The UAE should, expeditiously, enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.</p>

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating: Largely Compliant.</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>Phase 1: The element is in place.</b>		
<b>Phase 2 rating: Compliant.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>Phase 1: The element is in place.</b>	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.
<b>Phase 2 rating: Compliant.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>Phase 1: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>		

Determination	Factors underlying recommendations	Recommendations
<p><b>Phase 2 rating:</b> <b>Non-Compliant.</b></p>	<p>The absence of any organised process for the handling of requests in the first two years of the review period had an adverse impact on effective EOI, as only very few EOI requests were processed at that time. The establishment of the EOI unit continues to be a work in progress and there remains a backlog of unanswered requests.</p>	<p>The UAE should continue with its efforts to fully establish its EOI unit, particularly with its plans to increase the staffing of the unit, and to address the backlog of requests on an urgent basis.</p>
<p><b>Phase 2 rating:</b> <b>Non-Compliant.</b> <i>(continued)</i></p>	<p>The UAE's EOI partners have reported difficulties in communicating with the UAE Competent Authority. This includes cases where the UAE did not provide certain information on the basis of the equivalent of Article 26(3) of the OECD Model Tax Convention. The UAE has made efforts to facilitate discussions with key partners since the establishment of the EOI Unit.</p>	<p>The UAE should increase its efforts to discuss and understand issues raised by its EOI partners through direct communication, including the provision of status updates. The UAE should also engage in a dialogue in cases where it intends not to provide the information.</p>



## **Annex 1: Jurisdiction’s response to the review report<sup>31</sup>**

### **Introduction**

The UAE Competent Authority would like to express its appreciation for the in-depth review and support provided during the Phase 2 peer review process by the UAE Assessment team and the OECD General Secretariat. We thank the Assessment team for their effort in understanding and reviewing in details the UAE federal set up and organizational process of the exchange of information.

Since 2009, the UAE has supported the objectives set forth by the Global Forum for Transparency and Exchange of Information and has been an active member of the Steering Group of the Global Forum from 2012.

Additionally, we have cooperated with the forum in organizing series of Regional Workshops for the MENA and Central Asia regions to promote the role of the forum and increase awareness in standards set for transparency and exchange of information for tax purposes.

### **Background**

Significant efforts have been taken by the UAE to demonstrate its intentions to participate and implement the international exchange of information and tax evasion regulations. This is illustrated by the 100 DTAs including 8 TIEAs agreements negotiated and entered into between the UAE and international partners.

The UAE is a federal state with the Ministry of Finance being the Competent Authority. In accordance with the UAE Constitution, the ratification of any treaties or international agreement shall require deliberation and agreement by the seven emirates of the federation. Federal laws enacted by

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

the Union shall apply uniformly across the UAE, including within the free zones of the UAE.

The authority and powers have been fully granted to the Ministry of Finance under Cabinet Resolution No. 17 of 2012 to oversee and respond to requests for information made under a bilateral agreement for the exchange of information. Moreover, Resolution No. 17 provides a mandatory legal basis for all federal ministries and departments, local departments and local authorities, including the free zones, to cooperate with the Ministry of Finance in implementing the provisions of international tax agreements by using their own access powers for the collection of information from persons and companies within their jurisdiction, and provide such information to the Ministry of Finance based on a request from a UAE treaty partner.

Ministry of Finance has executed MOUs with key local authorities providing for an operational framework as to how requests for information will be handled by the respective UAE local authorities.

## **Legal Developments**

To address the Phase 1 assessment recommendations and fulfil treaties obligations, the UAE has implemented large number of changes in its legislative and operational frameworks related to the exchange of tax information.

The UAE has now passed a new anti-money laundering law – Federal Law No.9 of 2014 – amending certain provisions of Federal Law No. (4) of 2002 concerning the combating of Money Laundering Crimes. One major development of the new AML Law is that the scope of money laundering crime is significantly expanded. The Law has specified the administrative sanctions that the relevant supervising authority may impose on an entity which has committed a money laundering crime. In addition to the administrative sanctions, financial institutions are also subject to criminal punishment (fines) for committing a money laundering crime.

Federal Law No. 2 of 2015 concerning Commercial Companies came into force on 1 July 2015, replacing the existing Federal Law No. 8 of 1984. The objective of the new CCL is to continue the UAE’s development into a global standard market and business environment and, in particular, raise levels of good corporate governance, protection of shareholders and promotion of social responsibility of companies. Notable features of the new CCL include the recognition of the concept of holding companies, procedures for pledging shares, expert valuation of shares in kind (i.e. non-cash) and the requirement to rotate auditors (for Public Joint Stock Companies) every three years.

In addition, the DIFC/DFSA also made legislative amendments in 2013 to ensure the use of its access power for exchange of information purposes.

Currently, the DIFC is in the process of issuing a consultation paper to amend the DIFC Companies Law and the Partnership Laws by introducing the definition of “Accounting Records” prescribed by the International Standard on Auditing, which clarifies the type of underlying documentation to be retained by companies and partnerships in the DIFC.

## **Ownership Information**

Every company, person or establishment wishing to form an establishment in the UAE (including free zones) must submit detailed ownership information as per applicable laws and regulations. The ownership information must be updated. The Authorities have access and monitoring powers to obtain the information for any MoF EOI request.

## **Banking Information**

Banking information is obtainable through the UAE Central Bank and DIFC for the entities registered with DIFC Financial Zone.

## **Accounting Information**

In accordance with Article 30 of the Commercial Transaction Law (CTL), companies carrying out business in the UAE are required to comply with mandatory filing requirements requiring companies to file audited financial accounts each year upon renewing of the company’s commercial license.

CTL law applies to free trade Zones and similar requirements are imposed on entities operating in the Financial Free Zones.

The following free zones were assessed by the assessment team and have adopted provisions in their regulatory framework requiring companies carrying out activities in their respective free zone to retain accounting information: (i) JAFZA; (ii) DAFZA; and (iii) RAKIA. Based on the Phase 2 report recommendations Fujairah has issued a new circular No. 4 of 2016 addressing authority, powers, monitoring and accounting information requirements.

In accordance with Article 30 of the CTL, entities engaging in commercial activities in the UAE are required to keep records of all underlying documentation relating to the affairs of the company and transactions carried out by the company, including copies of all correspondence and invoices.

## EOI Unit

Based on phase 1 recommendation, Ministry of Finance established signed technical assistance agreement with the World Bank in 2014 to develop the EOI Organization structure, procedures, operational manuals, training and capacity building of the unit staff and define IT systems requirements.

Members of the EOI Unit have undergone extensive training from the World Bank and actively participate in various OECD trainings and workshops. Additionally, under the further guidance of the World Bank, the EOI Unit has developed and fully implemented its XLS based system to manage the requests. The EOI Unit engages in dialog with various Competent Authorities by regular conference calls, email exchange and on-site visits.

Steps taken to date by the EOI Unit have established a network of communication with the Federal and Local Authorities and Free Zones which included the execution of various MOUs and delivery of specific training about EOI in relation to the obligations under DTAs and TIEAs entered into by the UAE. It is anticipated that MOUs will be executed with all of the UAE free zones in due course.

Since its establishment, EOI Unit has been fully engaged its operational activity, the unit has exchanged responses to over 200+ requests relating to banking and ownership information and sent over 100+ requests for clarifications.

The Unit was responsible for the implementation of FATCA requirements and have developed its procedures and IT systems for automatic exchange of information.

## New Developments

The UAE government has committed to the year 2018 timetable AEOI implementation and is actively working on this initiative. Initially, due to the significant number of signed bilateral agreements like DTC and TIEA, we have indicated an intention to pursue a bilateral route to AEOI implementation. However, as per Global Forum recommendations, we have already reviewed our position and conducted internal consultations of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement. We are now in the process of obtaining internal legislative approvals to join the Convention and MCAA.

Further, it should be noted that the UAE is expected to implement a VAT tax regime, with Other GCC members by 2018, new tax authority will be established to implement the Law.

The emirate of Dubai has established the Dubai Free Zones Council, the objectives of which are to create mechanisms for cooperating and unity between the various free zones in Dubai, particularly with respect to the transfer of knowledge, information and best practices. The Council has started the project to create a free zone's databases in order to unify all free zones data into a single hub. Efforts have been made to create awareness by the free zones and entities in the free zones as to the UAEs obligations to comply with exchange for information requests.

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

### Bilateral agreements

Exchange of information agreements signed by the UAE, in alphabetical order:

	Jurisdiction	Type of arrangement	Date signed	Date in force
1	Albania	Double taxation convention (DTC)	13/03/2014	25/03/2015
2	Algeria	DTC	24/04/2001	25/06/2004
3	Andorra	DTC	28/07/2015	Not in force
4	Argentina	Tax Information Exchange Agreement (TIEA)	05/02/2016	Not in force
5	Armenia	DTC	22/04/2002	23/09/2003
6	Austria	DTC	23/09/2003	23/09/2004
7	Azerbaijan	DTC	20/11/2006	12/06/2007
8	Bangladesh	DTC	17/01/2011	13/06/2011
9	Barbados	DTC	22/09/2014	Not in force
10	Belarus	DTC	27/02/2000	01/02/2001
11	Belgium	DTC	30/09/1996	22/12/2003
12	Belize	DTC	01/10/2015	Not in force
13	Benin	DTC	04/03/213	Not in force
14	Bermuda	DTC	12/02/2015	Not in force
15	Bosnia and Herzegovina	DTC	18/09/2006	19/05/2009
16	Brunei Darussalam	DTC	21/05/2013	21/11/2014
17	Bulgaria	DTC	26/06/2007	16/11/2008
18	Canada	DTC	09/06/2002	25/05/2004
19	China (People's Republic of)	DTC	01/07/1993	22/07/1994

	Jurisdiction	Type of arrangement	Date signed	Date in force
20	Colombia	TIEA	09/02/2016	Not in force
21	Comoros	DTC	26/03/2015	Not in force
22	Cyprus <sup>a</sup>	DTC	27/02/2011	17/03/2013
23	Czech Republic	DTC	30/09/1996	01/01/2005
24	Denmark	TIEA	04/11/2015	Not in force
25	Egypt	DTC	12/04/1994	16/07/1995
26	Estonia	DTC	20/04/2011	29/03/2012
27	Ethiopia	DTC	12/04/2015	Not in force
28	Faroe Islands	TIEA	02/05/2016	Not in force
29	Fiji	DTC	02/09/2012	20/12/2013
30	Finland	DTC	12/03/1996	26/12/1997
		TIEA	27/03/2016	Not in force
31	Former Yugoslav Republic of Macedonia	DTC	26/10/2015	Not in force
32	France	DTC	19/07/1989	08/11/1994
33	Gambia	DTC	27/07/2015	Not in force
34	Georgia	DTC	24/11/2010	28/04/2011
35	Germany	DTC	01/07/2010	14/07/2011
36	Greece	DTC	18/01/2010	Not in force
		Protocol	27/06/2013	Not in force
37	Guinea	DTC	13/11/2011	09/07/2014
38	Hong Kong, China	DTC	11/12/2014	Not in force
39	Hungary	DTC	30/04/2013	04/10/2014
40	Iceland	TIEA	12/04/2016	Not in force
41	India	DTC	29/04/1992	30/11/1992
		Protocol	27/03/2007	03/10/2007
		Protocol	16/04/2012	12/03/2013
42	Indonesia	DTC	30/11/1995	01/06/1999
43	Ireland	DTC	01/07/2010	06/07/2011
44	Italy	DTC	22/01/1995	05/10/1997
45	Japan	DTC	02/05/2013	24/12/2014
46	Jersey	DTC	20/04/2016	Not in force
47	Jordan	DTC	05/04/2016	Not in force

	Jurisdiction	Type of arrangement	Date signed	Date in force
48	Kazakhstan	DTC	22/12/2008	27/11/2013
49	Kenya	DTC	21/11/2011	Not in force
50	Korea	DTC	22/09/2003	09/03/2005
51	Kyrgyzstan	DTC	07/12/2014	Not in force
52	Latvia	DTC	11/03/2012	11/06/2013
53	Lebanon	DTC	17/05/1998	23/03/1999
54	Libya	DTC	01/04/2013	Not in force
55	Liechtenstein	DTC	01/10/2015	Not in force
56	Lithuania	DTC	30/06/2013	19/12/2014
57	Luxembourg	DTC	20/11/2005	19/06/2009
		Protocol	26/10/2014	Not in force
58	Malaysia	DTC	28/11/1995	24/09/1996
59	Malta	DTC	13/03/2006	13/09/2006
60	Mauritania	DTC	21/10/2015	Not in force
61	Mauritius	DTC	18/09/2006	25/09/2007
62	Mexico	DTC	20/11/2012	09/07/2014
63	Mongolia	DTC	21/02/2001	24/02/2004
64	Montenegro	DTC	26/03/2012	11/02/2013
65	Morocco	DTC	09/02/1999	01/07/2000
66	Mozambique	DTC	24/09/2003	02/03/2004
67	Netherlands	DTC	08/05/2007	02/06/2010
68	New Zealand	DTC	24/09/2003	29/07/2004
69	Nigeria	DTC	18/01/2016	Not in force
70	Norway	TIEA	03/11/2015	Not in force
71	Pakistan	DTC	07/02/1993	20/11/2000
72	Palestinian Authority	DTC	24/09/2012	Not in force
73	Panama	DTC	13/10/2012	23/10/2013
74	Philippines	DTC	23/09/2003	20/10/2008
75	Poland	DTC	31/01/1993	03/02/1994
		Protocol	11/12/2013	01/05/2015
76	Portugal	DTC	17/01/2011	22/05/2012
77	Romania	DTC	11/04/1993	23/01/1996
		DTC "new"	04/05/2015	Not in force
78	Russia	DTC	07/12/2011	23/06/2013
79	Senegal	DTC	22/10/2015	Not in force



	Jurisdiction	Type of arrangement	Date signed	Date in force
80	Serbia	DTC	13/01/2013	02/07/2013
81	Seychelles	DTC	19/09/2006	14/04/2007
82	Singapore	DTC	01/12/1995	18/07/1996
		Protocol	31/10/2014	Not in force
83	Slovak Republic	DTC	21/12/2015	Not in force
84	Slovenia	DTC	20/10/2013	29/09/2014
85	South Africa	DTC	23/11/2015	Not in force
86	Spain	DTC	05/03/2006	02/04/2007
87	Sri Lanka	DTC	24/09/2003	04/07/2004
88	Sudan	DTC	15/03/2001	06/06/2004
89	Sweden	TIEA	05/11/2015	Not in force
90	Switzerland	DTC	6/10/2011	21/10/2012
91	Syrian Arab Republic	DTC	26/01/2000	12/01/2002
92	Tajikistan	DTC	17/12/1995	27/03/2000
93	Thailand	DTC	01/03/2000	04/01/2001
94	Tunisia	DTC	10/04/1996	27/05/1997
95	Turkey	DTC	29/01/1993	26/12/1994
96	Turkmenistan	DTC	09/06/1998	30/12/2011
97	Uganda	DTC	08/06/2015	Not in force
98	Ukraine	DTC	22/01/2003	09/03/2004
99	United Kingdom	DTC	12/04/2016	Not in force
100	Uruguay	DTC	10/10/2014	Not in force
101	Uzbekistan	DTC	26/10/2007	25/02/2011
102	Venezuela	DTC	11/12/2010	20/06/2011
103	Viet Nam	DTC	16/02/2009	12/04/2010
104	Yemen	DTC	13/02/2001	29/04/2004

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

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

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

### **Commercial laws**

- Federal Law 2/2015 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 Concerning Anti Money Laundering and Combating Terrorism Financing (AML law), as amended by Law 9/2014 [by Cabinet Resolution No. 38 of 2014]

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

SCA Chairman of the Board of Directors Resolution No. 17/R of 2010 on Procedures of Combating Money-Laundering and Financing Terrorism

## DIFC

Federal Law 8/2004 – Financial Free Zones

DIFC Law 1/2004 – Regulatory Law

DIFC Laws Amendment Law, No. 7 of 2012

DIFC Companies Law 2/2009 – DCL

DIFC Companies Law Amendment Law, No. 2 of 2013

DIFC Companies Regulations – DCR

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

DIFC General Partnership Law Amendment Law, No. 3 of 2013

DIFC General Partnership Regulations (GPR)

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

DIFC Limited Liability Partnership Law Amendment Law, No. 5 of 2013

DIFC Limited Liability Partnership Regulations (LLPR)

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

DIFC Limited Partnership Law Amendment Law, No. 4 of 2013

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

DFSA – Ancillary Service Providers Rules

DFSA – 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 ICC Business Companies Regulations 2016

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

Council of Ministers Resolution No. 17 of 2012

Dubai Law 12/2004

Dubai Law 9 as amended by Law 7

Dubai Law 25/2008

Dubai Law 13/2011

Federal Decree 35/2004

Federal Law 17/2004 (Anti-Fronting Law)

Federal Law 11/2008 (Human Resources in Federal Government)

Law Combating Cybercrimes (Law 5/2012)

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 Decision 2R/2000 concerning the regulation for market membership

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

SCA Board of Directors Resolution No. 37 of 2012 concerning Investment Funds Regulations

UAE Constitution

## **Annex 4: Persons interviewed during on-site visit**

Officials from the Ministry of Finance (including officials from the UAE Competent Authority)

Official from the Ministry of Foreign Affairs

Officials from the UAE Central Bank

Representative from the Department of Economic Development of Dubai

Representatives from the Dubai Airport Free Zones Authority

Representatives from the Fujairah Free Zones Authority

Representatives from the Jebel Ali Free Zones Authority

Representatives from the RAK Free Zones Authorities

Representatives from the Dubai International Financial Centre (including representatives from the Dubai Financial Services Authority)

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

## PEER REVIEWS, PHASE 2: UNITED ARAB EMIRATES

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

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

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

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

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction’s legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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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 visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).

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