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OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

KAZAKHSTAN

2018 (Second Round)



Global Forum on Transparency and Exchange of Information for Tax Purposes: Kazakhstan 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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as at April 2018)

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Reader's guide

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

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

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

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

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

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

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

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

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

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

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

More information

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

Abbreviations and acronyms

AFSA	Astana Financial Services Authority
AIFC	Astana International Financial Centre
AML	Anti-Money Laundering
AML/ATF Regulations	Law On Counteraction of Legitimation (Laundering) of Incomes Received by Illegal Means
AML/CFT	Anti-Money Laundering/Countering the Financing of terrorism
CDD	Customer Due Diligence
CIS	Commonwealth of Independent States
Competent authority	State Revenue Committee
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
LLP	Limited Liability Partnership
LSR	Law on State Registration of Legal Entities and Branches
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
PRG	Peer Review Group of the Global Forum
SRC	State Revenue Committee (Tax Authority)
TIEA	Tax Information Exchange Agreement
VAT	Value Added Tax

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
2015 Report	Kazakhstan’s Phase 1 Report assessing the legal implementation of the standard for transparency and exchange of information in tax matters as approved by the Global Forum in 2015.

Executive summary

1. This second round report analyses the legal and practical implementation of the standard by Kazakhstan in respect of EOI requests received during the period of 1 July 2014 to 30 June 2017 against the 2016 Terms of Reference. This second round report concludes that Kazakhstan is rated Partially Compliant overall.

2. In 2015, the Global Forum had evaluated Kazakhstan for its legal implementation of the EOIR standard, against the 2010 Terms of Reference (Phase 1 of the first round of reviews). Kazakhstan was blocked from moving to Phase 2 of the first round of reviews because it did not have in place elements of the legal framework which are crucial to achieving an effective exchange of information. As a result, no rating was assigned. Since then Kazakhstan has taken measures to address recommendations made in the first round report.

Comparison of determinations and ratings for First Round Report and Second Round Report

Element	First Round Phase 1 Report (2015) determination	Second Round Report (2018) determination	Second Round Report (2018) rating
A.1 Availability of ownership and identity information	Needs improvement	Needs improvement	PC
A.2 Availability of accounting information	In place	Needs improvement	PC
A.3 Availability of banking information	In place	Needs improvement	LC
B.1 Access to information	Not in place	Needs improvement	PC
B.2 Rights and Safeguards	In place	In place	C
C.1 EOIR Mechanisms	Not in place	In place	LC
C.2 Network of EOIR Mechanisms	Needs improvement	In place	C
C.3 Confidentiality	In place	In place	C
C.4 Rights and Safeguards	Needs improvement	Needs improvement	LC
C.5 Quality and timeliness of responses	Not applicable	Not applicable	LC
OVERALL RATING	Not applicable	Not applicable	PC

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

Progress made since previous review

3. The 2015 report recommended improvement in respect of several elements. The report determined that elements B.1 and C.1 were “not in place” and elements A.1, C.2 and C.4 were “in place but needs improvement”. Since then, Kazakhstan has taken measures to address gaps identified under elements B.1, C.1 and C.2. These improvements result in upgrade of the determination of elements C.1 and C.2 to “in place” and of element B.1 to “in place but needs improvement”.

4. The main progress has been made in respect of strengthening access powers which can be used by the tax administration for exchange of information purposes. Firstly, the 2015 report recommended that Kazakhstan clarify its law to allow for exchange of information regardless of domestic tax interest and put in place appropriate enforcement provisions to compel the production of information requested for exchange of information purposes. Kazakhstan has made the required legal changes to address these concerns. Secondly, Kazakhstan was recommended to ensure that it can provide banking information in line with the standard. Kazakhstan has amended its tax and banking law to address this gap. However, the amendments made do not necessarily ensure that all types of banking information (and beneficial ownership of account-holders in particular) can be obtained from banks as required under the standard. Therefore, the first round recommendation is only partially addressed. Thirdly, the 2015 report identified a gap in respect of too broad protection of information held by lawyers and notaries. Kazakhstan has amended its law in respect of notaries. However, the amendment will become effective only in January 2020 and does not require that all information relevant for exchange of information purposes (such as beneficial ownership) will be accessible. The gap therefore remains to be fully addressed.

5. No progress is reported in respect of the availability of legal ownership information on foreign companies and foreign partnerships.

Key recommendation(s)

6. The key issues raised by this report relate to the availability of beneficial ownership information and the tax administration access powers for exchange of information purposes.

7. The Astana International Financial Centre (AIFC) was opened in January 2018. Kazakhstan is currently finalising the AIFC’s legal framework. The strategic directions for the development of the AIFC are capital markets, asset management, Islamic finance, fintech, private banking and green finance. AIFC Constitutional Statute allows the establishment of entities and

operation of financial institutions under AIFC law. The current rules in place in respect of the availability and access to relevant information seem to generally comply with the standard. However, improvements are recommended, mainly in respect of the availability of beneficial ownership information and accounting information. Further, detailed rules are still being developed, which may impact the implementation of several elements of the standard, and the practical implementation of the AIFC acts remains to be tested.

8. Improvement is also recommended in respect of the availability of beneficial ownership information in Kazakhstan (i.e. outside of the AIFC). Although beneficial ownership as defined under the standard is required to be available under AML obligations, most domestic entities are not required to engage AML obligated persons and beneficial ownership is not required to be available in respect of trusts operated in Kazakhstan. Improvement is also recommended in respect of supervision of notaries, lawyers, accountants and auditors to ensure that beneficial ownership information is available with these professionals in line with the standard.

9. As noted above, Kazakhstan has recently made several amendments in its domestic legislation to ensure that adequate access powers are in place to ensure effective exchange of information. As a result, the tax administration access powers are now generally adequate. However, a concern exists in respect of accessibility of all types of banking information and implementation of the new rules in practice as their impact was not yet evidenced during the period under review.

Overall rating

10. Kazakhstan has made important improvements since the 2015 report which concluded that crucial elements were not in place to proceed with the assessment of Kazakhstan's practical implementation of the standard. In particular, access powers are now available for exchange of information purposes. Nevertheless, concerns remain mainly regarding access to banking information, information held by legal professionals and implementation of the new rules in practice.

11. Concerning the availability of information, important improvements are recommended regarding beneficial ownership information in Kazakhstan as well as in the AIFC. Although general accounting obligations are in place, improvements are needed concerning retention requirements for all relevant entities and arrangements (including those in the AIFC) and accounting obligations of special purpose companies registered in the AIFC.

12. Practical exchange of information during the period under review was generally satisfactory as confirmed by most peers. Nevertheless, the

majority of exchanges is carried out directly at the regional level and adequate measures were not in place to ensure efficient exchange of information in all cases.

13. As a result, elements A.1, A.2 and B.1 are rated Partially Compliant. Elements A.3, C.1, C.4 and C.5 Largely Compliant, and elements B.2, C.2 and C.3 Compliant. Considering the ratings for each of these elements, the overall rating for Kazakhstan is Partially Compliant.

14. This report was approved at the PRG meeting in June 2018 and was adopted by the Global Forum on 13 July 2018. A follow up report on the steps undertaken by Kazakhstan to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement.	Ownership information on foreign companies having their place of effective management in Kazakhstan is not consistently available.	Kazakhstan should ensure that ownership information on foreign companies with sufficient nexus with Kazakhstan is available in all cases.
	Kazakhstan's law does not require that identification of partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan is in all cases available in Kazakhstan.	Kazakhstan should ensure that information identifying the partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan, is available to its competent authority.

Determination	Factors underlying recommendations	Recommendations
	<p>Obligation to identify beneficial owners is contained in the AML law and not all relevant entities (including partnerships established in the AIFC) with the exception of joint stock companies created under Kazakhstan's law are required to engage an AML obligated person. It is nevertheless noted that the scope of AML obligated persons includes relevant professionals such as notaries, lawyers, accountants and auditors and in practice the majority of entities established under Kazakhstan's law engages an AML obligated service provider (e.g. through opening a bank account).</p>	<p>Kazakhstan should ensure that beneficial owners of all relevant entities are required to be identified in line with the standard.</p>
	<p>Kazakhstan's law requires the availability of information identifying the settlor, trustee and beneficiaries of a trust with a Kazakhstan resident trustee or administered in Kazakhstan. However, it does not require the identification of any other individual with ultimate effective control over the trust. In addition, the availability of beneficial ownership information on trusts created or administered in the AIFC or with a trustee resident therein is unclear as the definition of beneficial owners of a trust is not set out in the law.</p>	<p>Kazakhstan should ensure that beneficial ownership information in respect of trusts is available in line with the standard.</p>
	<p>All companies registered in the AIFC have to submit the identity of their beneficial owners to the Registrar. However, the applicable rules do not define the concept of beneficial ownership and measures by which beneficial owner is required to be identified.</p>	<p>Kazakhstan should take further steps to ensure that beneficial owners of companies registered in the AIFC are required to be identified in line with the standard.</p>

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Partially Compliant	Although notaries, lawyers, accountants and auditors are subject to certain supervision by the Ministry of Justice and their professional organisations, adequate measures are not taken to ensure that adequate, accurate and up to date beneficial ownership information is available with these professionals in practice.	Kazakhstan should strengthen the supervision of notaries, lawyers, accountants and auditors so that it is ensured that beneficial ownership information is available with these professionals in line with the standard.
	The legal and regulatory framework for the establishment and operation of entities and arrangements in the AIFC is very recent. Accordingly, effective implementation of rules ensuring the availability of legal and beneficial ownership information in the AIFC remains to be tested.	Kazakhstan should monitor the availability of ownership information in respect of entities and arrangements established under the AIFC laws or carrying out business therein and take measures, as necessary, to ensure that legal and beneficial ownership information is available in respect of these entities and arrangements in line with the standard.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement.	Although Kazakhstan' law contains retention requirements under the accounting law and tax law for relevant entities and arrangements to keep accounting information for at least five years, no consistent rules exist to ensure that all accounting information and underlying documents in particular will remain available after an entity or arrangement ceases to exist. This is a concern also in respect of entities registered in the AIFC.	Kazakhstan should ensure that all accounting information, including underlying documents, is required to be available for at least five years from the end of the period to which it relates, regardless whether the entity or arrangement ceases to exist.

Determination	Factors underlying recommendations	Recommendations
	There are no accounting obligations in the AIFC to ensure that special purpose companies keep accounting records in line with the standard.	Kazakhstan should ensure that special purpose companies registered in the AIFC are required to keep accounting information in line with the standard.
EOIR rating: Partially Compliant	The accounting obligations under AIFC acts are recent and there is very limited experience with their application and supervision in practice. Further, some AIFC rules are still in the process of drafting and adjustments.	Kazakhstan should monitor the availability of accounting information in the AIFC and take further measures, as necessary, so that accounting information is available in line with the standard in respect of entities and arrangements established under AIFC acts or carrying business therein.
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement.	The definition of the beneficial owner does not provide for the identification of beneficial owners of account-holders who are legal arrangements such as trusts. Consequently, beneficial owners of trusts or other legal arrangements which open an account with a bank in Kazakhstan are not required to be identified in line with the standard.	Kazakhstan should ensure the availability of beneficial ownership information in respect of legal arrangements account-holders.
	The definition of beneficial owners of account-holders required to be identified by banks registered in the AIFC appears in line with the standard. However, it remains unclear to what extent this definition is binding and therefore enforceable as it is not contained in the AIFC legal acts.	Kazakhstan should take further measures to ensure that banks in the AIFC are required to identify beneficial owners of all account-holders in line with the standard.

Determination	Factors underlying recommendations	Recommendations
<p>EOIR rating: Largely Compliant</p>	<p>According to the AIFC Constitutional Statute, it is possible to set up a bank in AIFC. Although the applicable rules and measures seem to ensure that the relevant banking information will be generally available, they were put in place only recently and some are still not finalised.</p>	<p>Kazakhstan is recommended to monitor the availability of banking information with banks operating in AIFC so that banking information on all account-holders is available in line with the standard.</p>
<p>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>		
<p>The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement.</p>	<p>Kazakhstan’s law does not ensure that all types of relevant banking information, including beneficial ownership information on account-holders, are accessible to the competent authority for EOI purposes.</p> <p>Although Kazakhstan has taken certain measures to limit the scope of protection of information held by notaries, the protection of information held by lawyers and notaries provided under Kazakhstan’s law remains too wide as it covers all information received by them in connection with their professional activities. This is a concern in particular when beneficial ownership information is requested.</p>	<p>Kazakhstan is recommended to clarify its law so that all types of banking information requested pursuant to a valid EOI request can be obtained in line with the standard.</p> <p>Kazakhstan should take further measures to ensure that the protection of information held by lawyers and notaries is consistent with the standard.</p>

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Partially Compliant	Kazakhstan has recently introduced new provisions to ensure that (i) it can obtain banking information in line with the standard, (ii) its access powers can be used regardless of domestic tax interest and (iii) enforcement provisions apply where information requested for EOI purposes is not provided. However, these rules are not yet sufficiently tested in practice.	Kazakhstan should monitor the practical application of new provisions of the Tax Code and Law on Banks and, if necessary, take further measures to ensure that the requested information is obtained and provided in line with the standard.
	Persons operating in AIFC can be subject to a tax audit allowing the competent authority to access information for EOI purposes. However, these rules are very recent, some of them are still being developed and they have not yet been tested.	Kazakhstan should monitor access to information available in AIFC so that the competent authority has the power to obtain and provide all relevant information requested pursuant to a valid EOI request and this power is efficiently exercised in practice.
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>)		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is in place.		

Determination	Factors underlying recommendations	Recommendations
<p>EOIR rating: Largely compliant</p>	<p>Kazakhstan has recently introduced new domestic provisions to ensure that it can provide the requested information in line with the standard under its EOI agreements. However, these rules are not yet sufficiently tested in practice.</p>	<p>Kazakhstan should monitor that the new rules are properly implemented in practice to allow EOI in line with the standard under all its EOI agreements.</p>
<p>The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)</p>		
<p>The legal and regulatory framework is in place.</p>		
<p>EOIR rating: Compliant</p>		
<p>The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)</p>		
<p>Legal and regulatory framework determination: The element is in place.</p>		
<p>EOIR rating: Compliant</p>	<p>The general confidentiality rules and procedures applied by the tax authority are sufficiently robust. Generally the same procedures concerning exchanged information apply at the central level of the tax authority as well as at the regional level. However, only limited measures are in place to ensure consistent application of confidentiality rules specific to exchange of information at the regional level.</p>	<p>Kazakhstan should put in place appropriate measures to ensure that all information exchanged at the regional level is kept confidential in line with the standard.</p>

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement.	Kazakhstan's EOI agreements do not define the term "professional secret" and the scope of the term under its domestic law is wider than permitted by the international standard. The concern is further heightened by the fact that beneficial ownership information is in many occasions held by these persons, and professional secrecy might hinder the competent authority's access to the information.	It is recommended that Kazakhstan limits the scope of "professional secret" in its domestic law so as to be in line with the standard for exchange of information.
EOIR rating: Largely Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework.	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
EOIR rating: Largely Compliant	During the review period Kazakhstan's exchange of information at the regional level did not ensure efficient exchange of information in all cases as reported by a few peers. In order to address this, Kazakhstan adopted a new EOI procedure in February 2018. Kazakhstan has also taken several steps to improve co-ordination with its EOI partners. However, as these measures are recent their impact on EOI practice remains to be seen.	Kazakhstan should monitor the implementation of the recently taken measures so that exchange of information is carried out in an effective manner in all cases.
	Kazakhstan did not provide status updates to its treaty partners in the majority of the cases that were pending more than 90 days.	Kazakhstan should ensure that it provides status updates in all cases to which it is not able to reply within 90 days.

Overview of Kazakhstan

1. This overview provides some basic information about Kazakhstan that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of its legal, commercial or regulatory systems.

Legal system

2. Kazakhstan is a republic with a presidential system. The head of state is the President, elected by popular vote for a five-year term. The Parliament is the supreme legislative body and consists of the Senate (upper house) and the Mazhilis (lower house). The country consists of 14 regions and two cities not belonging to any of the regions (Almaty and Astana). Each region is governed by a governor appointed by the president.

3. The legal system of Kazakhstan is based on civil law with strong influence from the Russian legal tradition. Kazakhstan's law consists of the Constitution, the laws approved by the Parliament, sub-law regulatory legal acts, international treaties as well as regulatory resolutions of the Constitutional Council and the Supreme Court. International agreements (including agreements that allow for exchange of information for tax purposes) require ratification by the Parliament. Where a ratified international treaty conflicts with domestic law the treaty prevails over domestic law (s.4(3) Constitution).

4. Kazakhstan's court system consists of local and regional courts, the Supreme Court and the Constitutional Council. The local court is the court of first instance for civil, criminal and administrative cases. The regional courts are the courts of appeal in cases already heard in local courts and serve as courts of first instance for cases falling specifically under their jurisdiction, such as tax matters. The Supreme Court amongst other appellate functions is the court of appeal in tax matters. In addition, the Constitutional Council reviews cases concerning the conformity of laws with the Constitution, as well as other cases where breach of the Constitution might have arisen.

5. The establishment of the Astana International Financial Centre (AIFC) by constitutional statute in December 2015 and its opening in January 2018 is having significant impact on Kazakhstan’s legal system as a whole. The AIFC is discussed in more detail in the section below concerning recent developments and its establishment is taken into account in this report when analysing Kazakhstan’s compliance with each element of the EOIR standard.

Tax system

6. Kazakhstan imposes a variety of taxes comprising direct and indirect taxes, fees and duties. The tax system is governed by the Law on Taxes and Other Obligatory Payments to Revenue (Tax Code) and specific regulating Acts and Cabinet Regulations issued pursuant to the Tax Code. The Tax Code determines the types of taxes payable in Kazakhstan and regulates the tax procedure, including rights of taxpayers and the administrative appeal procedures for decisions made regarding taxes and fees.

7. The income tax rate applicable to individual residents on all types of income except dividend income is 10%; dividend income is subject to a 5% tax. The income tax rate applicable to non-residents on employment income is also 10% while other Kazakh-source income is taxable at rates ranging from 5% to 20%.

8. A company is considered to be a Kazakh tax resident if it is established under the laws of Kazakhstan or if its place of effective management is located in Kazakhstan. An entity is subject to corporate income tax of 20% on trading profits and other taxable income. VAT (12%) is charged on the sale of most goods and services in Kazakhstan and on the importation of goods into the customs territory of Kazakhstan.

9. Ten special economic zones provide for some exceptions to the tax rules described above. A special economic zone is established by a Decree of the President of Kazakhstan with the aim of accelerating the development of Kazakhstani regions and attracting investment and technology into those regions. The special economic zone regime generally provides for tax benefits to companies operating in the zone which gross annual income consists of not less than 90% from certain types of activity. The benefits consist of exemption from the corporate income tax, exemption from land and property taxes, exemption from VAT and exemption from customs duties and levies (except excise duties) for goods imported into the special economic zone. Nevertheless, all entities operating in special economic zones are required to register for tax purposes and file their annual income tax returns. They are also required to provide information requested by the tax administration similarly to all other taxpayers.

10. The Astana International Financial centre (see further section on recent developments) offers its participants exemption from corporate and individual income tax and property and land tax for the first 50 years. However, the participants will be subject to all other taxes of Kazakhstan.

Financial services sector

11. The National Bank is Kazakhstan's central bank and the highest tier in the national banking system. All other banks form the lower tier of the banking system, with the exception of the Kazakhstan Development Bank, which has a special legal status. Banks and pension funds are allowed to operate only in the legal form of joint stock companies.

12. The financial services sector comprises the following types of entities which need authorisation from the National Bank of Kazakhstan: banks (33), brokers and dealers that are not banks (23), investment managers (23), transfer agents (2), security trading organisers (1), organisers of clearing activity in stock exchange (1), securities register (1) and central security depository (1). The total value of assets in the Kazakhstan's banking sector is approximately EUR 64 billion. Non-resident deposits do not play a significant role in Kazakhstan's banking sector. The AML supervisory authorities in respect of the financial sector are the National Bank of Kazakhstan and the Astana Financial Services Authority in the AIFC.

13. The Kazakhstan Stock Exchange (KASE) is the largest multifunctional and organised financial market in Central Asia. It is divided into five major sectors: a foreign currency market, a government securities market, shares and corporate bonds market, repo operations, and a derivatives market.

14. Kazakhstan's law also provides regulations for Islamic banking. In addition to prohibiting certain kinds of transactions, such as interest bearing loans, Islamic banking law also prohibits certain types of business activities related to activities forbidden by Islamic law. The AML, accounting and banking obligations regarding availability of ownership and accounting information are applicable in respect of Islamic banks.

15. Notaries and solicitors are required to be licensed by the Ministry of Justice in order to be engaged in notarial activities and legal practice. However, lawyers not appearing before the courts in Kazakhstan do not need a licence to operate. The Ministry also decides on suspension and cancellation of licences. There are 4 724 licensed solicitors and 4 177 licensed notaries operating in Kazakhstan. The local justice authorities are responsible for exercising control over compliance of notaries and solicitors with the AML/CFT legislation.

16. Professional accountants and auditors do not require any licence to operate or to provide public accounting services. However, accounting associations enforce the by-laws, codes of ethics and rules of professional conduct.

17. Kazakhstan's compliance with FATF recommendations concerning implementation of AML/CFT measures is evaluated by the Eurasian group on combating money laundering and financing of terrorism (EAG). The last mutual evaluation report on Kazakhstan was published in 2011. Based on the Fourth Follow-up Report, Kazakhstan was removed from the EAG follow-up process in 2016.

Recent developments

The Astana International Financial Centre

18. In December 2015, Kazakhstan adopted a Constitutional Statute setting up basis for the establishment of the Astana International Financial Centre (AIFC) (Constitutional Statute No. 438-V ZRK of 7 December 2015). The objectives of the AIFC are (i) to attract investment into the economy of Kazakhstan by creating an attractive environment for investment in the financial services sphere; (ii) developing a securities market in Kazakhstan and integrating it with international capital markets; (iii) developing insurance markets, banking services, and Islamic finance markets, financial technologies, electronic commerce and innovative projects in Kazakhstan; (iv) developing financial and professional services based on international best practice and (v) achieving international recognition as a financial centre (s.2(2) AIFC Constitutional Statute). Some of the main regulatory acts (including regulations on establishment and administration of legal entities) are already in force. However, other specific or more detailed regulations governing certain activities in the AIFC are in the process of being drafted and adopted. Although the AIFC was officially opened in January 2018 some of its activities are still in the process of development. According to the official website of the AIFC (www.aifc.kz) the current major strategic directions for the development are capital markets, asset management, Islamic finance, fintech, private banking and green finance.

19. The law of AIFC is based on Constitution of the Republic of Kazakhstan and shall consist of (i) the AIFC Constitutional Statute, (ii) AIFC acts based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres and (iii) laws of Kazakhstan which apply to matters not governed by the AIFC Constitutional Statute or AIFC Acts (s.4(1) AIFC Constitutional Statute). If an international treaty ratified by Kazakhstan provides rules different to those provided by the Constitutional Statute or AIFC acts, the rules of the international treaty must

be applied (s. 4(4) AIFC Constitutional Statute). The official language of the AIFC is English which is to be used in all areas regulated by the AIFC (s. 15 AIFC Constitutional Statute).

20. The AIFC Bodies are the AIFC Management Council, the Governor of the AIFC, the AIFC Authority, the Astana Financial Services Authority, the AIFC Court and the International Arbitration Centre. AIFC Bodies are independent in their exercise of the powers given to them by the AIFC Constitutional Statute and AIFC Acts (s. 9 AIFC Constitutional Statute).

21. The AIFC Court is independent and it does not form part of the judicial system of Kazakhstan. The AIFC Court has exclusive jurisdiction in relation to the hearing and adjudication of disputes (i) between AIFC Participants, AIFC Participants and AIFC Bodies, and an AIFC Participant or AIFC Body and its expat employees; (ii) disputes relating to activities conducted in the AIFC and governed by the Acting Law of the AIFC; (iii) disputes transferred to the AIFC Court by agreement of the parties. The AIFC Court does not have jurisdiction in criminal and administrative proceedings (s. 13 AIFC Constitutional Statute).

22. Participants in the AIFC (including entities and arrangements established under the AIFC acts) are generally exempted from corporate and individual income tax and property and land tax for the first 50 years (s. 6 AIFC Constitutional Statute). Nevertheless, Kazakhstan tax law remains applicable unless provided otherwise by the AIFC Constitutional Statute or AIFC acts (see further sections A.1, A.2, A.3 and B.1).

Other recent developments

23. Kazakhstan deposited its instrument of ratification of the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) on 8 April 2015 and it entered into force on 1 August 2015, broadening Kazakhstan's treaty network significantly.

24. Kazakhstan also enacted new legislation clarifying the tax administration's access powers for exchange of information purposes and allowing it wider access to banking information for EOI purposes as examined under section B.1.

25. Kazakhstan is currently working on possibilities to implement a register of beneficial owners covering all legal entities operating in Kazakhstan. As a first step in this plan, a new law regulating subsoil industry was adopted in December 2017 (the Code on Subsoil and Subsoil Use) which foresees implementation of public register of beneficial owners of companies engaged in subsoil business activities. The pilot project is currently on-going and full implementation of the beneficial ownership register for these companies is planned in summer 2018.

26. Kazakhstan is planning to commit to exchange information under the Common Reporting Standard by 2020 and has started working on implementing the required domestic legal framework. Kazakhstan is currently also in the process of signing the operational agreement for the implementation of the Standard (multilateral Competent Authority Agreement related to the Common Reporting Standard).

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

2. The 2015 report concluded that Kazakhstan’s legal and regulatory framework ensured the availability of legal ownership information for companies, partnerships and trusts in line with the standard with the exception of foreign companies and foreign partnerships with sufficient nexus to Kazakhstan. There has been no change in the relevant rules since then and therefore the recommendations in respect of foreign entities remain to be addressed.

3. The main sources of legal ownership information are information required to be filed with the Register of Legal Entities and information kept by entities themselves. Companies’ shares can be issued only in dematerialised form and entered in securities account operated by registered companies’ registrars.

4. Practical availability of legal ownership information is adequately ensured through the combination of supervisory and enforcement measures taken by the government authorities and legal safeguards. Practical supervision of the availability of legal ownership information is mainly carried out through tax filings and audits.

5. The 2016 ToR requires beneficial ownership on relevant entities and arrangements to be available. The requirements on availability of beneficial ownership information are contained in the AML law. These requirements ensure that where a domestic or foreign entity engages an AML obligated person, the beneficial owner of the entity is required to be identified in line with the standard. The definition of the beneficial owner of legal entities

contains all aspects of beneficial ownership and the law provides for sufficient mechanisms to ensure that appropriate measures are required to be taken to properly identify and verify the identity of the beneficial owners. However, not all entities are required to engage an AML obligated person and therefore beneficial ownership is not required to be available in respect of all entities as required under the standard. A further gap exists in respect of beneficial ownership information on foreign trusts with a resident trustee or being administered in Kazakhstan as Kazakhstan's law does not require the identification of an individual with ultimate effective control over the trust. Kazakhstan is therefore recommended to address these two gaps.

6. The implementation of rules requiring the availability of beneficial ownership information is supervised through supervision of AML obligated service providers. AML supervision is carried out by several authorities depending on the sector of the obligated person. Supervision of financial institutions appears adequate to ensure the availability of beneficial ownership information with these institutions in practice. These supervisory measures consist mainly of off-site and on-site inspections and application of sanctions in cases where deficiencies are identified. However, adequate measures are not taken in respect of AML obligated non-financial professionals and in particular in respect of lawyers, accountants and auditors. Kazakhstan is therefore recommended to strengthen the supervision of AML obligated professionals.

7. The AIFC Constitutional Statute allows the establishment of entities and arrangements under AIFC acts. The AIFC acts provide for establishment of companies and partnerships. Legal ownership information in respect of legal entities is required to be filed with the Registrar and kept updated. In addition, all legal entities are required to maintain register of their legal owners. Beneficial ownership information in respect of companies is required to be provided to the Registrar upon formation and kept updated subsequently. However, the applicable rules currently do not define the concept of beneficial ownership and measures by which beneficial owner is required to be identified. Beneficial ownership information in respect of partnerships is required to be available only to the extent they engage an AML obligated person such as a bank, corporate service provider, accounting auditor or a lawyer which is not required in all cases. Finally, AIFC trusts can be operated in the AIFC based on the principles of English common law. Acting as trustee on a professional basis requires registration with the AFSA and triggers AML obligations including identification of client's beneficial owners. The definition of the beneficial owner of a trust is currently specified in the AIFC AML guidance. However, it is unclear to what extent this definition is binding and therefore enforceable. Kazakhstan is therefore recommended to address these three gaps.

8. Supervision and enforcement of obligations concerning the availability of legal ownership as well as beneficial ownership information in the AIFC is the responsibility of the AFSA as the independent regulator of the AIFC. It appears that Kazakhstan devoted sufficient resources to set up adequate supervisory and enforcement regime in the AIFC which is commensurate with the current level of development of the AIFC. Nevertheless, given the lack of experience with implementation of the relevant rules and expected increase in the number of entities and arrangements operating in the AIFC, it is recommended that Kazakhstan monitor the availability of ownership information in the AIFC and take further measures, if necessary, so that the relevant ownership information is available in line with the standard.

9. During the review period, Kazakhstan's central EOI office received 43 requests related to ownership information, including a few requests for beneficial ownership. Further requests related to ownership information were handled at the regional level of the tax administration. As discussed in section C.5, there are no specific statistics available on the regional exchanges. However, based on the peer feedback, it can be estimated that the number of cases was approximately 400. The requested information was in the majority of cases obtained from the Register of Legal Entities (typically ownership of partnerships) or in the case of beneficial ownership from the concerned entity. No request related to trusts is reported by Kazakhstan authorities to have been received during the period under review. A complete response was not provided in a few cases mainly because of legal constraints related to the exercise of access powers analysed in section B.1. Nevertheless, peers were generally satisfied with the ownership information provided by Kazakhstan. During the period under review no EOI request related to an entity or arrangement in the AIFC.

10. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	Ownership information on foreign companies having their place of effective management in Kazakhstan is not consistently available.	Kazakhstan should ensure that ownership information on foreign companies with sufficient nexus with Kazakhstan is available in all cases.

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
	Kazakhstan's law does not require that identification of partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan is in all cases available in Kazakhstan.	Kazakhstan should ensure that information identifying the partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan, is available to its competent authority.
	Obligation to identify beneficial owners is contained in the AML law and not all relevant entities (including partnerships established in the AIFC) with the exception of joint stock companies created under Kazakhstan's law are required to engage an AML obligated person. It is nevertheless noted that the scope of AML obligated persons includes relevant professionals such as notaries, lawyers, accountants and auditors and in practice the majority of entities established under Kazakhstan's law engages an AML obligated service provider (e.g. through opening a bank account).	Kazakhstan should ensure that beneficial owners of all relevant entities are required to be identified in line with the standard.
	Kazakhstan's law requires the availability of information identifying the settlor, trustee and beneficiaries of a trust with a Kazakhstan resident trustee or administered in Kazakhstan. However, it does not require the identification of any other individual with ultimate effective control over the trust. In addition, the availability of beneficial ownership information on trusts created or administered in the AIFC or with a trustee resident therein is unclear as the definition of beneficial owners of a trust is not set out in the law.	Kazakhstan should ensure that beneficial ownership information in respect of trusts is available in line with the standard.

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
	All companies registered in the AIFC have to submit the identity of their beneficial owners to the Registrar. However, the applicable rules do not define the concept of beneficial ownership and measures by which beneficial owner is required to be identified.	Kazakhstan should take further steps to ensure that beneficial owners of companies registered in the AIFC are required to be identified in line with the standard.
Determination: In place but certain aspects of the legal implementation of the element need improvement.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Although notaries, lawyers, accountants and auditors are subject to certain supervision by the Ministry of Justice and their professional organisations, adequate measures are not taken to ensure that adequate, accurate and up to date beneficial ownership information is available with these professionals in practice.	Kazakhstan should strengthen the supervision of notaries, lawyers, accountants and auditors so that it is ensured that beneficial ownership information is available with these professionals in line with the standard.
	The legal and regulatory framework for the establishment and operation of entities and arrangements in the AIFC is very recent. Accordingly, effective implementation of rules ensuring the availability of legal and beneficial ownership information in the AIFC remains to be tested.	Kazakhstan should monitor the availability of ownership information in respect of entities and arrangements established under the AIFC laws or carrying out business therein and take measures, as necessary, to ensure that legal and beneficial ownership information is available in respect of these entities and arrangements in line with the standard.
Rating: Partially Compliant		

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

11. As described in the 2015 report, Kazakhstan’s law provides for the creation of companies in the form of a joint stock company only. As of February 2017 there were 1 875 domestic companies. About 60 of them are listed on Kazakhstan’s stock exchange (KASE). There were another about 4 300 foreign entities registered with the tax administration. The majority of legal entities created under Kazakhstan’s law are limited liability partnerships (see further section A.1.3).

12. The 2015 report concluded that legal ownership information in respect of domestic companies is required to be available in line with the standard. However, a gap was identified in respect of foreign companies with a place of effective management in Kazakhstan and Kazakhstan was recommended to address this concern. There are no changes in the relevant rules since the first round review. It is nevertheless noted that no impact is reported on Kazakhstan’s EOI practice.

13. Under the 2016 ToR, beneficial ownership on companies should be available. The main source of information on beneficial owners is information kept pursuant to AML obligations of service providers. All companies must conclude an agreement with a company’s registrar for the services of keeping its register of shareholders. Companies’ registrars are obligated persons under the AML rules and therefore required to identify beneficial owners of companies on whose behalf they maintain the register of shareholders. Consequently, the availability of beneficial ownership in respect of companies is required in line with the standard (see below).

14. The following table¹ shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies:

Type	Company law	Tax law	AML law
Joint stock company (JSC)	Legal – all	Legal – some	Legal – none
	Beneficial – none	Beneficial – none	Beneficial – all
Foreign company	Legal – none	Legal – some	Legal – none
	Beneficial – none	Beneficial – none	Beneficial – some

1. The table shows each type of company and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. “Some” in this context means that a company will be required to maintain information if certain conditions are met.

Legal Ownership and Identity Information on Companies in Kazakhstan

15. The 2015 report evaluated the availability of legal ownership information as required under Kazakhstan’s legal and regulatory framework but the practical implementation of the relevant rules was not assessed. The following section of the report deals with the availability of legal ownership information from the perspective of legal and regulatory requirements as well as their practical implementation in practice.

Obligations to maintain legal ownership information

16. The 2015 report concluded that legal ownership information in respect of domestic companies is required to be available in line with the standard. There are no changes in the relevant rules since the first round review.

17. A legal entity (including a joint stock company) obtains its legal personality upon registration with the Register of Legal Entities (s.42(3) Civil Code). Companies are required to provide upon registration a certified copy of their statutory documents, i.e. the Memorandum of Association and the Company’s Charter (s.6 Law on State Registration of Legal Entities and Branches, LSR). The information provided upon registration includes identification of the company’s founders and its representatives. None of these documents is required to be authorised by a notary or other professional unless one of the founders of the company is an individual. However, in practice companies prefer to have their foundation document notarised to get additional legal certainty.

18. The authorised representative of the registered entity (i.e. the board of directors in the case of a company) must within one month submit to the registration authority any changes or additions made to the statutory documents (s.14-1 LSR). However, changes in legal ownership of a joint stock company do not entail changes in the statutory documents and are not filed with the Register of Legal Entities.

19. Legal ownership information in respect of companies is required to be available in the register of shareholders maintained by a company’s registrar appointed by the company. Each company must conclude an agreement with a company’s registrar for the services of keeping of its register of shareholders (s.19(1) Law on Joint Stock Companies). Company’s registrar is an independent corporation carrying out as its professional activity the maintenance of companies’ registers of shareholders (s.1(15)). Companies’ registrar is an obliged person under the AML rules and subject to the supervision by the National Bank (s.3(1) AML Act). As of April 2018, there is one companies’ registrar maintaining the system of shares registers in Kazakhstan. The founders and shareholders of the joint stock company “Uniform Registrar of Securitie” are the National Bank and the Central Depository. The National

Bank is currently in the process of reorganisation of the Central Depository and the Registrar of Securities into a single joint stock company “Central Securities Depository”.

20. Companies can issue shares only in non-documentary (dematerialised) form, i.e. as a set of electronic records in securities accounts operated by companies’ registrars with the Central Depository (s. 129(1) Civil Code and s. 12(1) Law on Joint Stock Companies). A shareholder is a person who has been entered in the register of shareholders. Until the person is entered into the register of shareholders it cannot exercise shareholder rights (ss. 22 and 39 Law on Joint Stock Companies). Entries in the register of shareholders shall be stored in electronic form. There is no limitation to the time period for which the information entered in the register should be kept. The information kept by the company’s registrar (including shareholder and beneficial ownership information) is accessible to authorised public authorities including the tax administration (s. 43(3) Law on Securities Market).

21. As already noted in the 2015 report, a company can be liquidated if it fails to conclude an agreement with the company’s registrar for the services of maintenance of the register of shareholders or fails to register the issuance of shares with the National Bank (s. 18 LSR). However, no case is reported during the period under review where a company failed to conclude an agreement with the company’s registrar or to register the issuance of shares with the National Bank. Administrative and criminal sanctions are also applicable in respect of the company’s registrar who fails to comply with his/her CDD requirements. Although the 2015 report raised concerns about the lack of direct monetary sanctions applicable in respect of the relevant entities and their representatives, given that a person becomes a shareholder only upon entry in the register of shareholders and only dematerialised shares can be issued, Kazakhstan law contains sufficient incentives and safeguards to ensure that shareholder information in respect of companies is required to be kept in practice. This has been also confirmed by the Kazakhstan authorities and in EOI practice as no concerns in respect of the availability of information on shareholders of joint stock companies were reported.

22. The business of providing nominee shareholding is regulated under the AML rules (s. 3 AML Law). Non-professional nominees are not regulated under AML laws however formal nominees are normally legal professionals or participants on the securities market acting on a professional basis. In any case the company’s registrar is required under its AML obligations to identify the company’s beneficial owners including in cases where shares are held by the beneficial owner through a nominee. In addition, if a person holds shares on behalf of another person as a nominee, the nominee would be subject to tax obligations as a legal owner of these shares unless the nominee provides proof through written agreement or otherwise that he/she is not the beneficial owner of the assets.

23. The 2015 report concluded that companies formed outside of Kazakhstan are generally not required to maintain or provide information identifying their legal owners even if they are effectively managed therein. Consequently, Kazakhstan was recommended to address this gap. As no change has been made, the recommendation remains to be addressed. It is nevertheless noted that no impact is reported on Kazakhstan's EOI practice.

Implementation of obligations to maintain legal ownership information in practice

24. The main source of legal ownership information in respect of companies in practice is the information kept by company registrars at security accounts maintained by the Central Depository. Information on founders of the company, its address and identification of its representatives are available in the Register of Legal Entities and with the tax administration.

25. As already pointed out above, companies can issue shares only in dematerialised form, i.e. as an electronic record in securities accounts. Further, until a person is entered into the register of shareholders kept by the company registrar it cannot exercise shareholder rights. Companies registrars are AML obligated service providers licensed and supervised by the National Bank (see below section on implementation of obligations to keep beneficial ownership information in practice).

26. A company obtains its legal personality upon registration with the Register of Legal Entities. Upon submission of the required documents and information (including foundation documents of the entity) a business identification number is issued to the company by the tax administration. All information provided to the Register of Legal Entities is also automatically available to the tax administration as processes of registration in the Register of Legal Entities and with the tax administration are integrated. Business identification number functions as a confirmation of the company's due registration with the Register of Legal Entities and it is required by government entities, banks and third parties in communication with the legal entity.

27. Entities are required to report changes in the information reported to the Register within one month after the change. Compliance with the filing requirements is mainly based on vested interest of the registered entities. Information contained in the register (such as the company address or legal representatives) serves as evidence of the facts in legal proceedings. Updated information in the Register is required also in communication with government authorities and some third parties such as banks.

28. Although certain doubts arise whether the information contained in the Register is up to date in all cases as very limited supervision is carried out by the Register (see further section on partnerships), availability of

the relevant legal ownership information is ensured in line with the standard through information contained in shareholder registers and securities accounts maintained by company registrars.

Beneficial ownership information

29. The main sources of beneficial ownership information as understood under the standard are requirements under Kazakhstan's AML law.

Requirements to identify beneficial owners of companies

30. Kazakhstan's AML law sets out obligations which apply to inter alia the following entities and professionals:

- banks and organisations carrying out banking operations
- operators of electronic money systems that are not banks
- stock exchange
- insurance (reinsurance) organisations, insurance brokers
- pension savings funds
- professional participants on securities market
- central securities depository
- notary offices carrying out notary actions with money and (or) other property
- attorneys, other independent specialists on legal issues – in cases when they participate in transactions with money and (or) other property in the name or by order of a client in respect of the following activity:
 - buy and sell of immovable property
 - management of money, securities or other property of a client
 - management of banking accounts or securities accounts
 - managing funds for creation, functioning or management of a legal entity
 - creation, transfer or management of a legal entity
- bookkeeping organisations and professional accountants carrying out entrepreneurial activity in the scope of bookkeeping operations, audit organisations (s.3(1) AML Act).

31. AML obligated entities and professionals are required to perform customer due diligence (CDD) and therefore identify their customers and clients when among others (i) establishing a business relationship (which includes the opening of a bank account), (ii) carrying out occasional banking transactions exceeding KZT 7 million (EUR 17 560), (iii) carrying out a transaction with securities, (iv) carrying out real property transactions or (v) there are doubts about the veracity or adequacy of data identifying the contracting party or beneficial owner (ss.4(2) and 5(2)(3) AML Act).

32. CDD measures require that entities and professionals covered by the AML/CFT obligations must identify and verify the identity of their customers. This includes that in respect of legal persons the AML obligated service provider has to identify the customer's beneficial owner(s) and take reasonable measures to verify the accuracy of the obtained information (s. 5(3) AML Act). The AML obligated service provider is also explicitly required to establish the client's ownership and control structure (s. 5(2-1) AML Act). The AML Act does not allow for CDD measures which would not include the requirement to identify and take reasonable measures to verify the identity of the beneficial owner of a customer. Where it is not possible to carry out CDD measures in line with the AML Act (e.g. where no sufficient information is provided) the AML obligated person must refuse to enter into a business relation or carry out the respective transaction (s. 13(1) AML Act).

33. The beneficial owner under the AML Act is defined as an individual with direct or indirect ownership of more than 25% of shares or assets of an entity and/or an individual carrying out control of an entity through other means, or in behalf of whom the entity performs transactions with money and (or) other property (s. 1(3) AML Act).

34. The beneficial owner must be identified based on the legal entity's constitutive documents and its register of shareholders or information received from other sources. The identification of the beneficial owner can be based on information and documents provided by a client (or its representative) or received from other sources. The AML obligated person is required to maintain documents proving identity of the beneficial owner (such as valid passport, ID card or driving licence) and his/her individual identification number (IIN) unless the individual has not been registered in Kazakhstan and therefore has no individual identification number.

35. Individuals holding position in the management of the legal entity must be identified as the beneficial owner in the case where upon carrying identification measures described above no other beneficial owner is identified (s. 5(2-1) AML Act).

36. An AML obligated person is allowed to rely on CDD measures applied by certain third parties. However, the relying obligated person is required to immediately obtain and keep the CDD records including underlying

documentation that identifies the beneficial owner and remains ultimately responsible for ensuring that CDD measures are applied in accordance with the Kazakhstan AML law and applicable regulations. Further, the relying party must establish that the activity of the relied person is subject to licensing, regulation and supervision in the jurisdiction in which it is registered, and that such foreign person takes appropriate CDD measures equivalent to the requirements of the Kazakhstan AML Law (s. 5(3)(6) AML Act).

37. An AML obliged person is required to keep the identification of the beneficial owner updated. The CDD documentation should be renewed in case of doubts whether previously obtained information is current as well as in cases provided by the rules of internal control (s. 5(6) AML Act). According to the AML supervisory authority rules of internal control in the banking sector, banks should provide for annual inspection of CDD records.

38. CDD documentation including measures taken to identify the beneficial owner and other supporting documents must be retained by the obliged person for a period of at least five years after the business relation has ended (s. 11(4) AML Act).

39. The client of an AML obligated person is required to provide the necessary information for it to carry out CDD measures including identification of the beneficial owner. The provision of false or misleading information to an AML obligated person can be subject to criminal sanctions depending on the severity of such behaviour (e.g. wilful deception with purpose to mislead the service provider). In addition, as noted above, where no sufficient information is provided to the AML obligated person to identify the beneficial owner or to keep the information up to date, the AML obligated person is obliged to refuse to enter into a business relation, carry out the respective transaction or terminate the business relationship if already established (ss.5(3) and 13 AML Act).

40. The AML obligated person's failure to comply with CDD requirements can result in the application of administrative and criminal sanctions. Administrative fines are applied by courts up to EUR 795 for individuals and up to EUR 2 275 for legal persons (140 and 400 monthly calculation indices respectively, s. 20(1) AML Act, s. 214(1) Act on Administrative Breaches). As a criminal offence, a wide range of sanctions is available, including fines, detention under arrest, imprisonment or confiscation (s. 193 Criminal Code).

41. The above requirements ensure that where a domestic or foreign company engages an AML obligated person, the beneficial owners of the company are required to be identified in line with the standard. Mainly, the definition of the beneficial owner provides for all three aspects of beneficial ownership as defined under the standard and requires identification of the beneficial owner in cascading steps which do not represent alternative options. The regulations also contain sufficient mechanisms to ensure that

appropriate measures are required to be taken to properly identify and verify the identity of the beneficial owners in a particular case.

42. As already described in the section dealing with the availability of legal ownership information, all domestic companies (i.e. joint stock companies) are required to engage a company's registrar to maintain their shareholder register. A company's registrar is an AML obligated person required to conduct CDD in respect of the company and to identify its beneficial owners in line with the standard. Consequently, Kazakhstan's law ensures that beneficial ownership is required to be available in respect of domestic companies and foreign companies with sufficient nexus with Kazakhstan in line with the standard.

Implementation of obligations to keep beneficial ownership information in practice

43. The practical availability of the information on beneficial owners as defined under the standard is ensured through the implementation of the AML obligations. AML obligations are supervised and enforced by several authorities depending on the sector of the obligated person (see further section A.1.3). Companies' registrars are the main source of beneficial ownership information in respect of companies. The Company registrars are AML obligated persons subject to supervision by the National Bank. Currently, only one companies' registrar operates in Kazakhstan and it is owned by the National Bank.

44. The National Bank carries out off-site as well as on-site inspections. Generally the same measures apply across all financial institutions including professional participants on the securities market such as a companies' registrar (see further section A.3). Off-site inspections consist of review of the service provider's AML internal guidelines and regulations or in cases where deficiencies were identified and remedial action recommended review of the follow up action taken. On-site inspections consist among other in checking CDD documentation kept in respect of the service provider's clients and documentation of measures taken to establish the client's beneficial ownership. In the context of off-site inspection, the National Bank applied a fine of KZT 277 480 (EUR 720) in respect of the Companies' registrar for breach of its AML reporting obligation in November 2015. No further breach of the Companies' registrar obligations was encountered over the reviewed period.

Availability of ownership information on companies in the Astana International Financial Centre (AIFC)

45. The AIFC Constitutional Statute allows the establishment of entities including companies under the AIFC acts (s. 3 AIFC Constitutional Statute). The AIFC acts provide for the establishment of three types of companies (s. 11 AIFC Companies Regulations No. 2 of 2017):

- private company – a limited liability company whose shares cannot be traded on public exchanges; it must have at least one shareholder who can be a natural person or a body corporate; it has no requirements for minimum share capital; it must have at least one director who is a natural person
- public company – a limited liability company whose shares can be traded on public exchanges; unlike private company, the minimum share capital is USD 100 000; it must have at least two directors and at least one secretary
- special purpose company – a company limited by shares, incorporated under AIFC acts to arrange specific financial transactions such as acquisition, holding and disposal of any asset or obtaining any type of financing; the minimum share capital is USD 100; special purpose company can have only up to three shareholders; it must appoint a Corporate Service Provider (CSP) to act as a director and company secretary.

46. A company can be registered in the AIFC since 1 January 2018. As of April 2018 there were nine private companies registered with the AIFC Registrar of companies and no public or special purpose company.

Legal ownership information

47. A company obtains its legal personality upon registration with the Registrar of Companies (s. 16(2) AIFC Companies Regulations). The application for registration must, among others, contain (s. 13 AIFC Companies Regulations):

- the nature of the business to be conducted by the proposed company
- the amount of the initial share capital and shareholdings of the Incorporators
- the address of the proposed Company's registered office
- the following information for each founder:
 - the full name, nationality and address of the founder
 - if the founder is an individual and is to hold shares in a fiduciary capacity for another person – the full name, nationality and address of the beneficial owner of the shares

- if the founder is a legal entity – the beneficial ownership information of the legal entity
- the full name, nationality, address, business occupation (if any) and date of birth of the individuals who are to serve as the directors and, if applicable, the secretary
- proposed Articles of Association, signed by or on behalf of each founder.

48. Any change in the information provided to the Registrar (including in respect of legal and beneficial owners of the company) has to be reported to the Registrar within 14 days after the change happens (s. 17 AIFC Companies Regulations). Failure to do so is subject to a fine of up to USD 2 000 (s. 17 AIFC Companies Regulations and Schedule 3 AIFC Companies Rules, AIFC Rules No.GR0004 of 2017).

49. Subsequent to incorporation, private and public companies (but not special purpose companies) are required to file annual returns with the Registrar. Annual returns must include (s. 26 AIFC Companies Regulations):

- either (i) the name and address of each shareholder who, on the filing date, held not less than 5% of the shares together with the number of shareholders each of whom, on that date, held less than 5% of the shares; or (ii) the name and address of every shareholder who, on the filing date, held any shares
- updated particulars for each director and, if applicable, the secretary.

50. Failure to file the annual return is subject to a maximum fine of USD 10 000 (s.26 AIFC Companies Regulations and Schedule 3 AIFC Companies Rules).

51. Finally, all companies must maintain a register of shareholders. The register must include (s. 52 AIFC Companies Regulations):

- the names and addresses of its shareholders, together with a statement of the shares held by each shareholder
- the date each shareholder was registered as a shareholder
- the date any person ceased to be a shareholder
- the date the number of shares held by any shareholder increased or decreased.

52. Although the AIFC acts set conditions under which a person can be entered in the register of shareholders and therefore become a shareholder in respect of the company, there is no deadline within which the share transfer has to be reported to the company. Therefore it is possible that the person who acquired shares in the company remains unknown to the company until

that person decides to be registered (e.g. before distribution of dividends). Kazakhstan is therefore recommended to put in place appropriate mechanisms to ensure that ownership information kept by a company registered in the AIFC is required to be up to date. It is nevertheless noted that there are already certain mechanisms in place which mitigate this gap (e.g. obligation to identify the company's beneficial owners and file annual returns with the Registrar).

53. The register of shareholders is required to be kept at the company's registered office in the AIFC or at the premises of its registered agent if the company has immediate access to the register (s.55 AIFC Companies Regulations). A fine of up to USD 10 000 applies in the case of breach of the obligation to maintain the register of shareholders (ss.52 and 55 AIFC Companies Regulations and Schedule 3 AIFC Companies Rules).

54. Foreign companies cannot conduct business in or from the AIFC unless they are registered as a Recognised Company with the Registrar of companies (s.144 AIFC Companies Regulations). Upon registration in the AIFC, foreign companies must submit, among others, the details of persons authorised to accept service on their behalf in the AIFC; the address of their principal place of business in the AIFC, details of the Recognised Company's shareholders or members and details of the Recognised Company's directors and secretary (s.147(1) AIFC Companies Regulations). The information provided to the Registrar is required to be updated as in case of domestic companies. In the case of failure fine of up to USD 15 000 applies (s.148 AIFC Companies Regulations and Schedule 3 AIFC Companies Rules).

55. Further to the administrative application of fines, the Registrar has a wide range of measures to enforce companies' compliance with the relevant rules. Mainly, the Registrar can strike off a company from the register if the Registrar has reason to believe that (i) the company is not conducting business or is not in operation; or (ii) the company is in breach of the AIFC rules and regulations; or (iii) it is prejudicial to the interests of the AIFC for the company to remain in the Register (s.167(1) AIFC Companies Regulations).

Beneficial ownership information

56. As described above, all companies have to submit identification of their beneficial owners upon their incorporation to the Registrar of companies in the AIFC. The provided information must be kept updated during the existence of the company and in case of failure to do so sanctions apply.

57. However, the applicable rules do not define the concept of beneficial ownership, as the definition is currently not contained in the AIFC legal acts, and measures by which beneficial owner is required to be identified. It is therefore unclear whether the persons identified as beneficial owners

conform with beneficial owners required to be identified under the standard. Further, it is not ensured that their identification is reliable as it is unclear by what measures and under whose responsibility the beneficial owner should be identified and verified. In view of these deficiencies, Kazakhstan is recommended to take further steps to ensure that beneficial owners of companies registered in the AIFC are required to be identified in line with the standard.

58. Beneficial ownership information is required to be available with AML obligated service providers when engaged by the company. The AIFC AML rules cover a broad range of financial institutions and relevant professionals including CSPs, lawyers, notaries, accountants and auditors (s. 2.1 AIFC Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Rules (AIFC AML Rules), AIFC Rules No. FR0008 of 2017). AML obligated persons are required to conduct CDD and to identify beneficial owners of their clients (s. 5.1.3 AIFC AML Rules) (see also section A.3). Nevertheless, the engagement of an AML obligated person is not required. Although CSPs have to be engaged by special purpose companies, these CSPs are not required to be residents in the AIFC or Kazakhstan and therefore the availability of beneficial ownership with these professionals will rely on the rules (and their implementation in practice) in other jurisdictions. Some companies are required to have their accounts audited by an auditor registered in the AIFC but the requirement is subject to conditions (see further section A.2). Finally, companies are required to have a registered office in the AIFC (s. 24(1) AIFC Companies Regulations) and the service of providing registered office is covered by the concept of corporate services which triggers AML obligations. Nevertheless, companies are not required to engage such service provider in order to have a registered office in the AIFC (although in practice this may be the case for the majority of companies as they may not have any other presence in the AIFC).

Availability of ownership information on AIFC companies in practice

59. The supervision and enforcement of obligations concerning the availability of legal and beneficial ownership information is the responsibility of the Astana Financial Services Authority (AFSA). The AFSA was launched on 1 January 2018 as the independent regulator of the AIFC. It is a legal entity and statutory body of the Republic of Kazakhstan. Currently, the AFSA is staffed with about 50 employees in several departments. One department is devoted to the function of the Registrar of companies and another to the AML supervision.

60. The AFSA is empowered to detect and directly sanction breach of AIFC regulations and rules. The AFSA is currently finalising a supervision and inspection plan in respect of legal ownership information. An integrated companies' register is currently under development which will allow for data analytics and smart management of filed information. In the

interim, a searchable registration database is currently in use, which records all ownership information on AIFC entities. In respect of beneficial ownership information, the AFSA issued an AML guide² and carried out seminars explaining AML requirements to the future AIFC participants in the financial services sector. AML supervision in the AIFC is to be carried out in co-operation with the Kazakhstan FIU to use already existing expertise and resources.

61. It appears that Kazakhstan devoted sufficient resources to set up an adequate supervisory and enforcement regime in the AIFC which is commensurate with the current level of development of the AIFC and the number of entities registered therein. This regime is currently in the process of being fully designed and established to ensure effective implementation of the relevant rules also in the future when the number of entities operating in the AIFC will arise. Nevertheless, given the lack of experience with the implementation of the relevant rules and the expected increase in the number of companies established in the AIFC, it is recommended that Kazakhstan monitor the availability of ownership information in respect of companies established under the AIFC laws or carrying out business therein and take further measures as necessary to ensure that legal and beneficial ownership is available in respect of these entities in line with the standard.

ToR A.1.2. Bearer shares

62. The 2015 report concluded that Kazakhstan's law does not allow for the issuance of bearer shares. Shares can be issued only in dematerialised form, i.e. as a set of electronic records in securities accounts (s. 129(1) Civil Code and s. 12(1) Law on Joint Stock Companies). There has been no change since the last report.

63. Companies registered in the AIFC are prohibited from issuing bearer shares (s. 47 AIFC Companies Regulations).

ToR A.1.3. Partnerships

64. Kazakhstan's law recognises four types of partnerships: (i) limited liability partnerships (LLP), (ii) additional liability partnerships, (iii) general partnerships and (iv) limited partnerships. All forms of partnerships created under Kazakhstan's law are legal entities. The most common form of partnerships is LLP representing about 95% of all business entities. As of April 2018, the number of LLPs registered in the Register of Legal Entities was 353 600, the number of additional liability partnerships was 242, the number of general partnerships was 1 186 and the number of limited partnerships was 71.

2. <http://afsa.kz/storage/files/6d3ced5d664f44e2/ANTI-MONEY%20LAUNDERING%20GUIDE.pdf>.

Legal Ownership and Identity Information

65. The following section of the report deals with the availability of identification of partners of a partnership from the perspective of legal and regulatory requirements as well as their practical implementation in practice.

Identity of partner information requirements

66. The 2015 report concluded that identity of partner information in respect of partnerships was required to be available in line with the standard except for foreign partnerships that carry on business in Kazakhstan or have income, deductions or credits for tax purposes in Kazakhstan. There are no changes in the relevant rules since the first round review.

67. A domestic partnership obtains legal personality upon registration with the Register of Legal Entities (s.42(3) Civil Code). As in the case of companies, none of the foundation documents is required to be authorised by a notary or other professional unless one of the founders is an individual.

68. Identification of partners in respect of domestic partnerships is required to be available in the Register of Legal Entities and with partnerships themselves. In certain cases LLP can issue shares. As in the case of companies, these shares can be issued only in a dematerialised form and their owners are recorded in the securities account kept in the Central Depository. About 1% of LLPs have issued shares.

69. Changes in the information filed with the Register are required to be reported within one month after the change. Change in legal ownership of a partnership (i.e. in its partners) requires re-registration of the partnership (except for LLPs which have issued shares). Until new partners of the partnership are entered in the Register, their ownership is not legally valid (s. 42(6) Civil Code).

70. The Register of Legal Entities must contain information provided by the registered entities. There is no provision that limits the time period for which the information entered in the Register should be kept.

71. The 2015 report concluded that partnerships formed outside of Kazakhstan but carrying on business in Kazakhstan or having income, deductions or credits for tax purposes therein are generally not required to maintain or provide information identifying their partners. Consequently, Kazakhstan was recommended to address the gap. As no change has been made the recommendation remains to be addressed. It is nevertheless noted that no impact is reported on Kazakhstan's EOI practice.

72. Sanctions are applicable in cases of breach of the relevant obligations. Although the 2015 report raised concerns about the lack of direct monetary

sanctions applicable in respect of the relevant entities and their representatives, given that a person becomes a partner only upon entry in the Register of Legal Entities (or entry in the securities account if shares were issued), Kazakhstan's law contains sufficient incentives and safeguards supporting available sanctions to ensure that legal ownership information is required to be kept in practice (see below).

Implementation of identity of partner information requirements in practice

73. The main source of legal ownership information in practice is the information filed with the Register of Legal Entities.

74. The same measures apply as in respect of companies. A partnership obtains its legal personality upon registration with the Register of Legal Entities. Registration with the Register of Legal Entities and with the tax administration is integrated. Although there is no annual reporting to the Register, entities are required to report changes in the information reported to the Register within one month after the change, including changes of partners.

75. Availability of accurate and updated information in the register relies on vested interest of the registered entities and its partners. The Register carries out reviews of information to be entered in the Register and crosschecks the information provided with the information contained in other government databases, for instance on the registered address. However, no inspections or third party reporting is in place to facilitate accuracy of the ownership information filed and there are no systemic measures in place to ensure that this information is accurate and up to date. Nevertheless sanctions are reported to be applied by the Register in cases of failure to provide the required information and legal safeguards are in place to facilitate availability of the required information in the Register.

76. Out of about 370 000 business entities (mainly partnerships) registered in the Register of Legal Entities, about 65 000 (representing about 17% of all these entities) are reported as non-contactable or abandoned (i.e. not responding to communication). In these cases the respective entity is considered legally existing, however, it is prohibited from conducting business in Kazakhstan, its business identification number is invalid and it is blocked from issuing VAT invoices. The Register terminates several of these entities annually and is in the process of designing a programme to systematically terminate these entities, which is planned to start in the second half of 2018. Considering that legal ownership is constituted by entry in the Register of Legal Entities, the availability of information on legal owners of legal entities should be ensured. However, these entities continue to legally exist and may be active outside of Kazakhstan or change their ownership structure without

changing direct legal owners. It is therefore recommended that Kazakhstan takes measures to ensure that adequate, accurate and up to date ownership information is available in respect of all domestic entities entered in the Register of Legal Entities.

77. Tax filing obligations are not a source of ownership information. Nevertheless the tax administration has at its disposal all information provided to the Register of Legal Entities. Partnerships are taxed as companies (i.e. they are considered separate entities from their partners). All registered legal entities including partnerships are required to file annually their tax returns. The majority of corporate income tax returns is filed electronically although this is not mandatory. The number of corporate income tax returns filed for tax years 2014, 2015 and 2016 was 256 518, 228 653 and 207 147 respectively. This represents about 65% of all entities registered in the Register of Legal Entities filing their income tax returns. According to the Kazakhstan authorities the discrepancy between the number of registered entities and filed tax returns can be partially attributed to the difference between the date of incorporation and obligation to file a tax return and to the number of entities that are not contactable or abandoned. Nevertheless, the tax filing rate appears rather low (see further section A.2).

Beneficial ownership information

78. Under the 2016 ToR, beneficial ownership on partnerships should be available.

Requirements to identify beneficial owners of partnerships

79. The source of beneficial ownership information as defined under the 2016 ToR is requirements under the AML law.

80. The same AML obligations as described in respect of companies apply also in respect of partnerships (see further section A.1.1). Therefore the definition of the beneficial owner required to be identified by AML obligated service providers is in line with the standard. The applicable CDD measures require appropriate measures to be taken to identify the beneficial owners in all cases, and sanctions apply in the case of failure. The obtained information is required to be kept updated and for at least five years after the end of the business relationship.

81. However, a gap exists in respect of the scope of entities in respect of which beneficial owners are required to be identified. Although AML obligations cover relevant financial institutions and professionals (including notaries, lawyers, accountants and auditors), domestic and foreign partnerships carrying on business in Kazakhstan are not required to engage an AML

obligated service provider. As described above, notaries are not required to be engaged upon foundation of a partnership or subsequent transfer of shares in a partnership unless one of the parties is an individual. There is also no requirement to open a bank account in Kazakhstan under the commercial or tax law. Although as a matter of practice, according to Kazakhstan, about 90% of registered entities have a bank account in Kazakhstan. Only certain companies are required to have their accounts audited by a professional auditor (see further section A.2.1). No other requirement exists to engage an AML obligated person or to gather and maintain beneficial ownership. Therefore it is possible to establish and operate a domestic partnership in Kazakhstan or for a foreign partnership to carry out business in Kazakhstan without a requirement to establish beneficial ownership of that partnership. Kazakhstan is therefore recommended to ensure that identification of beneficial owners of all domestic partnerships and foreign partnerships that carry on business in Kazakhstan or have income, deductions or credits for tax purposes therein is required to be available in Kazakhstan as required under the standard.

Implementation of obligations to keep beneficial ownership information in practice

82. The implementation of rules requiring the availability of beneficial ownership information is supervised through the supervision of AML obligated service providers. AML supervision is carried out by several authorities depending on the sector of the obligated person. Financial institutions are subject to supervision by the National Bank. Notaries and other legal professionals are supervised by the Ministry of Justice. Professional organisations are supervising accountants and auditors. Finally, the General Prosecutor Office exercises general control on observance of Kazakhstan's legislation including AML laws. The Financial Monitoring Committee of the Ministry of Finance acts as Kazakhstan's Financial Intelligence Unit (FIU). The FIU is primarily responsible for the analysis and dissemination of information provided in suspicious transaction reports (STRs) by AML obligated persons and does not conduct inspections of CDD compliance.

83. The supervision of AML obligations of the obligated service providers is ensured through a combination of on-site inspections, off-site audits and enforcement actions in cases where breaches are discovered. The National Bank carried out 320 inspections of financial institutions in 2015, 312 inspections in 2016 and 284 in 2017. These inspections include complex on-site controls as well as off-site checks of a particular aspect of compliance. Given the number of financial institutions in Kazakhstan (about 80 throughout the reviewed years) this constitutes a high frequency of inspections. The Ministry of Justice carried out 217 inspections of notaries in 2015, 308 inspections in 2016 and 217 in 2017. As in the case of financial

institutions, these inspections refer to several types of supervisory measures including on-site inspections. This means that annually, about 5% of notaries were subject to a check of their obligations. No inspections were carried out in respect of lawyers. The number of supervisory measures taken in respect of accountants and auditors is not centrally available. Based on the information provided by Kazakhstan, it is estimated that the number of inspections carried out annually is low. The proportion of lawyers, accountants or auditors subject to AML inspections seems relatively low in comparison to the proportion of financial institutions subject to inspections despite that these professionals have an important role in establishing legal entities and providing legal and corporate services (e.g. as formation agents, tax advisors or auditors of annual accounts) and therefore have a potential of being an important source of beneficial ownership information.

84. The supervision of AML obligations of financial institutions in terms of its scope of reviewed obligations and enforcement measures taken seems adequate and appears to ensure that required beneficial ownership is available in practice as further described in section A.3.

85. The supervision of notaries and lawyers is carried on by a division within the Ministry of Justice and in co-operation with regional offices of the Ministry of Justice. The supervisory division is staffed with 12 employees. The supervision is based on complaint reports filed to the Ministry of Justice by the FIU or other law enforcement authorities. The supervision consists mainly of on-site inspections focused on verification of documentation kept in respect of particular transactions subject to AML monitoring and typically do not focus on verification of general compliance with notaries' CDD obligations. Nevertheless, where deficiencies are discovered, enforcement measures are taken including application of fines. In 2016, a fine under s. 214(1) of the Act on Administrative Breaches was applied in one case and in another case a notary was issued a warning. In 2017, 24 notaries were issued a notification for failure to report internal AML procedures to the Ministry of Justice and one notary received a warning. Since 2014 no licence of a notary was suspended or revoked. No enforcement actions were taken in respect of lawyers.

86. Supervision of accountants and auditors is performed by their professional bodies (Chamber of Professional Accountants and Chamber of Auditors). Based on the information provided, the supervision is organised in a similar way as in respect of other professionals. Therefore the supervision is not particularly focused on compliance with CDD obligations and typically not covering the availability of beneficial ownership information and measures carried out by these professionals to identify beneficial owners of their clients. Kazakhstan was not able to provide any further details and no statistics are available on enforcement measures taken for breach of AML obligations by these professionals.

87. To conclude, although the supervision of financial institutions appears adequate to ensure the availability of beneficial ownership information with these institutions in practice, adequate measures are not taken in respect of other AML obligated professionals and in particular in respect of lawyers, accountants and auditors. Current supervision of the availability of beneficial ownership with these professionals is not adequately frequent, does not ensure that the beneficial ownership information kept by these professionals is adequate, accurate and up to date and applied enforcement measures do not seem to be dissuasive enough. It is noted that entities are not required to engage these professionals and that beneficial ownership should be available also with financial institutions, if engaged by the entity, nevertheless, these professionals are relevant source of beneficial ownership information in Kazakhstan as they have an important role in providing legal and corporate services to companies (e.g. as tax or legal advisors or auditors). Kazakhstan is therefore recommended to strengthen the supervision of non-financial AML obligated professionals so that it is ensured that the beneficial ownership information is available in practice in line with the standard.

Availability of ownership information on partnerships in Astana International Financial Centre (AIFC)

88. The AIFC acts provide for the establishment of three types of partnerships:

- general partnership – a legal entity constituted as a relationship between two or more persons jointly conducting any business, purpose or activity with a view to making a profit; all partners in general partnership are jointly and severally liable for the debts and obligations of the partnership
- limited partnership – a legal entity constituted as a relationship between at least one general partner and at least one limited partner; limited partners are not liable for any of the partnership's liabilities beyond their contribution to the partnership
- limited liability partnership (LLP) – a legal entity constituted as a relationship between partners with limited liability for debts and obligations of the partnership.

89. A partnership can be registered in the AIFC since 1 January 2018. As of April 2018 there was no partnership registered with the AIFC Registrar.

90. In order to carry out a business activity in the name of the partnership, it has to be registered by the AIFC Registrar (s.9 General Partnership Regulations, AIFC regulations No. 5 of 2017; s.9 Limited Partnership Regulations, AIFC Regulations No. 12 of 2017; s.9 Limited Liability Partnerships Regulations, AIFC Regulations No. 13 of 2017). Upon registration the founders must provide

to the Registrar (s.12(2) General Partnership Regulations, s.12 Limited Partnership Regulations, s.10(2) Limited Liability Partnerships Regulations):

- the name of the partnership
- the address of the registered office of the partnership in the AIFC
- the nature of the business, purpose or activity to be conducted by the partnership in or from the AIFC
- the name and address of each of the partners of the partnership with the exception of limited partners in limited partnership
- the partnership agreement, except for general partnerships.

91. Any change in the information provided to the Registrar (including change in partners of the partnership) has to be reported within 14 days to the Registrar (s. 14 General Partnership Regulations; s. 14 Limited Partnership Regulations; s.2.7 Limited Liability Partnerships Rules, AIFC Rules No. GR0006 of 2017). In case of failure to provide the information to the Registrar, fines ranging from USD 1 000 up to USD 2 000 apply (Schedule 1 General Partnership Rules; Schedule 1 Limited Partnership Rules, Schedule 1 Limited Liability Partnerships Rules).

92. In addition to reporting partners to the Registrar, all partnerships are required to keep a register of partners at their registered office in the AIFC (s.2.4 General Partnership Rules, AIFC Rules No. GR0002 of 2017; s.16(4) Limited Partnership Regulations, s.2.6 Limited Liability Partnerships Rules). The register has to contain all current and former partners of the partnership. However, unlike in case of limited partnerships, no sanctions are applicable on general and limited liability partnership which fail to do so. Kazakhstan is therefore recommended to address this gap.

93. Foreign partnerships carrying out business activity in the AIFC are required to be registered with the AIFC Registrar. The same information is required to be registered as in respect of partnerships established under the acts of the AIFC. This information includes the identification of all partners in the partnership (s.13 General Partnership Regulations, s.46 Limited Partnership Regulations, s.37 Limited Liability Partnerships Regulations). Sanctions apply as in the case of partnerships established under the AIFC acts.

94. Similar to companies, limited partnerships and LLPs can be struck off from the Register if the Registrar has reason to believe (i) that the partnership is not conducting the business, purpose or activity for which it was formed or is not in operation; or (ii) that the partnership is contravening the applicable AIFC rules and regulations; or (iii) that it is prejudicial to the interests of the AIFC for the partnership to remain on the register (s.58(1) Limited Partnership Regulations, s.49(1) Limited Liability Partnerships Regulations).

General partnerships can be dissolved by the Court upon application by the Registrar if it is in the interests of the AIFC to make an order dissolving the partnership (s.44 f) General Partnership Regulations).

95. Unlike companies, partnerships registered in the AIFC are not required to provide beneficial ownership information to the Registrar and therefore beneficial ownership information in respect of these partnerships is available only to the extent they engage an AML obligated person in the AIFC. However, there is no requirement for a partnership registered in the AIFC to engage a person subject to AML obligations in the AIFC or Kazakhstan. Further, the AIFC AML Rules do not contain a definition of the beneficial owner and therefore its meaning has to be derived from the AML law of Kazakhstan through a general reference to the applicability of Kazakhstan criminal law (including AML law) in the AIFC (s.3(1) AIFC AML Rules). Kazakhstan is therefore recommended to ensure that beneficial owners of all partnerships established under the AIFC acts are required to be identified in line with the standard. It is noted that as in the case of companies, partnerships are required to have a registered office in the AIFC (s.16(1) General Partnership Regulations, s.16(1) Limited Partnership Regulations, s.15(1) Limited Liability Partnerships Regulations) and the service of providing registered office is covered by the concept of corporate services which trigger AML obligations. Nevertheless, partnerships are not required to engage such service provider in order to have a registered office in the AIFC.

96. The supervision of rules ensuring the availability of legal and beneficial ownership information on partnerships is supervised in the same way as in respect of companies. As already concluded in section A.1.1, it appears that Kazakhstan devoted sufficient resources to set up a supervisory and enforcement regime in the AIFC commensurate with the current level of development of the AIFC and the number of entities registered therein. The regime is in the process of being fully designed and established to ensure effective implementation of the relevant rules also in the future when the number of entities operating in AIFC arises. Nevertheless, given lack of experience with implementation of the relevant rules and expected increase in the number of partnerships established in the AIFC, it is recommended that Kazakhstan monitor the availability of ownership information in respect of partnerships and take further measures as necessary to ensure that legal and beneficial ownership is available in respect of these entities in line with the standard.

ToR A.1.4. Trusts

97. Kazakhstan's law does not recognise the concept of a trust and Kazakhstan is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. However, there are no restrictions for a

resident of Kazakhstan to act as trustee, protector or administrator of a trust formed under foreign law.

Identification of parties of a trust requirements

98. The 2015 report determined that information on parties of trusts (i.e. identification of the settlor, trustee and all beneficiaries) is required to be available in line with the standard. There are no changes in the relevant rules since the first round review.

99. Information on the settlor, the trustee and all beneficiaries is required to be available based on tax law requirements and AML rules. In order to substantiate their tax position (i.e. to whom income and expenses incurred under the trust agreement should be attributed for tax purposes in Kazakhstan), the trust manager (a trustee), the founder and the beneficiary have to be able to provide the trust agreement as well as other relevant information such as bank accounts, accounting records and underlying documentation. Further, where a trust engages a service provider (such as a bank or a lawyer) the service provider will be required to identify its clients which in this case should entail obtaining at least a trust agreement containing information on parties of the trust.

100. The obligated person is required to keep the relevant information for at least five years from the end of the business relationship or taxable period to which it relates and sanctions apply in case of breach of these obligations (see further section A.1.1)

101. In practice, the tax obligations of trustees are supervised in the same manner as in respect of other taxpayers (see further section A.1.1 and A.2.1). According to Kazakhstan's authorities instances where a resident person would act as a trustee are very rare in practice but a few cases were reported. Supervision of AML obligations of the engaged service provider are supervised based on the sector in which the service provider operates (see below and sections A.1.3 and A.3).

Beneficial ownership information

102. Availability of beneficial ownership information in respect of trusts operated by a resident trustee (or administered in Kazakhstan) depends on AML obligations. However these obligations are deficient in two aspects:

- the AML law does not contain a definition of the beneficial owner of a trust – s. 1(3) of the AML Act defines beneficial owner only in respect of legal entities and CDD requirements do not presume identification of the beneficial owners of legal arrangements

- acting as a trustee does not trigger AML obligations – the trustee is only AML obligated if it is a professional otherwise covered by AML obligations, such as a lawyer.

103. As described above, Kazakhstan’s law requires the availability of information identifying the settlor, trustee and beneficiaries of a trust. However, it does not require identification of any other individual with ultimate effective control over the trust. It is therefore recommended that Kazakhstan ensure that beneficial ownership information in respect of trusts with resident trustees or administered in Kazakhstan is available in all cases.

104. Implementation of AML obligations of the trustee or a service provider, if engaged, is supervised based on the sector in which the service provider operates (see below and sections A.1.3 and A.3).

Ownership information on trusts in the AIFC

105. AIFC acts currently do not expressly provide for the establishment of trusts. However, trusts can be created in the AIFC based on general common law principles. Further, a person resident in the AIFC can act as a trustee of a foreign trust and a foreign trust can be administered therein. Kazakhstan also reported that one of the future development goals of the AIFC is to develop a more detailed trust framework.

106. Acting as trustee on a professional basis requires registration with the AFSA as trust service provider (Schedule 1 AIFC General Rules, AIFC Rules No. FR0001 of 2017). The AIFC authorities report that as of April 2018, no trust service provider is registered in the AIFC. Trust service providers (as well as other relevant professionals) are AML obligated persons and are required to identify their clients including the clients’ beneficial owners (s.6.1.1 AIFC Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Rules, AIFC Rules No. FR0008 of 2017)

107. The definition of the beneficial owner of a trust is not contained in the AML law. Information required to be collected in respect of trusts is specified in the guidance on identification and verification of beneficial owners contained in the AIFC AML rules. The guidance states that where an obligated person carries out identification and verification of beneficial owners of a trust, this should include the trustee, settlor, the protector, the enforcer, beneficiaries, other individual persons with power to appoint or remove a trustee and any person entitled to receive a distribution, whether or not such person is a named beneficiary (AIFC AML Rules, AIFC Rules No. FR0008 of 2017). Although this definition seems to cover all persons required to be identified as beneficial owners of a trust under the standard, it remains unclear to what extent this definition is binding and therefore enforceable. In view of this concern it is recommended that Kazakhstan ensure that

beneficial ownership information in respect of trusts with resident trustees in the AIFC or administered therein is available in line with the standard.

108. It is noted that certain information on parties of the trust (i.e. on the settlor, the trustee and the beneficiaries, once identifiable) should be available based on general common law principles applicable in the AIFC. Nevertheless, these principles do not ensure that the beneficial owner(s) as defined under the standard is required to be identified in particular in cases where ultimate effective control is exercised through chain of ownership or control.

ToR A.1.5. Foundations

109. The 2015 report concluded that it is not possible to form a foundation in Kazakhstan as a distinct legal entity. There has been no change in this respect since the last review.

110. Foundations cannot be created under the AIFC acts.

Other entities

111. The 2015 report identified co-operatives as relevant for the purposes of the review. The 2015 report concluded that legal ownership information is required to be available in line with the standard. There has been no change in the applicable rules since then.

Co-operatives

112. A co-operative is a voluntary association of individuals or legal persons for the purpose of joint entrepreneurial activities which are based on property contributions or labour participation by members of the co-operative. Each co-operative must have at least two members. Members of the co-operative bear subsidiary liability on the obligations of the co-operative.

113. A co-operative obtains legal personality upon entry in the Register of Legal Entities. Changes in the information provided to the registration authority should be reported by the co-operative within one month after the change took place.

114. The main obligation ensuring that legal ownership information on co-operatives is required to be available in Kazakhstan in line with the standard is the requirement to keep a register of members. Each co-operative is required to keep a register of its members containing the member's name and address, the amount of capital contribution, and the date of commencement and termination of membership.

115. Co-operatives are not tax transparent. However, ownership information is not required to be filed with tax administration in all cases.

116. The availability of beneficial ownership information in respect of co-operatives follows the same rules as in respect of other entities. The beneficial owner of a co-operative is defined as an individual with direct or indirect ownership of more than 25% of shares or assets of an entity and/or an individual carrying out control of an entity through other means, or on behalf of whom the entity performs transactions with money and (or) other property (s. 1(3) AML Act). Nevertheless, a gap exists in cases where a co-operative does not engage an AML obligated person (see further section A.1.2). This is not in line with the standard and Kazakhstan is recommended to address this gap.

117. Availability of ownership information in respect of co-operatives is ensured in the same way as in respect of other entities. Therefore, the practical availability of legal ownership information is ensured in line with the standard mainly through tax supervision (see further section A.1.3). The practical availability of beneficial ownership will depend on the implementation of CDD measures by an AML obligated service provider, if engaged by the co-operative. AML supervision of financial institutions is adequate, however, improvement is recommended in supervision of notaries, lawyers, accountants and auditors so that it is ensured that beneficial ownership information is available with these professionals in line with the standard (see further section A.1.3).

A.2. Accounting records

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

118. The 2015 report concluded that the legal and regulatory framework ensures the availability of accounting information in line with the standard. Although there has been no change in the relevant provisions since the first round review, new legislation is in force in relation to the AIFC.

119. Under the 2016 ToR, accounting information should be kept for at least five years even in cases where the relevant entity or legal arrangement has ceased to exist. Although Kazakhstan's law contains retention requirements under the accounting and tax law to keep accounting information for at least five years, they represent obligation of the legal entity or arrangement. Thus, when an entity or arrangement ceases to exist, these obligations are not transferred to another person. While some information would remain available with public authorities, this does not ensure that all relevant accounting information and underlying documents in particular will remain available in line with the standard. Kazakhstan is therefore recommended to address this gap.

120. Implementation of accounting requirements in practice is ensured mainly through tax audits and tax filing obligations. All entities and trustees are required to file annual income tax returns which contain basic accounting information such as simplified balance sheet and profit and loss statement. The tax administration has in place a tax audit programme which comprises off-site and on-site audits. Annually the tax administration carries out on average 60 000 on-site audits to verify compliance with corporate income tax obligations. The level of compliance with accounting obligations is reported as good.

121. Kazakhstan is currently in process of fully establishing the legal framework of the AIFC. However, general regulations that relate to accounting information are in place with regard to entities that can be currently established in the AIFC. Accounting records of entities must sufficiently explain the entity's transactions and disclose with reasonable accuracy the financial position of the entity and to enable the directors to ensure that the entity complies with the companies regulations and rules. The accounting records must show a true and fair view of the profit or loss for the period and of the state of the entity's affairs at the end of the period. General retention period for all accounting records is six years from the day of creation of a document. However, when the entity ceases to exist no consistent rules exist to ensure that accounting records remain available for at least five years as required under the standard. Kazakhstan is therefore recommended to address this gap. Special purpose companies are exempted from accounting obligations which represents a legal gap and Kazakhstan is recommended to address it. The availability of accounting information of trusts currently relies on the English and Wales common law principles and AML obligations of trustees. The accounting obligations under AIFC acts are recent and there is very limited experience with their application in practice. Further, some AIFC rules are still in the process of drafting and adjustments. Kazakhstan is therefore recommended to monitor the availability of accounting information in the AIFC and if necessary take further measures to ensure that accounting information is available in the AIFC in line with the standard.

122. During the review period, Kazakhstan's central EOI office received 166 requests related to accounting information. Further requests related to accounting information were directly received and handled at the regional level of the tax administration. The requested information was in the majority of cases obtained from the respective entity unless it was contained in the person's tax return. Kazakhstan provided full response in the majority of cases. In some cases a complete response was not provided. This was mainly because the entity ceased to exist, was not contactable (see A.1.1 above), or due to legal constraints related to the exercise of access powers analysed in section B.1. Peers were generally satisfied with the accounting information provided by Kazakhstan. Nevertheless, a few peers referred to some cases

where no response was received or only partial information was provided due to reasons noted above (see also sections B.1 and C.5). During the period under review no EOIR request related to accounting information of an entity arrangement in the AIFC.

123. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	Although Kazakhstan' law contains retention requirements under the accounting law and tax law for relevant entities and arrangements to keep accounting information for at least five years, no consistent rules exist to ensure that all accounting information and underlying documents in particular will remain available after an entity or arrangement ceases to exist. This is a concern also in respect of entities registered in the AIFC.	Kazakhstan should ensure that all accounting information, including underlying documents, is required to be available for at least five years from the end of the period to which it relates, regardless whether the entity or arrangement ceases to exist.
	There are no accounting obligations in the AIFC to ensure that special purpose companies keep accounting records in line with the standard.	Kazakhstan should ensure that special purpose companies registered in the AIFC are required to keep accounting information in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation need improvement.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	The accounting obligations under AIFC acts are recent and there is very limited experience with their application and supervision in practice. Further, some AIFC rules are still in the process of drafting and adjustments.	Kazakhstan should monitor the availability of accounting information in the AIFC and take further measures, as necessary, so that accounting information is available in line with the standard in respect of entities and arrangements established under AIFC acts or carrying business therein.
Rating: Partially Compliant		

ToR A.2.1. General requirements and A.2.2 Underlying documentation

124. The 2015 report concluded that Kazakhstan’s legal and regulatory framework ensures the availability of accounting information in line with the standard. Although there have been no relevant changes in the laws applicable to Kazakhstan, the AIFC bodies recently adopted new accounting legislation that requires all companies established or operating in the AIFC to keep accounting records. The new provisions are effective from 1 January 2018.

125. The general accounting obligations are stipulated by the Law on Financial Accounting and Financial Reporting (LFA) and are further supported by obligations under the tax law.

126. Accounting obligations under LFA apply to all relevant entities and arrangements including foreign entities conducting business in Kazakhstan (s. 2(1) LFA). Accounting records should represent an ordered system (s. 6 LFA). Transactions and events should be reflected in accounting records providing a chronological and accurate view of an accounting entity’s transactions and financial position. Accounting records should be organised based on a double entry system as captured in the international accounting standards (IAS, IFRS) and the national accounting standards (s. 6(4) LFA). Small business entities can keep accounting records based on a single entry system (s. 2(3) LFA). Accounting records are based on accounting entries. Each accounting entry must be supported by a source document (s. 7(1) LFA).

127. Under the Tax Code, taxpayers (including trustees) are obliged to substantiate their tax base through accounting records kept in accordance with Kazakhstan’s general accounting rules (s. 56(2) Tax Code). The taxpayer is obliged to use the accrual method of accounting, organise accounting in a way which provides information relevant for taxation of all transactions it performed during the tax period, explanation of each reported figure in the annual tax report and keep supporting documentation and basis for supervision of the taxpayer’s tax obligations at any time (ss. 56(3) and 57(1) Tax Code).

128. If the accounting documentation is not kept as required, administrative and, in severe cases, criminal sanctions apply (s. 8 LFA, s. 56 Tax Code, ss. 276, 238 and 239 Administrative Code, ss. 241 and 245 Criminal Code).

129. The 2015 report concluded that accounting information including underlying documentation is required to be kept for at least five years since the end of the period to which it relates. The 2016 ToR extended the five year retention requirements also to cases where an entity ceases to exist during that retention period. Although Kazakhstan’s law contains retention requirements under the accounting law and tax law to keep accounting information for at least five years (s. 11 LFA and ss. 59(4) and 46(2) Tax Code), they represent obligation of the legal entity or arrangement and when an entity

or arrangement ceases to exist no rules exist to transfer these obligations to another person. Some accounting information is required to be transferred to the National Archives pursuant to various obligations (such as annual financial statements and information related to employees retirement funds) and some information will be available with the tax administration based on tax filings and audits carried out throughout the existence of the taxpayer, however, these obligations do not ensure that all relevant accounting information, and underlying documents in particular, will remain available after an entity or arrangement ceases to exist. Kazakhstan is therefore recommended to ensure that accounting information is required to be available for at least five years from the end of the period to which it relates, regardless whether the entity or arrangement ceases to exist.

The requirements to maintain accounting information in respect of entities or arrangements operating in or from the AIFC

130. Entities and arrangements can be established and operate in the AIFC. AIFC Constitutional Statute gives broad autonomy to AIFC bodies to regulate obligations of participants in the AIFC.

131. The AIFC bodies recently (20 December 2017) adopted new accounting legislation that requires all companies to keep accounting records, effective from 1 January 2018 (s. 129(1) AIFC Companies Regulations). The Companies Regulations that contain the accounting provisions are applicable to all companies that conduct business in or from the AIFC (s. 5(2) AIFC Companies Regulations). The accounting records must sufficiently explain the company's transactions, disclose with reasonable accuracy the financial position of the company and enable the directors to ensure that the company complies with the companies regulations and rules. The accounting records must also 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 (ss. 129(1) and 131(2) AIFC Companies Regulations). It is the obligation of a company's directors that accounting records are maintained in line with the prescribed rules (s. 131(1) AIFC Companies Regulations).

132. Companies regulations further require that accounting records must include underlying documents comprising initial and other accounting entries and associated supporting documents, including, for example, cheques; records of electronic funds transfers; invoices; contracts; the general and subsidiary ledgers, journals entries and other adjustments to the financial statements that are not reflected in journal; worksheets and spreadsheets supporting costs allocations, computations, reconciliations and disclosures (s. 1 Schedule 1 AIFC Companies Regulations).

133. The accounting documents must be kept at a place the directors consider appropriate (if not otherwise specified) and must be open to inspection by an officer, an auditor or a shareholder of the company at reasonable time (s. 129(2) AIFC Companies Regulations). With regard to public companies, the accounting of any business conducted in and from the AIFC must be kept in the AIFC (s. 129 (3) AIFC Companies Regulations).

134. The annual accounts must be examined by an auditor (s. 131(4a) AIFC Companies Regulations), except for private limited companies with less than 20 shareholders and annual turnover of less than USD 5 million (s. 131(6) AIFC Companies Regulations).

135. Companies' audited annual financial statements are required to be filed with the Registrar (s. 131(5) AIFC Companies Regulations).

136. Accounting obligations described above do not apply in respect of special purpose companies unless the special purpose company has been listed on a stock exchange (s. 7.1 AIFC Special Purpose Company Rules, AIFC Rules No. GR0001 of 2017). Due to this exemption, there are no accounting obligations in the AIFC to ensure that special purpose companies keep accounting records in line with the standard. Kazakhstan is therefore recommended to take measures to address this gap.

137. The accounting obligations for all types of partnerships are similar as explained above with regard to companies including requirements to keep underlying documentation (ss. 19-20 AIFC General Partnership Regulations, ss. 19-20 AIFC Limited Partnership Regulations and ss. 28-30 AIFC Limited Liability Partnership Regulations).

138. It is not yet possible to establish trusts under AIFC acts but the representatives of the AIFC reported that accounting rules in relation to trusts are currently being developed. Nevertheless where a person acts as a trustee it will be bound by English and Wales common law principles. Further record keeping requirements apply under the AML rules and AIFC General Rules regulating provision of services in the AIFC.

139. General retention period for all accounting records is six years from the day of creation of a document (s. 129(2) AIFC Companies Regulations). The obligation is in respect of the entity. However, when the entity ceases to exist, no consistent rules exist to transfer these obligations to another person. It is noted that public companies, limited partnerships and limited liability partnerships are required to keep accounting records for six years after they were struck off from the register (s. 167(12) AIFC Companies Regulations, s. 58(5) AIFC Limited Partnership Regulations, s. 49(7) AIFC Limited Liability Partnership Regulations). However, there are other ways how an entity can cease to exist (e.g. voluntary dissolution or liquidation) and no similar rule exists for private companies and general partnerships. Therefore,

a similar gap that was described in relation to the accounting requirements applicable in Kazakhstan is present also in the AIFC and Kazakhstan is recommended to address it.

140. The AIFC, the Ministry of Finance and the Ministry of National Economy have issued a tax regulation applicable in the AIFC on keeping separate accounting of income and deductions subject to exemption from corporate income tax and subject to taxation. There remain uncertainties on the interaction of these rules with record keeping obligations under Kazakhstan's accounting and tax law in cases where the issue is considered not regulated by the AIFC law.

141. The AIFC acts contain administrative sanctions applicable to cases where accounting obligations are not respected. Contravening with accounting obligations is punishable by a fine up to USD 25 000 (s.129(4) AIFC Companies Regulations and s. (7)4 AIFC Companies Rules). There is not any special legislation passed on criminal matters for the AIFC, and the criminal code of Kazakhstan is therefore also fully applicable in the AIFC.

142. The accounting obligations under AIFC acts are recent and there is very limited experience with their application in practice. Further, some AIFC rules are still in the process of drafting and adjustments. According to the information from the AIFC representatives these rules in progress will introduce further details on accounting documents to be maintained by companies and partnerships and accounting obligations of trusts. Given these uncertainties and lack of practice, Kazakhstan is recommended to monitor the availability of accounting information in the AIFC and to take further measures, as necessary, to ensure that accounting information is available in respect of all entities arrangements in the AIFC in line with the standard.

Implementation of accounting requirements in practice

143. The supervision of the implementation of the accounting requirements (including maintenance of underlying documentation) is carried out mainly through tax audits and tax filing obligations.

144. All entities and trustees are required to file annual income tax returns which contain basic accounting information such as simplified balance sheet and profit and loss statement. As discussed in section A.1.2, about 65% of all entities registered in the Register of Legal Entities are filing their income tax returns. Although there can be several factors explaining the number of filed tax returns, the proportion of entities filing their tax returns is rather low and may have negative impact on the availability of accounting information in practice. Kazakhstan should therefore take further measures to improve the tax filing rate.

145. The tax administration has in place a tax audit programme which comprises off-site and on-site audits. On-site audits can be differentiated on complex audits based on risk assessment and “counter” audits based on reports of possible non-compliance. Annually the tax administration carries out about 60 000 on-site audits to verify compliance with corporate income tax obligations. These audits also cover entities which failed to file their annual tax returns. In respect of tax year 2016, the tax administration carried out about 10 000 complex audits (covering about 3% of corporate taxpayers) and 53 000 “counter” audits. As accounting information forms the basis for corporate income tax base, the availability of accounting records is verified in depth during complex tax audits. Counter audits typically focus on collecting information or reporting of certain transactions and may not verify the overall availability of accounting information with the taxpayer in all cases. Typically tax audits take about 30 days but may be extended up to 80 days depending on the circumstances of the taxpayer.

146. The availability of accounting underlying documents is also checked during VAT inspections. The tax administration carried out 6 269 complex and thematic VAT audits in 2015, 9 713 in 2016 and 7 925 in 2017. This means that about 2% of entities is subject to VAT audit annually. In addition, about 30 000 taxpayers are subject to VAT counter audit annually. It is nevertheless noted that some complex audits may check obligations relevant for both types of taxes (VAT as well corporate income tax). Kazakhstan is currently in the process of implementing electronic reporting of transactions for VAT purposes.

147. The level of compliance with accounting obligations is reported as good. The main deficiencies relate to underreporting of income or manipulation with cash transactions. Cases where accounting information would be missing are rare and trigger administrative sanctions. In 2017, administrative sanctions in respect of accounting failures were applied in about 1 700 cases with the total amount of applied fines of KZT 332.6 million (EUR 0.8 million). In addition, breach of accounting obligations would typically lead to a failure to substantiate the tax base and thus to an additional tax assessment.

148. The supervision of accounting obligations in the AIFC is the responsibility of the AFSA. There are two main ways of accounting supervision currently foreseen. Firstly, through annual filing obligations of companies and secondly through on-site and off-site inspections carried out by the AFSA. It is expected that the tax administration will also have certain supervisory role to the extent the entity or arrangement has tax liability in Kazakhstan or to verify that no tax liability exists. As already concluded above, the accounting obligations under AIFC acts are recent and there is very limited experience with their application in practice. Given these uncertainties, Kazakhstan is recommended to monitor the availability of

accounting information in the AIFC and to take further measures, as necessary, to ensure that accounting information is available in respect of all entities arrangements in the AIFC in line with the standard.

A.3. Banking information

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

149. In terms of banking information, the 2015 report concluded that banks' record keeping requirements are in line with the standard. Although there has been no change in the relevant provisions since the first round review, new legislation is in force in relation to the AIFC. General record keeping requirements in respect of all account-holders are contained in AML regulations. The availability of transaction records is primarily ensured based on accounting rules and banking law obligations.

150. Banks are required to identify beneficial owners of account-holders pursuant to CDD obligations under the AML law. These requirements are in line with the standard in respect of account-holders which are legal entities. However, the definition of beneficial owners does not provide for identification of beneficial owners of account-holders who are legal arrangements such as trusts. Consequently, beneficial owners of a trust which opens an account with a bank in Kazakhstan are not required to be identified in line with the standard. Kazakhstan is therefore recommended to address this gap.

151. The supervision of banks' record keeping requirements is carried out by the National Bank. Measures taken by the National Bank are adequate to ensure that the required records are available in line with the standard.

152. In addition to banks operating under Kazakhstan's law, it is possible to set up a bank or a branch of a bank in the AIFC. The provision of banking services in or from the AIFC is subject to licensing by the AFSA and triggers AML obligations. The obligated person is required to keep transactional records and conduct CDD, which include the identification of beneficial owners of the customer and understanding the customer's ownership and control structure. The definition of the beneficial owner is however currently not contained in the AIFC legal acts (i.e. regulations or rules) and therefore it remains unclear to what extent it is binding and enforceable. Kazakhstan is therefore recommended to address this gap. AIFC banks obligations to obtain and maintain the relevant information on account-holders is subject to supervision by the AFSA. It appears that Kazakhstan devoted sufficient resources to set up a supervisory and enforcement regime which is commensurate with the current level of development of the AIFC. Although the rules and measures currently in place seem to ensure that the relevant banking information

will generally be available in line with the standard, these measures were brought into force only in the second half of 2017 and some are still in the process of drafting, consultations or adjustments. Kazakhstan is therefore recommended to monitor the availability of banking information in the AIFC.

153. During the review period, Kazakhstan reported receiving about 100 requests related to banking information (19 at the central EOI office and about 80 at the regional offices). Kazakhstan was not able to provide the requested information in most cases. This was caused by legal constraints related to the exercise of access powers analysed in section B.1 or practical organisational aspects of exchange of information analysed under section C.5. These findings were also confirmed by two peers. None of these requests related to banking information kept in the AIFC.

154. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	The definition of the beneficial owner does not provide for the identification of beneficial owners of account-holders who are legal arrangements such as trusts. Consequently, beneficial owners of trusts or other legal arrangements which open an account with a bank in Kazakhstan are not required to be identified in line with the standard.	Kazakhstan should ensure the availability of beneficial ownership information in respect of legal arrangements account-holders.
	The definition of beneficial owners of account-holders required to be identified by banks registered in the AIFC appears in line with the standard. However, it remains unclear to what extent this definition is binding and therefore enforceable as it is not contained in the AIFC legal acts.	Kazakhstan should take further measures to ensure that banks in the AIFC are required to identify beneficial owners of all account-holders in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation need improvement.		

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	According to the AIFC Constitutional Statute, it is possible to set up a bank in AIFC. Although the applicable rules and measures seem to ensure that the relevant banking information will be generally available, they were put in place only recently and some are still not finalised.	Kazakhstan is recommended to monitor the availability of banking information with banks operating in AIFC so that banking information on all account-holders is available in line with the standard.
Rating: Largely Compliant		

ToR A.3.1. Record-keeping requirements

155. The 2015 report concluded that banks' record keeping requirements are in line with the standard. There has been no change in the relevant provisions since then.

156. General record keeping requirements in respect of all account-holders are in place through AML obligations. The availability of transaction records is primarily ensured by accounting rules and banking law obligations.

157. Records are to be retained for a period of at least five years from the date of the transaction. Sanctions for failure to maintain these records are available under the AML law as well as under accounting and banking laws. Banks are required to perform customer due diligence prior to establishing a business relationship with the client (s. 5(2) AML Law). A natural person is identified through copy of the identity card and the personal identification number. Identification of a legal person is based on copy of the statutory documents, the business identification number and the registered address (s. 5(3)). Further, banks are obliged to keep accounting records in respect of each bank account and store all documents pertaining to transactions carried out through it (s. 56 Law on Banks and Banking Activity). Detailed rules on accounting registers and documentation required to be kept in respect of each transaction are specified by the National Bank's binding orders. Banks are also required to maintain information on accounts operated by them based on their contractual obligations with clients.

158. The supervision of banks' record keeping requirements is carried out by the National Bank. The availability of records pertaining to accounts is reviewed together with the availability of information pursuant to AML rules and CDD obligations described below (see further section A.3.1). The measures taken by the National Bank are adequate to ensure that the required records are available with banks in line with the standard.

ToR A.3.1. Beneficial ownership information on account-holders

159. Banks are required to identify beneficial owners of account-holders pursuant to CDD obligations under the AML law. As discussed in section A.1.1, these requirements are in line with the standard in respect of account-holders which are legal entities.

160. The beneficial owner under the AML Act is defined as an individual with direct or indirect ownership of more than 25% of shares or the assets of an entity and/or an individual having control of an entity through other means, or on behalf of whom the entity performs transactions with money and (or) other property (s. 1(3) AML Act). The definition of the beneficial owner provides for all three aspects of beneficial ownership as defined under the standard and requires the identification of beneficial owners in cascading steps which do not represent alternative options. The regulations contain sufficient mechanism to ensure that appropriate measures are required to be taken to properly identify and verify the identity of the beneficial owner in a particular case. There is no exception from the requirement to identify beneficial owners of legal entities account-holders even in low-risk cases.

161. The definition of beneficial owners does not provide for identification of beneficial owners of account-holders which are legal arrangements such as trusts. Consequently, beneficial owners of a trust which opens an account with a bank in Kazakhstan are not required to be identified. As this is not in accordance with the standard Kazakhstan is recommended to address this gap.

162. Banks are allowed to rely on CDD measures applied by certain third parties. However, the relying bank is required to immediately obtain and keep the CDD records including underlying documentation that identifies the beneficial owner and remains ultimately responsible for ensuring that CDD measures are applied in accordance with the Kazakhstan AML law and applicable regulations (s. 5(3)(6) AML Act).

163. Banks are required to keep the identification of the beneficial owner updated (s. 5(6) AML Act). According to the AML supervisory authority, rules of internal control in the banking sector should provide for annual inspection of CDD records.

164. CDD documentation including measures taken to identify the beneficial owner and other supporting documents have to be retained by the obligated person for a period of at least five years after the business relation has ended (s. 11(4) AML Act).

165. Administrative and criminal sanctions are applicable in cases of breach of AML obligations (s. 20(1) AML Act, s. 214(1) Act on Administrative Breaches, s. 193 Criminal Code). Further, the National Bank is authorised to suspend or revoke the bank's licence.

Implementation of obligations to keep beneficial ownership information in practice

166. A dedicated department of the National Bank supervises banks' obligations to keep beneficial ownership information together with other AML requirements. The department is staffed with about 100 employees overseeing AML compliance of 34 banks and other 51 financial institutions.

167. The National Bank carries out off-site as well as on-site inspections. Off-site inspections consist of a review of the financial institution's AML internal guidelines and regulations or, where deficiencies were identified and remedial action recommended, a review of the follow up actions taken. On-site inspections consist, among others, in checking sample CDD documentation kept in respect of the clients and documentation of measures taken to establish the client's beneficial ownership. During these inspections, it is verified whether all the necessary steps were taken to identify the beneficial owners and whether the information kept by banks is accurate, adequate and up to date. Inspectors use, among other tools, government and private databases containing information relevant for the identification of beneficial owners, to verify the quality of the beneficial ownership information. Where senior management is identified as the beneficial owner of a client, care is taken to verify whether cascading measures were appropriately applied and that verification measures carried out by the bank correspond to the risk profile of the client.

168. According to the internal inspection plans, each bank is required to be inspected annually. These annual on-site inspections represent complex reviews of the bank's AML internal regulation and their implementation in practice. Accordingly, over the period under review each was reviewed at least once. Further, AML officers of the National Bank are permanently allocated in certain large banks and participate in the internal AML procedures. Finally, in addition to its planned complex inspection, the National Bank carries annually about eight ad-hoc inspections based on reports from the FIU or other sources.

169. The reported compliance with banks' CDD obligations is satisfactory. Deficiencies identified by the National Bank mainly relate to formal documentation requirements and cases where beneficial owners are not properly identified are rare. The National Bank reported that small and medium sized banks may frequently require excessive documentation not in line with the risks posed by a particular client.

170. Where deficiencies are identified, the National Bank applies enforcement measures, including financial sanctions. Over the period 2014-17 the National Bank issued 12 written warnings to banks ordering remedial actions and applied administrative fines in about 100 cases. These penalties were

related to failures to elaborate internal control rulings, to provide information on transactions which are subject to financial monitoring and failure to notify the FIU on suspicious transactions (s. 214(1) Act on Administrative Breaches and s. 20(1) AML Act).

Availability of information with banks in the AIFC

171. In addition to banks operating under Kazakhstan’s law, it is possible to set up a bank or a branch of a bank in the AIFC. Detailed rules governing their operations and information required to be available are being developed.

172. The provision of banking services in or from the AIFC is subject to licensing by the AFSA and triggers AML obligations. The obligated person is required to keep transactional records (e.g. transfer orders, cheques and account balances) and conduct CDD, which include the identification of beneficial owners of the customer and understanding the customer’s ownership and control structure (s. 5.1.3 AIFC AML Rules, AIFC Rules No. FR0008 of 2017).

173. The AIFC Glossary defines the beneficial owner as a natural person:

- a. who ultimately controls, directly or indirectly, a customer
- b. who, in relation to a customer which is a legal person or arrangement, exercises (whether directly or indirectly) ultimate effective control over the person or arrangement, or the management of such person or arrangement
- c. who ultimately owns or has an ownership interest in the customer, whether legally or beneficially, directly or indirectly
- d. on whose behalf or for whose benefit a transaction is being conducted; or
- e. on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.

A person not falling into (a) or (b) is not a beneficial owner by reason of (c) or (d) if, having regard to a risk-based assessment of the customer, the ownership interest is small and in the circumstances poses an insignificant (or no) risk of money laundering.

174. Further clarification of the concept of beneficial ownership in respect of trusts is contained in the guidance on identification and verification of beneficial owners contained in the AIFC AML Rules. According to the guidance, the identification of the beneficial owner of a trust should include the identification of the trustee, settlor, protector, enforcer, beneficiaries, other

individual persons with power to appoint or remove a trustee and any person entitled to receive a distribution, whether or not such person is a named beneficiary.

175. The guidance in the AIFC AML Rules specifies that an obligated person should take all reasonable steps to establish and understand a customer's legal ownership and control structure and identify the individual who becomes a beneficial owner based on fulfilling any of the criteria of beneficial ownership indicated above. Further, obligated persons should take substantive approach and avoid focusing purely on the legal form of control or fixed percentages of ownership at which beneficial owners are identified.

176. The above definitions of beneficial owners appear in line with the standard. However, it remains unclear to what extent these definitions are binding and therefore enforceable as they are not contained in the AIFC legal acts (i.e. regulations or rules). In view of this concern it is recommended that Kazakhstan take further measures to ensure that banks are required to identify beneficial owners of all account-holders in line with the standard. The AFSA is currently in the final stages of adopting the AIFC Glossary as its regulatory act which would make it legally binding.

177. CDD, including identification and verification of the customer, is required to be completed before establishing a business relationship or upon certain conditions within 30 days after the establishment of the business relationship (ss.5.1.2., 6.2.3 and 6.6.1 AIFC AML Rules).

178. Banks are required to verify the identification of the beneficial owner by taking reasonable measures commensurate with the risk profile of the client and to carry out ongoing due diligence (ss.6.3.1 and 6.4.1 AIFC AML Rules).

179. Banks are allowed to rely on CDD performed by specified AML obligated persons if prescribed conditions are met. The relying bank is among others required to (i) immediately obtain the necessary CDD information from the relied party; (ii) take adequate steps to satisfy itself that certified copies of the documents used to undertake CDD will be available from the relied party on request without delay; (iii) satisfy itself that the relied person is subject to regulation, including AML regulation, by a Financial Services Regulator or other competent authority in a country with AML regulations which are equivalent to the standards set out in the FATF Recommendations and it is supervised for compliance with such regulations (s. 9.1.3 AIFC AML Rules). Although a bank is allowed to rely on CDD performed by a third party, the relying bank remains ultimately responsible for compliance with CDD obligations in respect of its customers (s. 9.1.6 AIFC AML Rules).

180. A copy of all documents and information obtained in undertaking initial and on-going Customer Due Diligence including supporting records is

required to be kept for at least six years after the end of the business relationship (s. 14.5.1 AIFC AML Rules).

181. In case of failure to comply with the AML obligation, enforcement measures are applicable. These measures include de-registration and criminal penalties under Kazakhstan law applicable in respect of the senior management or employees of the bank (s. 2.2 and 3.1 AIFC AML Rules).

182. Banks' obligations to obtain and maintain the relevant information on account-holders is subject to supervision by the AFSA. The AFSA is the prudential as well as AML regulator and supervisor of the financial services sector in the AIFC. As of April 2018, one representative office of a bank is registered in the AIFC. As described in section A.1, it appears that Kazakhstan devoted sufficient resources to set up a supervisory and enforcement regime which is commensurate with the current level of development of the AIFC. The regime is in the process of being fully designed and established to ensure effective implementation of the relevant rules also in the future when more banks participate in the AIFC.

183. To conclude, although the rules and measures described above seem to ensure that the relevant banking information will generally be available in line with the standard, these measures were brought into force only in the second half of 2017 and some are still in the process of drafting, consultations or adjustments. Given these uncertainties and lack of practice, Kazakhstan is recommended to monitor the availability of banking information including beneficial ownership information in respect of all account-holders so that banking information in the AIFC is available in line with the standard.

Part B: Access to information

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

B.1. Competent authority's ability to obtain and provide information

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

185. The 2015 report concluded that Kazakhstan does not have in place adequate access powers to ensure efficient exchange information in practice. The report identified gaps in respect of (i) potential domestic tax interest restriction on the exercise of access powers, (ii) access to banking information, (iii) compulsory powers in the exchange of information context and (iv) information held by lawyers and notaries.

186. Since the 2015 report Kazakhstan has amended several laws to address the first round gaps:

- introduced new section 19(3-2) of the Tax Code
- amended section 19(8) of the Tax Code
- introduced new section 581(1-2) of the Tax Code
- introduced new section 50(6-5) in the Law on Banks
- introduced new section 18(10) of the Law on Notaries.

187. The changes made address a gap identified in respect of domestic tax interest. A new section 19(3-2) of the Tax Code explicitly authorises the tax authority to exchange information pursuant to Kazakhstan's international treaties and establishes a link between Kazakhstan's obligation under its treaties

and the tax authority's access powers which was missing at the time of the first round review. Consequently, the first round recommendation is deleted.

188. The gap in respect of access to banking information is only partially addressed. Pursuant to the amendments made in the Tax Code and the Law on Banks, Kazakhstan's law ensures that banking information can be requested in respect of all persons. However, it remains unclear whether all types of banking information can be obtained for EOI purposes. The first round recommendation is therefore amended to reflect the changes made.

189. Powers to compel the production of the information requested for EOI purposes are now in place. The explicit power to launch a cross audit (a type of tax audit used to collect information that concerns a third person) where information is requested pursuant to an EOI agreement forms a clear link to enforcement powers that are related to failure to provide information during a tax audit under sections 285(8) and 288 of the Law on Administrative offences. These provisions apply regardless of domestic tax liability being at stake.

190. Kazakhstan has taken certain measures to address also the gap in respect of information held by lawyers and notaries. However, the amendment of the Law on Notaries comes into effect only in January 2020 and does not necessarily ensure that all types of information held by notaries will be accessible. No measures were taken in respect of protection of information held by lawyers. The concern is further heightened by the fact that notaries and lawyers are an important source of beneficial ownership information based on their AML obligations. Consequently, the first round recommendation is kept and amended accordingly.

191. Kazakhstan is currently in the process of fully setting up the AIFC. General rules currently in place stipulate that persons operating in the AIFC can be subject to a tax audit allowing the competent authority to access information for EOI purposes. However, these rules are very recent, some of them are still being developed and they have not yet been tested. It is therefore recommended that Kazakhstan monitor access to information available in the AIFC so that it is accessible in line with the standard.

192. Despite concerns identified above in respect of Kazakhstan's legal framework, Kazakhstan was able to provide the requested information in the majority of cases during the period under review as was also confirmed by peers. Ownership information is generally already at the disposal of the tax administration. Accounting information is typically obtained through a tax audit. The main difficulties in practice were encountered in respect of obtaining banking information, in particular where the requested banking information did not relate to a Kazakhstan taxpayer or the taxpayer was not contactable. No information was requested from lawyers or notaries during the period under review but these professionals nevertheless remain an important potential source of information especially beneficial ownership information.

193. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	Kazakhstan's law does not ensure that all types of relevant banking information, including beneficial ownership information on account-holders, are accessible to the competent authority for EOI purposes.	Kazakhstan is recommended to clarify its law so that all types of banking information requested pursuant to a valid EOI request can be obtained in line with the standard.
	Although Kazakhstan has taken certain measures to limit the scope of protection of information held by notaries, the protection of information held by lawyers and notaries provided under Kazakhstan's law remains too wide as it covers all information received by them in connection with their professional activities. This is a concern in particular when beneficial ownership information is requested.	Kazakhstan should take further measures to ensure that the protection of information held by lawyers and notaries is consistent with the standard.
Determination: The element is in place, but certain aspects of the legal implementation need improvement.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Kazakhstan has recently introduced new provisions to ensure that (i) it can obtain banking information in line with the standard, (ii) its access powers can be used regardless of domestic tax interest and (iii) enforcement provisions apply where information requested for EOI purposes is not provided. However, these rules are not yet sufficiently tested in practice.	Kazakhstan should monitor the practical application of new provisions of the Tax Code and Law on Banks and, if necessary, take further measures to ensure that the requested information is obtained and provided in line with the standard.

Practical implementation of the standard <i>(continued)</i>		
	Underlying Factor	Recommendation
	Persons operating in AIFC can be subject to a tax audit allowing the competent authority to access information for EOI purposes. However, these rules are very recent, some of them are still being developed and they have not yet been tested.	Kazakhstan should monitor access to information available in AIFC so that the competent authority has the power to obtain and provide all relevant information requested pursuant to a valid EOI request and this power is efficiently exercised in practice.
Rating: Partially Compliant		

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

194. The tax administration (SRC) has access powers to obtain information including ownership, accounting and banking information from persons within Kazakhstan’s jurisdiction in order to comply with obligations under Kazakhstan’s EOI agreements. As described in the 2015 report, the main access power of the SRC is tax audit. This access power is broad in terms of the scope of ownership and accounting information which can be requested and obtained from a taxpayer. A tax audit may include inspection of assets which are subject to tax and of objects relating to taxation (regardless of the place of their location), inspection of documents and other information kept by the taxpayer and inspection of persons who have documents or other information concerning activities of a taxpayer under audit (s. 627 (1-2) Tax Code). A taxpayer may also be subject to several tax audits, for example a comprehensive audit to supervise compliance of the entity’s own tax affairs and a cross tax audit(s) to collect information needed to supervise compliance of a third taxpayer (s. 627 Tax Code).

Access to banking information

195. The 2015 report concluded that access to banking information under Kazakhstan’s domestic law is restricted regarding (i) the persons whose bank accounts information can be requested and (ii) the type of the information which may be requested. Consequently Kazakhstan was recommended to ensure that its competent authority has access powers in respect of all banking information requested by its EOI partners.

196. Since the 2015 report, Kazakhstan has made several legal amendments in order to address the first round recommendation:

- amended section 19(8) of the Tax Code to specify the right of the tax administration to receive information from banks and other financial institutions (including brokers and companies registrars) which is to be provided in accordance with provisions of sections 581 and 583-1 of the Tax Code
- introduced new section 581(1-2) in the Tax Code which obliges banks to provide to the competent tax authority upon its request information on the existence, number of bank accounts and on account balance, and also information on existence, type and value of other property mentioned in a request from the competent authority of another jurisdiction made in accordance with an international treaty of Kazakhstan. The information should be provided through the procedure and in the time established by the Kazakhstan competent tax authority and agreed by National Bank of Kazakhstan
- introduced new section 50(6-5) in the Law on Banks which mirrors the wording of the new section 581(1-2) in the Tax Code, thus confirming the tax administration's power to obtain specified banking information. It further specifies that the procedures and form for providing the required information will be established by the Kazakhstan competent tax authority.

197. The amendments above came into force in December 2016 and have been in effect since January 2017. According to the Kazakhstan authorities the new procedural provisions are applicable also in respect of information requested predating the date when the amendments became effective, i.e. any banking information can be requested pursuant to the new rules if a valid request is made (or resubmitted) after January 2017.

198. The amendments made clear that the Competent Authority can access banking information for the purposes of exchanging information from all account-holders (and not only taxpayers). Therefore the issue identified in the 2015 report is addressed in respect of the persons whose bank accounts information can be requested. However, as the new rules continue to list banking information which can be requested and provided by banks pursuant to a request by the tax administration, it remains uncertain whether all types of banking information are accessible. This is of a particular concern in respect of information which does not directly relate to transactions performed through the bank account such as opening account contracts, signature cards, copies of cancelled cheques, deposit slips or beneficial ownership information because these types of information are not specifically mentioned in the list. As the Tax Code or Law on Banks do not contain any

broader provision either which would allow access to all foreseeably relevant information held by banks, Kazakhstan's law does not ensure that all types of banking information can be accessed.

199. It can be argued that Kazakhstan's domestic law restrictions do not apply if banking information is requested under a treaty containing explicit obligation to provide banking information regardless of domestic banking secrecy rules (i.e. under a treaty with language akin to Article 26(5) of the OECD Model Tax Convention) as according to Kazakhstan's law a ratified international treaty prevails over the domestic law (s.4(3) Constitution and s.2(5) Tax Code). However, as already concluded in the 2015 report, it is not clear whether this rule will be applied in a way which allows Kazakhstan's competent authority to provide information which is not accessible under the Law on Banks and the Tax Code in domestic cases. Further, this rule does not seem applicable where the information is requested under a treaty which does not explicitly oblige to provide banking information. This is a concern in respect of eight Kazakhstan's treaty partners (see further section C.1.3).³

200. To sum up, Kazakhstan's domestic law does not ensure that all types of relevant banking information are accessible to the Competent Authority. Access to all types of banking information could be claimed based on the EOI provision of the treaty which would be directly applicable and prevail over domestic laws, however it is not clear that such interpretation will be applied in practice. Finally, the treaty prevails rule does not seem applicable for treaties without Model Article 26(5). In view of this, Kazakhstan is recommended to clarify its law so that all types of banking information requested pursuant to a valid EOI request can be obtained in line with the standard.

Access to information in the Astana International Financial Centre (AIFC)

201. As discussed in section A.1, the AIFC Constitutional Statute allows the establishment of entities and arrangements, operation of banks and financial intermediaries in the AIFC. The legal framework and relevant rules for the availability and access to information in the AIFC are being developed.

202. Participants in the AIFC (including entities and arrangements established under the AIFC acts) are generally exempted from corporate and individual income tax (s.6 AIFC Constitutional Statute). Nevertheless, Kazakhstan tax law remains applicable unless provided otherwise by the AIFC Constitutional Statute or AIFC acts (s.4(3) AIFC Constitutional Statute, s.1(1) Joint Order on Approval of the Rules concerning Tax

3. These jurisdictions are Belarus, Iran, Kyrgyzstan, Mongolia, Montenegro, Tajikistan, Turkmenistan and Uzbekistan.

Administration and Interaction of State Revenue Authorities with Bodies and Participants of AIFC on Taxation Matters of 22 December 2017). This means that in principle all access powers that are normally available should be applicable also in the AIFC as there is no legislation in the AIFC regulating this. However, this assumption remains to be tested. Based on section 20 of the Joint Order, AIFC entities and arrangements can be subject to a tax audit requesting information relevant for verification of their tax liability or liability of third parties. Further, the AIFC Constitutional Statute contains a provision stating that if an international treaty ratified by the Republic of Kazakhstan provides rules different to those provided by the AIFC Constitutional Statute, the rules of the international treaty must be applied. The AIFC and the SRC are in the process of adoption of additional joint order which should be put in place in June 2018. The new order will further clarify the access powers of the SRC in relation to AIFC participants.

203. General rules currently in place seem to allow access to information available in the AIFC for the purposes of exchange information. Nevertheless, given that these rules are very recent, some of them are still being developed, and given that these rules have not yet been tested, Kazakhstan should monitor access to information available in the AIFC so that the competent authority has the power to obtain and provide all relevant information requested pursuant to a valid EOI request and this power is efficiently exercised in practice.

Access to information in practice

204. During the period under review, the requested ownership information was typically already at the disposal of the tax administration as it was available in the Register of Legal Entities (typically ownership of partnerships).

205. On the other hand, provision of accounting information normally requires contacting a taxpayer as only general accounting information is filed with the tax administration and available to the Competent Authority. A tax audit is the most important general access power in these cases.

206. The most commonly used access power for EOI purposes is the cross audit, which allows collecting information needed to audit another taxpayer. Cross audits are always performed as non-scheduled tax audits. The requested information is required to be provided within 30 days since opening a tax audit unless an extension is granted (see further section C.5). According to the Tax Code they may be carried out even in relation to a previously audited period (s.627(5)). However, periods subject to any documentary audits (this includes cross audits) must not exceed the five year statute of limitations as established in application of Article 46 of the Tax Code (see further section B.1.3).

Access to banking information in practice

207. Access to information held by banks follows generally the same rules as in respect of other types of information. Where information relates to a Kazakhstan taxpayer, either as a person subject of the request or the account-holder, the tax administration opens a tax audit of the taxpayer and requests the relevant banking information from the taxpayer. In cases where banking information does not relate to a Kazakhstan taxpayer or it cannot be obtained during a tax audit, the tax administration has now in place the power to request information from a bank without launching a tax audit pursuant to the new section 581(1-2) of the Tax Code.

208. No specific identifiers are required to be provided to banks by law or regulation. However, so far there is only limited experience (if any) with obtaining banking information in cases where only a bank account number or bank card number was provided. This was mainly because banking information was so far obtained through tax audits launched in respect of a particular identified taxpayer. Kazakhstan is therefore recommended to monitor that the requested banking information can be provided also in cases where the account-holder is not identified by the name or TIN.

209. Over the reviewed period, Kazakhstan was confronted with difficulties to provide the requested banking information. One peer reported that information on bank accounts, bank account-holders, and individuals authorised to operate bank accounts of a Kazakh taxpayer, and bank statements for accounts were not provided in most of the 74 cases relating to banking information it sent under the review period. According to the Kazakhstan authorities, this was mainly because the requested banking information did not relate to a Kazakhstan taxpayer (either as the account-holder subject of the request or as a party to the transaction under investigation) or the taxpayer was not contactable and therefore it was not possible to open a tax audit. These obstacles in providing the requested banking information are now addressed with the new section 581(1-2) of the Tax Code.

210. It appears that even when the new legislation was already in force the new power was not applied in practice as reported by a peer. The Kazakhstan authorities confirmed that they are not aware of any case where the new power to require information directly from banks was applied in practice. This seems to be caused primarily by organisational deficiencies identified in section C.5.2 and result from insufficient awareness of the new rules. However, it must be noted that even if the new provision were to be applied, not all banking information might have been accessible as described previously in this Section. Nevertheless, the new legislation should allow access to certain basic banking information in all cases. Kazakhstan is recommended to monitor the practical application of the new provisions of the Tax Code and

Law on Banks and to take further measures, if necessary, to ensure that all banking information can be obtained and provided in line with the standard.

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

211. The concept of “domestic tax interest” describes a situation where a party can only provide information to another party if it has an interest in the requested information for its own tax purposes.

212. During the last review the rules in relation to domestic tax interest were identified as unclear, especially in situations where the treaty did not contain language similar to Article 26(4) of the OECD Model Tax Convention. Even in other cases it was not certain that the provision in the treaty would prevail over the domestic limitations to ensure that the requested information would ultimately be obtained by the competent authority.

213. As explained in section B.1.1, Kazakhstan introduced new section 19(3-2) in the Tax Code which explicitly gives the tax administration the authority to exchange information on the basis of the international treaties of Kazakhstan with competent authorities of foreign countries. This newly introduced provision authorising the tax authority to exchange information pursuant to Kazakhstan’s international treaties establishes a link between Kazakhstan’s obligation under its treaties and the tax authority’s access powers which was missing at the time of the first round review. The Tax Code also provides that in the case of a conflict, the ratified international treaty should prevail over the rules contained in the Tax Code. The supremacy of treaty obligations over the domestic law is further supported by the Constitution and confirmed by the official position of the Ministry of Justice. It is also noted that all of Kazakhstan’s EOI relations except for eight contain obligation to exchange information regardless of domestic tax interest. Finally, these rules are further supported by an explicit power to launch a cross audit where information is requested pursuant to “an international agreement on mutual co-operation in tax and law enforcement matters” (s. 627(5) Tax Code). Kazakhstan authorities confirmed that an international agreement on mutual co-operation in tax and law enforcement matters includes all EOI instruments such as DTCs and the Multilateral Convention. In view of the above rules, it is concluded that Kazakhstan has addressed the first round recommendation.

214. The legal amendment clarifying Kazakhstan’s access power for EOI purpose came into force in December 2016 and are applicable since January 2017 in respect of all information requested pursuant to requests received after January 2017.

215. As amendments to the relevant provisions were made recently and no information confirming their practical efficiency is available, Kazakhstan is recommended to monitor its ability to provide the requested information in cases where it has no domestic tax interest to obtain the requested information.

216. Tax periods falling outside of the statute of limitations cannot be subject to a tax audit and therefore Kazakhstan will not be able to use its access power to obtain the requested information related to tax periods outside of the statute of limitations (s. 627(11) Tax Code). The general statute of limitations period is five years after the end of the respective tax period (s. 46(2)). If the taxpayer submits additional tax report or files an appeal, the period can be extended for one year or till the appealed case is settled (s. 46(5, 7)). During the period under review, Kazakhstan declined to provide the requested information because its domestic statute of limitations lapsed and therefore it could not access the requested information in less than six cases. It is not clear what impact (if any) will the new rules have on the limitation to open a tax audit after lapse of the statute of limitations. Therefore, as already recommended above, Kazakhstan should monitor its ability to access the requested information in cases where it has no domestic tax interest to obtain the requested information (such as in cases where its domestic statute of limitations has lapsed) and if necessary take further measures so that the requested information is obtained and provided in line with the standard.

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

217. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

218. The 2015 report concluded that Kazakhstan’s enforcement powers are designed for domestic purposes and do not provide effective enforcement powers in relation to EOI requests from Kazakhstan’s treaty partners. Kazakhstan was recommended to ensure that its laws provide for effective enforcement measures and sanctions when the requested information is not provided.

219. As explained above in B.1.3, Kazakhstan improved its legislation that relates to access powers. The explicit power to launch a cross audit where information is requested pursuant to “an international agreement on mutual co-operation in tax and law enforcement matters” (s. 627(5) Tax Code) forms a clear link to enforcement powers that are related to tax audits. If the taxpayer under audit (including a cross audit) does not produce all the requested documents, the taxpayer is normally given 30 days to produce the documents or provide a written clarification why the documents are not provided. If there is no legal reason to refuse to provide the requested documents (the

person is not in possession or control of the information or claims professional secrecy) the sanctions under s.288 of the Law on Administrative offences “Failure to perform legal requirements of state revenue bodies and their civil servants” would apply. This provision foresees fines for failure to perform the legal requirements of the state revenues bodies and their civil servants by a taxpayer. The amounts of fines vary from EUR 45 to EUR 340 (i.e. 8 to 60 monthly calculation indices). On the first occasion of non-compliance by the taxpayer the lowest fine would be imposed and the fine would increase with further non-compliance. There is also a separate fine for illegal impeding of access by a civil servant of the state revenues bodies conducting tax inspection to the land or to the premise used by a taxpayer (except for resident premises) for entrepreneurial activity of EUR 255 (i.e. 45 monthly calculation indices).

220. The tax Code also contains provisions on access of officials to the offices of taxpayers to conduct tax audits. The taxpayer must allow officials of the tax authority to the territory and offices (except for housing) which are used for earning income, are taxable objects or are related to taxation. If access is denied a report signed by the taxpayer and auditor will be prepared together with written explanations as to why access was refused. Acceptable reasons are (i) the injunction has not been formulated in line with the procedure, (ii) time of the audit has expired or has not yet started, (iii) the officials conducting it are not mentioned in the injunction and (iv) officials of the tax authority do not have sufficient permits and identification (s.627 1-5 Tax Code). It appears that there are no provisions that would allow the tax authority powers to seize materials without the consent of the taxpayer.

221. A special provision applies to banks which entails a fine of EUR 170 (i.e. 30 monthly calculation indices) if the bank does not comply with a request from the tax authorities (s.285(8) Law on Administrative Offences).

222. In practice, cases where a person fails to provide information requested are not common. In cases where the person refuses to co-operate, the SRC explained that it will use its available compulsory powers. However, Kazakhstan was not able to provide statistics on cases where compulsory powers had been applied in practice. A peer reported a few cases during the period under review where the requested information was not provided and compulsory powers were apparently not used (see section C.4.1). The referred cases were processed at the regional level. Since then Kazakhstan has taken measures to prevent this situation from happening again (see further section C.5). Nevertheless, considering that measures taken by Kazakhstan to ensure that enforcement provisions are in place and efficiently used in practice are recent, Kazakhstan is recommended to monitor their practical application so that the requested information is obtained and provided in line with the standard.

ToR B.1.5. Secrecy provisions

223. The main secrecy provisions relevant in the exchange of information context are rules governing banking secrecy and legal professional privilege.

(a) Bank secrecy

224. As described in the 2015 report, Kazakhstan's law provides for bank secrecy which includes the identity of account-holders, bank account numbers, balances of bank accounts and transactional and identity information related to operations involving bank accounts (s. 50(1) Law on Banks). The protected information can be disclosed only to the account-holder, any third person on the basis of a written consent of the account-holder or to persons authorised by law (s. 50(4)).

225. The 2015 report concluded that the exception from the banking secrecy was too narrow and did not allow the tax administration to access all banking information requested pursuant to a valid EOI request. As described in section B.1.1, since then Kazakhstan has amended the Law on Banks by introduction of new section 50(6-5). The Competent Authority can now access banking information for the purposes of exchanging information from all account-holders. Therefore the issue identified in the 2015 report is addressed in respect of the scope of persons whose bank accounts information can be requested. However, as the new rules continue to list banking information which can be requested and provided by banks pursuant to a request by the tax administration it remains uncertain whether all types of banking information are accessible as required under the standard (see further section B.1.1).

(b) Legal professional privilege

226. The 2015 report concluded that the protection of information kept by lawyers and notaries was too broad and therefore had the potential to limit effective exchange of information. There has been no change made in the relevant rules in respect of lawyers and partial change was made in respect of information kept by notaries.

227. As described in the 2015 report, Kazakhstan's law provides for the protection of information held by lawyers in connection with providing legal services. The concept of legal services is broad and consists of giving consultations and advice on legal issues orally or in writing; drafting documents of legal nature; representing a client in civil legal proceedings and in administrative or criminal court proceedings; participating on behalf of a client in mediation, arbitration or in other forms of legal dispute resolutions; representing the client in front of the government bodies (s. 4(1) Law on Lawyers'

Activities). However, lawyers may also render any other legal services unless they would be in breach of law (s. 4(2)). Information covered by the secrecy protection includes information regarding content of oral or written communication with the client or other persons concerning the nature and outcomes of legal services rendered to the client and any other information related to providing legal services (s. 18(1)). The legal professional privilege contained in Kazakhstan's law was found beyond the limits of the international standard as it covered also (i) information obtained by the lawyer acting in different capacity than as an admitted legal representative (e.g. such as a company director, a trustee or a nominee shareholder), (ii) communications with third persons and (iii) purely factual information such as on the identity of a director or beneficial owner of a company. There has been no change in the relevant rules since the first round report and therefore its conclusion remains valid.

228. The 2015 report identified a similar deficiency also in respect of information held by notaries. Information received by notaries in connection with the performance of their activities is covered by the secrecy protection (s. 18(1) Law on Notaries). Notaries are allowed to draft legal documents (e.g. contracts), produce authorised copies of documents and statements, give consultations concerning notarial actions, request documents and information necessary for carrying out notarial actions, engage in scientific, pedagogical and creative activities (s. 17 Law on Notaries).

229. Since the 2015 report, Kazakhstan has amended its law to address the deficiency. According to the new section 18(10) of the Law on Notaries, the provision of information on deals and contracts of individuals to the tax administration does not represent a breach of notarial secrets. The new provision is in force since December 2017, however, it will become effective (i.e. practically applicable) only after 1 January 2020. The amendment is limiting the broad scope of protection of information held by notaries. Nevertheless, certain concerns remain. Firstly, the new provision becomes applicable only after January 2020 which represents an unduly long transitional period. Secondly, it is not clear if the exemption covers all types of information which can be relevant for a valid EOI request. The formulation “information on deals and contracts of individuals” may allow narrow interpretation which would not include for example beneficial ownership information of the established entity.

230. The 2016 ToR requires the availability of legal as well as beneficial ownership information. As described in section A.1 of this report, AML obligations of notaries and lawyers are important source of beneficial ownership information as these professionals are required to conduct CDD and identify beneficial owners of their clients. Therefore the broad concept of professional secrecy as already identified in the 2015 report gains further potential to negatively impact effective exchange of information.

231. To sum up, although Kazakhstan has taken certain measures to address the first round recommendation in respect of notaries, the protection of information held by lawyers and notaries remains too broad and has the potential to limit effective exchange of information. Kazakhstan is therefore recommended to take further measures to address the gap.

232. In practice, where the information is not already in the hands of the tax administration or other available databases, the tax administration requests information directly from the taxpayer who is obliged to provide the requested information. If information cannot be obtained from the taxpayer, the tax administration uses its access powers to request information from third parties. There was no case reported during the period under review where the information needed to be requested from a notary, lawyer or other professional not acting on behalf of his/her client under the power of attorney and there was also no case when a person refused to provide the information requested because of professional privilege (see further section C.4). However, although information was not requested from these professionals during the current review period and while taking into account they are not required to be engaged by law, these professionals still are an important source of beneficial ownership information. This is especially the case when an entity or arrangement has not engaged a financial institution in Kazakhstan but has purchased legal services from these professionals.

B.2. Notification requirements, rights and safeguards

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

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

233. The 2015 report concluded that rights and safeguards contained in Kazakhstan's law are compatible with effective EOI. There has been no change in the relevant rules or practices since then.

234. Kazakhstan's domestic legislation does not require the notification of the person subject to the EOI request prior or after the exchange of information.

235. A taxpayer (i.e. the person subject of the request or the information holder) can file an administrative appeal against the notice of the results of a tax audit or against acts of an official person (s. 666 and 686 Tax Code). A taxpayer's complaint has to be filed with the superior of the tax authority, of

which act or decision is appealed, within 30 working days from the date of delivery of the notice to the taxpayer (s. 667). The complaint has to be made in writing and has to include identification of the taxpayer, reasons why the complaint is filed and evidence supporting these reasons (s. 668 Tax Code). The tax office is obliged to decide within 30 days from the receipt of the complaint (s. 669). If the complaint against the notice on results of a tax audit is declined the taxpayer can further appeal to the Court within 15 days since receipt of the decision (s. 666(3)) (see also section C.3). Filing a complaint to the tax authority or to the Court suspends the implementation of the notice with regard to the appealed items (s. 674). It appears that filing a complaint will therefore also suspend provision of the requested information to the requesting competent authority. Kazakhstan reports that in case the taxpayer files a complaint to the court it typically takes from two to six months in domestic issues.

236. As already concluded in the 2015 report, applicable appeal rights do not seem excessive and are compatible with effective exchange of information. During the period under review, no case was reported by Kazakh authorities or peers where obtaining or providing the requested information was subject to an administrative or judicial appeal.

237. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

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

239. Kazakhstan has a broad network of EOI agreements in line with the standard. Kazakhstan’s EOI network covers 126 jurisdictions through 53 bilateral DTCs and the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention). Kazakhstan has an EOI instrument in force with 110 jurisdictions. Compared to Kazakhstan’s EOI network at the end of the first round review its possibilities to exchange of information have been affected most by the ratification of the Multilateral Convention on 8 April 2015

240. The 2015 report identified two deficiencies in relation to element C.1. Firstly, Kazakhstan’s domestic law limited access to banking information and Kazakhstan was recommended to ensure that all of its EOI relationships provide for exchange of banking information. Secondly, it was not clear how Kazakhstan’s competent authority’s access powers were legally applied in cases where information was requested for exchange of information purposes and especially in cases where there was no domestic tax interest to the requested information.

241. Since the 2015 report Kazakhstan has amended provisions in its domestic law in order to address the recommendations made. As discussed in section B.1.1 and B.1.3, the changes generally address issues identified in

the first round review although some ambiguity remains in respect of access to banking information (see further section B.1).

242. In practice, Kazakhstan’s EOI instruments are applied in line with the standard. Kazakhstan provides information to the widest possible extent. However, because the new legislation that allowed exchange of information in line with the standard entered into force in January 2017, most of the exchanges during the period under review are based on the application of the old law, and banking information could not often be provided (see section B.1.1 and C.5). It appears that even when the new legislation was already in force the new provisions regarding access to banking information were not efficiently applied in all cases at the regional level due to organisational deficiencies (see section C.5.2). Given that the new rules are not yet sufficiently tested in practice, Kazakhstan is recommended to monitor that the new rules are properly implemented in practice to allow EOI in line with the standard under all its EOI agreements.

243. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Kazakhstan has recently introduced new domestic provisions to ensure that it can provide the requested information in line with the standard under its EOI agreements. However, these rules are not yet sufficiently tested in practice.	Kazakhstan should monitor that the new rules are properly implemented in practice to allow EOI in line with the standard under all its EOI agreements.
Rating: Largely Compliant		

ToR C.1.1. Foreseeably relevant standard

244. Exchange of information mechanisms should allow for EOI on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

245. In the 2015 report all of Kazakhstan's EOI agreements were found to provide for exchange of information in line with the standard of foreseeable relevance with the exception of the DTC with Austria, which provides for EOI only for the purposes of applying the treaty. However, because both Austria and Kazakhstan are parties to the Multilateral Convention, the wording of the DTC is not a concern in practice as EOI in line with the standard is possible under the Multilateral Convention. There was no exchange of information between Austria and Kazakhstan during the period under review.

246. Since the 2015 report Kazakhstan signed two new DTCs with Serbia and Slovenia. Both of them provide for exchange of information in line with the foreseeable relevance standard.

247. Kazakhstan does not require a specific template to be used for incoming requests; however, a request should contain the basic information required by the standard. The approach is formalised in the SRC Order on Exchange of Information with Competent Authorities of Foreign States concerning Taxation (Order of the Chairman of State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan from 6/16/2015 No. 323).

248. Kazakhstan reported that it only rarely asked for clarifications during the period under review, but that exact number on clarifications is not available. At the central level, formal clarifications are requested via regular post but e-mails have also been used for simple non-confidential issues. At the regional cross-border level, phone communication is typically more widely used. The most common reason for requesting clarification is that the treaty partner has not provided sufficient identification details of the taxpayer or holder of the information in Kazakhstan.

249. Identification of the taxpayer can be done by providing different indicators. Typically more than one identifiers are necessary to uniquely identify the taxpayer such as the name and date of birth or address. Providing the tax identification number of the taxpayer often is the most efficient identifier in practice.

250. Concerning the practical application of the criteria of foreseeable relevance, Kazakhstan does not require information to be included in incoming requests that would go beyond what is required under the standard. This was also confirmed by peers as they reported no issues.

251. Kazakhstan received six EOI requests (2% of all received requests at the central level) over the period under review that were ultimately declined. Kazakhstan clarified that some of these were declined because of lack of foreseeable relevance. In these few cases the request did not contain reasons why the requested information was considered relevant or any link with an ongoing tax assessment or investigation. In all cases Kazakhstan requested clarification from the requesting jurisdiction; however, no response has been received yet. Concerning the regional level exchange, the main EOI partner reported that there was no case during the period under review where a request was declined based on lack of foreseeable relevance.

Group requests

252. None of the DTCs or domestic law of Kazakhstan contain language prohibiting group requests. Kazakhstan interprets its agreements and domestic law as allowing to provide information requested pursuant to group requests in line with Article 26 of the OECD Model Tax Convention and its commentaries.

253. The general procedures for accessing information pursuant to group requests do not differ from taxpayer-specific requests. However, Kazakhstan indicated that if the amount of requested information is high, it might have an effect on timeliness of the reply.

254. During the review period, Kazakhstan did not receive any group request and no peers reported sending a group request to Kazakhstan either.

255. As discussed under element B.1, information required to be provided to banks in order to request the relevant information typically includes identification of a specific taxpayer (or an account) in respect of which the information is requested. Although this can be done by different identifiers, it is not yet tested and remains unclear whether identification of a taxpayer based on group request will be accepted by banks. Kazakhstan is therefore recommended to monitor its ability to provide all information requested pursuant to a valid group request.

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

256. As concluded in the 2015 report, all of Kazakhstan's treaties allow for exchange of information with respect to all persons or are interpreted in such a way. This is the case also for the two new DTCs signed since then.

257. In addition to EOI under DTCs, Kazakhstan can exchange information in respect of all persons under the Multilateral Convention.

258. During the period under review there was no instance where Kazakhstan refused to exchange information on the basis that the person on whom the information is requested is not covered by the EOI provision of the treaty.

ToR C.1.3. Obligation to exchange all types of information

259. The OECD Model Tax Convention Article 26(5) and the Model TIEA Article 5(4), which are 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.

260. The 2015 report concluded that due to domestic law limitations in respect of access to banking information Kazakhstan could not exchange banking information in line with the standard with its EOI partners. Since the 2015 report Kazakhstan has made several amendments in order to address the gap in its domestic law. As discussed in section B.1.1, these amendments addressed the gap partially as it is not clear that all requested banking information can be obtained by the tax administration under Kazakhstan domestic law. Further, although the domestic law contains treaty prevails rule it is not clear whether the treaty prevails rule will be applied in a way which allows Kazakhstan's competent authority to provide information which is not accessible under the Law on Banks and the Tax Code in domestic cases. Given that it is not ensured that all relevant banking information is accessible pursuant to a valid EOI request Kazakhstan is recommended to address this gap (see further section B.1.1).

261. Further, the rule pursuant to which a treaty prevails over domestic law does not seem to be applicable where the information is requested under a treaty which does not explicitly oblige to provide banking information. Out of Kazakhstan's 53 DTCs, 11 contain language akin to the Article 26(5) of the OECD Model Tax Convention providing for the obligations of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information.⁴ With 37 of 42 remaining jurisdictions Kazakhstan can exchange information under the Multilateral Convention which contains Model Article 26(5). Therefore the treaty prevails rules does not seem to be applicable in respect of eight jurisdictions.⁵

4. These 11 DTCs are with Armenia, Finland, Former Yugoslav Republic of Macedonia, United Arab Emirates, Japan, Qatar, Serbia, Singapore, Slovenia, Spain and Switzerland.

5. These eight jurisdictions are Belarus, Iran, Kyrgyzstan, Mongolia, Montenegro, Tajikistan, Turkmenistan and Uzbekistan.

Kazakhstan should therefore work with these partners to ensure that their EOI relations are in line with the standard.

262. During the period under review, Kazakhstan received 19 requests for banking information at the central level. All these requests are reported as responded. However, one peer indicated that a response has not yet been received. Approximately 80 requests for banking information were handled directly at the regional level. No statistics are centrally available to verify in how many cases the requested banking information was provided but it is reported by a peer engaged in EOI at the regional level that in most of these cases the relevant banking information was not provided or it was provided only partially. As discussed in section B.1.1, the legal obstacles reported to cause these difficulties are now addressed. However, it appears that even when the new legislation was already in force the new power was not applied in practice as reported by a peer. This seems to be caused primarily by organisational deficiencies identified in section C.5.2.

ToR C.1.4. Absence of domestic tax interest

263. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the OECD Model Tax Convention Article 26(4) and the Model TIEA Article 5(2).

264. The 2015 report noted that Kazakhstan's law did not contain explicit rules on use of access powers for exchange of information purposes. This was especially a concern where the information would be requested under a treaty which does not contain language similar to Article 26(4) of the OECD Model Tax Convention. It was recommended that Kazakhstan clarifies its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.

265. As explained in section B.1.3, Kazakhstan has amended its domestic legislation to address the gap identified in the 2015 report. These amendments of the Tax Code ensure that Kazakhstan can now use its access powers for EOI purposes.

266. Out of Kazakhstan's 56 DTCs 11 DTCs include provision akin to the Model Article 26(4). Out of the remaining 45 treaty partners, Kazakhstan can exchange information with 37 partners under the Multilateral Convention which contains wording akin to Model Article 26(4). However, as discussed in B.1.3 and above, there are now no limitations in Kazakhstan's laws or practices with respect to access to information regardless of domestic tax interest and therefore the absence of such provision in the EOI agreement may restrict exchange of information only if such restriction exists in the domestic law of Kazakhstan's treaty partner. The remaining eight jurisdictions already

mentioned under section C.1.3⁶ have not been reviewed by the Global Forum and may have such domestic law restrictions. However, Kazakhstan does not apply reciprocity in a way which would restrict its ability to provide the information requested by these jurisdictions.

267. In practice, it is difficult to conclude whether during the period under review domestic tax interest impeded provision of the requested information because no such statistics are centrally available. As mentioned under B.1.3 and C.1.1, in a few cases the requested information was not provided because Kazakhstan's domestic five year statute of limitation elapsed. Kazakhstan confirmed that it responds to all valid requests for information consistent with the international standard whether it has or does not have a domestic tax interest in obtaining the requested information. No concerns in this respect were reported by peers either, although several cases are pending for more than a year at the regional level without providing a reason (see further section C.5). Although the legal framework does allow for exchange of information in line with the standard, given that the relevant change came into force at the later part of the period under review Kazakhstan is recommended to monitor that the new rules are properly implemented in practice to allow EOI in line with the standard under all its EOI treaties.

ToR C.1.5. Absence of dual criminality principles

268. There have been no changes since the 2015 report, which found that there are no dual criminality provisions which would limit exchange of information in any of Kazakhstan's EOI agreements. In practice, a few EOI requests related to criminal tax matters, and there has been no case where Kazakhstan declined a request because of a dual criminality requirement, as confirmed by peers.

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

269. As concluded in the 2015 report, all of Kazakhstan's EOI agreements provide for exchange of information in both civil and criminal tax matters. This is the case also in respect of the two DTCs signed after the first round review.

270. In practice, Kazakhstan provides exchange of information assistance in both civil and criminal tax matters. As Kazakhstan's procedures do not differ when gathering information for administrative or criminal tax purpose, no exact figure is available on the number of cases where information was

6. These eight jurisdictions are Belarus, Iran, Kyrgyzstan, Mongolia, Montenegro, Tajikistan, Turkmenistan.

provided for criminal tax purpose. However, Kazakhstan authorities report that during the period under review there were a few such requests.

271. No peer reported any concerns regarding Kazakhstan's ability to exchange information relevant to criminal tax matters.

ToR C.1.7. Provide information in specific form requested

272. As already concluded in the first round review, there are no restrictions in the exchange of information provisions in Kazakhstan's EOI agreements that would prevent Kazakhstan from providing information in a specific form, as long as this is consistent with the Kazakh law and its administrative practices.

273. In practice, Kazakhstan's competent authority provides information in the requested form. No peers reported any issues in relation to the form of the provided information.

ToR C.1.8. Signed agreements should be in force

274. Kazakhstan's EOI network covers 126 jurisdictions through 53 DTCs and the Multilateral Convention. Kazakhstan has an EOI instrument in force with 110 of these jurisdictions.

275. The first round report noted that the DTCs with Saudi Arabia and Qatar were not in force. Since then, the DTC with Saudi Arabia came into force in September 2016. Kazakhstan ratified the DTC with Qatar already in January 2015 but because Qatar has not completed the ratification process, the treaty is still not in force.

276. To sum up, Kazakhstan has in force all bilateral EOI treaties except for the DTC with Qatar. Sixteen jurisdictions with which Kazakhstan does not have an EOI instrument in force are signatories of the Multilateral Convention which have not yet ratified it and there is no alternative EOI instrument in force between Kazakhstan and the particular jurisdiction (see further Annex 2).

277. The following table summarises outcomes of the analysis under element C.1 in respect of Kazakhstan's bilateral EOI mechanisms (i.e. regardless of whether Kazakhstan can exchange information with the particular treaty partner also under a multilateral instrument):

Bilateral EOI mechanisms

			Total bilateral instruments
A	Total number of DTCs/TIEAs	$A = B + C$	53
B	Number of DTCs/TIEAs signed but not in force	$B = D + E$	1
C	Number of DTCs/TIEAs signed and in force	$C = F + G$	52
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	D	1
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard	E	0
F	Number of DTCs/TIEAs in force and to the Standard	F	51
G	Number of DTCs/TIEAs in force and not to the Standard	G	1

ToR C.1.9. Be given effect through domestic law

278. For exchange of information to be effective, the parties must enact any legislation necessary to comply with the terms of the agreement.

279. The 2015 report found that Kazakhstan's domestic law restricted access to certain banking information and that it was unclear whether Kazakhstan's tax authority access powers and enforcement measures could be applied in all cases especially those where there is no domestic tax at stake. As explained in section B.1, C.1.3 and C.1.4, Kazakhstan has amended its laws to address the issues identified in the 2015 report. Although certain doubts persist in respect of access to specific type of information, Kazakhstan has in place legislation necessary to give effect to its EOI instruments.

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

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

280. Kazakhstan has an extensive EOI network currently covering 126 jurisdictions through 53 DTCs and the Multilateral Convention. Kazakhstan's EOI network encompasses a wide range of counterparties, including all of its major trading partners, all the G20 members and all OECD members.

281. During the first round review Kazakhstan had signed but not ratified the Multilateral Convention and was encouraged to do so expeditiously. Kazakhstan ratified the Convention in April 2015 and it entered into force in August 2015, broadening Kazakhstan's treaty network significantly.

282. The 2015 report contained a recommendation that Kazakhstan should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners. As discussed in sections B.1 and C.1, Kazakhstan has amended its laws to address the issues identified in the 2015 report in respect of its access powers. Although doubts persist whether certain specific information requested can be accessed in an efficient manner, these concerns are related to the exercise of access powers primarily dealt with under element B.1 and do not limit exchange of information to the extent that they would preclude exchange of information under its EOI treaties once they are in force. Consequently, the first round recommendation is addressed.

283. Kazakhstan indicated that no jurisdictions contacted it during the review period to negotiate a new EOI instrument. No peers indicated that they had done so either. Kazakhstan confirmed that it is willing to enter into new EOI agreements with any jurisdiction without insisting on additional conditions. Treaties are negotiated or updates made based on practical needs. However, as the amount of jurisdictions that have joined the Multilateral Convention continues to grow, Kazakhstan does not find it necessary to update any existing DTCs that do not have the latest wording of Article 26 of the OECD model Tax Treaty.

284. As the standard ultimately requires that jurisdictions establish an EOI relation up to the standard with all partners who are interested in entering into such relation Kazakhstan is recommended to ensure that its exchange of information network continues to cover all relevant partners.

285. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.3. Confidentiality

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

286. The 2015 report concluded that all of Kazakhstan's EOI agreements have confidentiality provisions in line with the standard. This is also the case for all Kazakhstan's EOI agreements signed since the first round review.

287. There are adequate confidentiality provisions protecting tax information in Kazakhstan's domestic tax laws. These provisions also apply to information exchanged under Kazakhstan's EOI instruments. However, when the respective EOI instrument imposes different rules on the use and disclosure of the exchanged information, the rules stipulated by the respective EOI instrument are respected.

288. The confidentiality rules also cover incoming EOI request letters and only information necessary to obtain the requested information is disclosed in notices to information holders.

289. The general confidentiality rules and procedures applied by the tax authority are sufficiently robust. Generally, the same procedures concerning exchanged information apply at the central level of the tax authority as well as at the regional level and no issue in respect of confidentiality of exchanged information was reported by peers. However, only limited measures are in place to ensure consistent application of confidentiality rules specific to exchange of information at the regional level. Although the new EOI procedure provides oversight on all EOI cases processed at the regional level, it does not contain measures or guidance to ensure confidentiality of EOI cases handled at the regional level. Consequently Kazakhstan is recommended to address this concern.

290. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	The general confidentiality rules and procedures applied by the tax authority are sufficiently robust. Generally the same procedures concerning exchanged information apply at the central level of the tax authority as well as at the regional level. However, only limited measures are in place to ensure consistent application of confidentiality rules specific to exchange of information at the regional level.	Kazakhstan should put in place appropriate measures to ensure that all information exchanged at the regional level is kept confidential in line with the standard.
Rating: Compliant		

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

291. As found in the first round review, there are robust confidentiality provisions supported by sanctions protecting all tax secrets under Kazakhstan's domestic tax laws (s. 557(1), 557(4-6) Tax Code) and these also apply to information in respect of EOI requests. There has been no change in the relevant rules since then.

292. Exchanged information represents information protected by tax secrecy and in accordance with the Tax Code it is classified as information with limited access which cannot be disclosed (ss.1(3), 24(1)(4) Law on Access to Public Information). Further, internal correspondence, instructions by officials and any other information intended for internal administrative use such as EOI request letters should not be subject to disclosure (s. 24(2)). In addition, the confidentiality provisions of Kazakhstan's EOI agreements ratified by the Parliament override domestic laws.

293. As explained in the 2015 report, there is no legal requirement to disclose to the information holder the identity of the requesting competent authority or any information from the EOI request which goes beyond the description of the requested information. However, there is currently no experience with the scope of information to be disclosed to banks when requesting information without opening a tax audit. It is expected that the same information will be disclosed as when requesting information from banks in the context of a tax audit however, given the lack of any practical

case and uncertainty connected with exercise of these new access powers Kazakhstan is recommended to monitor the scope of information disclosed to banks so that only the necessary information is disclosed as required under the standard.

294. The EOI request letter can be disclosed only if a court proceeding necessitates its disclosure (see further B.2). As there were no court proceedings linked to EOI requests during the review period, Kazakhstan was not required to disclose any EOI requests in practice. Therefore, Kazakhstan does not have any practice in contacting the requesting jurisdiction before disclosing the request. Further, although there are no rules which would prohibit Kazakhstan from asking the requesting jurisdiction whether a request can be disclosed, there is no guidance to request such approval or to clarify how to proceed in cases where the requesting jurisdiction indicates that the EOI request letter should not be disclosed. It was also not clear how the tax authorities at the central level or regional level would proceed in such cases. In view of these uncertainties, Kazakhstan should ensure that the requesting jurisdiction is contacted before disclosure of the EOI request. In the case where the requesting jurisdiction indicates that the EOI letter should not be disclosed, it should be protected from disclosure to the taxpayer or holder of the information.

295. The 2016 Terms of Reference clarify that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes in accordance with their respective laws. Such an exception is in accordance with the amendment to Article 26 of the OECD Model Tax Convention. The DTCs Kazakhstan has concluded do not contain the new amendment of provision 26(2) of the OECD Model Tax Convention. The Multilateral Convention contains such provision. In practice, during the period under review, Kazakhstan reports that it never requested or was requested to share information with other governmental authorities for non-tax purposes and/or use the information exchanged for such purposes. Nevertheless, no statistics in this respect are available regarding exchange of information at the regional level.

Practical measures to ensure confidentiality of the information received

296. In practice, the EOI request and the supporting documentation including communications between Competent Authorities are treated as confidential and are subject to confidentiality rules contained in the respective EOI agreement under which they were received as well as section 557 of the Tax Code.

297. When an EOI request arrives to the SRC it is always first upon arrival registered by the registration office to a secure electronic system in accordance with the rules specified in Resolution of the Government of the Republic of Kazakhstan of 17 April 2004 № 430 About the approval of Rules of electronic document flow. The system is used to track the status of execution of the request. This system is accessible only to authorised officials on a need to know basis.

298. After registration, the registration office transfers the case to the Manager of the EOI team. This includes both the electronic file and the hard copy. At all times the file is considered confidential and kept only in restricted areas. The originals of hard copies are stored in the Non-resident Taxation Division where the EOI team is located.

299. Concerning general security, the office in which the central EOI-team is located is closed off and is protected by security guards. The building is only accessible with an ID card and a personal entry card which every employee has to have to enter the building. Mobile phones with cameras are not allowed inside the building and laptops have to be registered. Everyone entering the building will be checked for metal objects and any bags have to go through scanning.

300. General supervision of confidentiality breaches is overseen by the internal tax security department. The measures taken by the department cover the full range of activities of state revenue authorities including supervision of non-disclosure of the tax secrets. The supervision conducted by the security department consists of monitoring of outgoing and incoming communication in departmental e-mail, monitoring of Internet sites visited by employees from their official computers and analysis of outgoing mail.

301. As Kazakhstan's law only recognises hard copies as official communication, Kazakhstan exchanges all confidential information only through post. Therefore e-mail communication is used only where non-confidential information is transmitted.

302. The general confidentiality rules and procedures applied by the tax authority are sufficiently robust. Generally, the same procedures concerning exchanged information apply at the central level of the tax authority as well as at the regional level. However, only limited measures are in place to ensure consistent application of confidentiality rules specific to exchange of information at the regional level. In February 2018, Kazakhstan issued an order setting up a new procedure of co-operation between the central Competent Authority and regional offices (see further section C.5.2). Although it is expected that the new rules will increase regional offices awareness of EOI, they do not deal with confidentiality of exchanged information and how it should be ensured at the regional level. Given the above concerns, Kazakhstan is recommended to put in place appropriate measures to ensure

that all exchanged information at the regional level is kept confidential in line with the standard.

303. No case of breach of the confidentiality obligations in respect of the exchanged information has been reported by Kazakhstan’s authorities and no such case or concern in this respect has been indicated by peers.

ToR C.3.2. Confidentiality of other information

304. The confidentiality provisions in Kazakhstan’s EOI agreements and domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for information, background documents to such requests, and any other documents reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

305. In practice, SRC maintains confidentiality with respect to all communications with other competent authorities. This confidentiality is observed without regard to whether the information is in written form or communicated orally, and it extends to the incoming EOI request letter.

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

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

ToR C.4.1. Exceptions to requirement to provide information

306. As concluded in the 2015 report, all of Kazakhstan’s EOI agreements contain provisions allowing the contracting parties not to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process or information the disclosure of which would be contrary to public policy.

307. As the term professional secret is not defined in any of the agreements the meaning is derived from the domestic law of Kazakhstan. The 2015 report concluded that the scope of professional secrecy is too wide and may negatively impact exchange of information.

308. As described in section B.1.5, since then Kazakhstan has amended the law on notaries. However, as explained, there remain gaps in the new provision and it will enter into force only in January 2020.

309. There were no measures taken to ensure SRC's access to information held by lawyers. However, Kazakhstan specified that the professional secrecy rules cover only solicitors (lawyers that have the licence to appear before the court). Because these professionals are not limited only to giving legal advice for purposes where they would be allowed to refuse to provide information under the standard (i.e. a pending criminal trial) the distinction between a lawyer and a solicitor only limits the amount of professionals that are concerned by the professional secrecy rules (see section B.1.5).

310. During the period under review there was no case reported where a person refused to provide the requested information because of professional privilege. No peers reported any such case either. However, the information on the regional exchange of information of Kazakhstan is not fully available to the assessment team, and peers reported that reasons for not providing all requested information were not always provided.

311. One peer engaging in regional EOI with Kazakhstan reported that in a few cases Kazakhstan had not provided all requested information because the taxpayer refused to provide the information with reference to article 16 of the Tax Code of Kazakhstan. The article stipulates that the taxpayer shall be guaranteed protection of his/her rights and legitimate interests in accordance with the procedures in the Tax Code and other legislative acts of the Republic of Kazakhstan. The regional authorities did not pursue these cases further and no sanctions were applied. It is unclear what the concrete reason was for refusal to provide the requested information as these cases were handled at the regional level. Kazakhstan authorities explained that there is no legitimate ground for the taxpayer to refuse to provide information requested pursuant to a valid EOI request based on the said article. Given lack of further details, it is difficult to conclude whether in these cases a reference was made to specific grounds allowing not to provide information such as under Model Article 26(3). Nevertheless based on the available information it appears very likely that the reported difficulties can be attributed to the organisational issues analysed in section C.5.2 of this report. Since then Kazakhstan has taken measures to prevent similar situations from occurring in the future mainly by ordering closer co-operation between the central competent authority and regional offices (see further section C.5.2).

312. The table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	Kazakhstan's EOI agreements do not define the term "professional secret" and the scope of the term under its domestic law is wider than permitted by the international standard. The concern is further heightened by the fact that beneficial ownership information is in many occasions held by these persons, and professional secrecy might hinder the competent authority's access to the information.	It is recommended that Kazakhstan limits the scope of "professional secret" in its domestic law so as to be in line with the standard for exchange of information.
Determination: In place, but needs improvement		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

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

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

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

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.

- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions

314. As the first review of Kazakhstan dealt only with its legal and regulatory framework, the 2015 report did not analyse Kazakhstan's exchange of information practice.

315. Kazakhstan has in place an active EOI programme and exchanges information mainly with its neighbours and other CIS countries. The volume of outgoing and incoming exchanges is significant. Most of these exchanges are carried out directly at the regional level.

316. The processes at the central level are mostly in place and ensure efficient exchange of information, with the exceptions of provision of status updates as confirmed by peers. The reported timeliness of responses is excellent with 80% out of 297 requests received at the central level responded within 90 days. Nevertheless, information on timeliness of responses and on status of handled requests provided by Kazakhstan frequently differs from information provided by its EOI partners. In order to address this concern Kazakhstan has contacted its main EOI partners to ensure better co-ordination in the future.

317. About 80% of EOI cases are handled directly at the regional level. During the period under review, the regional offices were operating without adequate oversight in relation to exchange of information which led to uneven exchange of information performance over the review period. Although peers feedback is generally positive, a few peers reported instances where exchange of information with Kazakhstan was not satisfactory either in terms of the provided information or requests made by Kazakhstan.

318. Kazakhstan adopted a new procedure by an Order of the Chairman of the SRC in February 2018 which provides for improvements to the EOI procedure used by the regional authorities. The new procedure seems to address the concerns reported by peers. Nevertheless, as these improvements are recent Kazakhstan should monitor their implementation so that exchange of information is carried out in an effective manner in all cases.

319. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	During the review period Kazakhstan's exchange of information at the regional level did not ensure efficient exchange of information in all cases as reported by a few peers. In order to address this, Kazakhstan adopted a new EOI procedure in February 2018. Kazakhstan has also taken several steps to improve co-ordination with its EOI partners. However, as these measures are recent their impact on EOI practice remains to be seen.	Kazakhstan should monitor the implementation of the recently taken measures so that exchange of information is carried out in an effective manner in all cases.
	Kazakhstan did not provide status updates to its treaty partners in the majority of the cases that were pending more than 90 days.	Kazakhstan should ensure that it provides status updates in all cases to which it is not able to reply within 90 days.
Rating: Largely Compliant		

ToR C.5.1. Timeliness of responses to requests for information

320. Over the period under review (1 July 2014 to 30 June 2017), Kazakhstan received 297 request for information handled at the central level. Kazakhstan also exchanges information directly at the regional level with Russia, Belarus and Ukraine. Although no exact statistics are centrally available, it is estimated that the central authority co-ordinates about 20% of all received EOI requests.

EOI requests received at the central level

321. The following table relates to the requests during the period under review which were processed at the central level. The table gives an overview of response times needed by the central authority to provide a final response to these requests together with a summary of other relevant factors impacting the effectiveness of Kazakhstan's exchange of information practice during the reviewed period. The numbers also include the requests that were transferred from the central level to the regional level in order to collect information pertaining to the request.

	2014		2015		2016		Total		
	Num.	%	Num.	%	Num.	%	Num.	%	
Total number of requests received	[A+B+C+D+E]	92	31	124	42	81	27	297	100
Full response: ≤90 days		74	80.4	87	70.2	79	97.5	240	80.8
(cumulative) ≤180 days		89	96.7	110	88.7	80	98.8	279	93.9
(cumulative) ≤1 year	[A]	90	97.8	121	97.6	80	98.8	291	97.9
>1 year	[B]	0	0	0	0	0	0	0	0
Declined for valid reasons		2	2.2	3	2.4	1	1.2	6	2
Status update provided within 90 days (for responses sent after 90 days)		0		0		0		0	
Requests withdrawn by requesting jurisdiction	[C]	0		0		0		0	
Failure to obtain and provide information requested	[D]	0		0		0		0	
Requests still pending at date of review	[E]	0		0		0		0	

Notes: Requests are counted as per the number of taxpayers subject of the request, i.e. if one EOI letter relates to several taxpayers it is counted multiple times based on the number of taxpayers subject of the letter.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

322. During the reviewed period the central authority was able to reply to 81% of all requests within 90 days and 94% of all requests within 180 days. Short response times were kept during all three years of the period under review.

323. Reasons for not being able to respond within 90 days did not relate to any particular type of information or procedure used. Although in cases where response was not provided within 90 days the requested information was obtained through a local tax office, this was typically the case also for requests responded within 90 days.

324. Two percent of requests (six cases) received by the central authority of Kazakhstan during the review period were declined. Kazakhstan explained that the reasons for declining these requests were (i) expiry of the statute of limitation or (ii) lack of foreseeable relevance. As described in section B.1.3, after lapse of the five year statute of limitation under Kazakhstan's Tax Code, Kazakhstan's law does not allow opening an audit to obtain the requested information. In all these cases Kazakhstan responded to the requesting jurisdiction and explained the reason why the requested information cannot be provided. In cases where the EOI request lacked foreseeable relevance, the request did not contain reasons why the requested information is considered relevant or any link with ongoing tax assessment or investigation. In these cases Kazakhstan requested clarification from the requesting jurisdiction; however, no response has been received yet. The peer feedback

did not indicate an issue in respect of requests declined by Kazakhstan or its implementation of foreseeable relevance or domestic tax interest (see further sections C.1.1 and B.1).

325. During the period under review Kazakhstan did not provide status updates within 90 days where it was not able to provide the requested information. This was also confirmed by peers. Kazakhstan explained that this was due to high percentage of replies provided within 90 days. Although it is acknowledged that Kazakhstan provided responses within 90 days in the majority of the cases handled at the central level, it is recommended that Kazakhstan provides status updates in all cases to which it is not able to reply within 90 days, in accordance with the standard.

326. Based on the information provided by the Kazakhstan authorities, no request received during the reviewed period at the central level was withdrawn by the requesting jurisdiction, was not responded or remains to be processed.

EOI requests received at the regional level

327. The regional exchanges cover about 80% of all Kazakhstan's EOI in direct taxes. It is estimated that Kazakhstan received at the regional level approximately 1 200 requests counted per the number of taxpayers. Based on the statistics provided by the main EOI partner at the regional level, about 75% of all requests were replied within 90 days, additional 18% were replied within 180 days, 1% within one year and 6% after more than a year. Exchanges with this main regional EOI partners represent about 90% of all regional exchanges. However, no statistics are centrally available to the Kazakhstan Competent Authority or at the regional level to confirm this information.

328. Neither Kazakhstan nor any of the peers engaged in regional exchange of information with Kazakhstan reported cases where provision of the requested information was explicitly declined. However, there were some cases where a full response was not provided (see further section C.5.2). Further, a peer reported about 6% of requests sent to Kazakhstan as pending with the majority of these requests pending for more than a year. Most of these pending requests relate to banking information but some also relate to accounting and ownership information (see further section B.1). Although these requests have been pending for a significant period of time, the peer reports that no status updates or reasons for not providing the requested information were communicated.

329. Kazakhstan confirmed that there had been such cases and reported that it had contacted the peer to identify these cases. There were in total 95 cases open but 93 have since then been replied to. Kazakhstan confirmed

that most cases related to banking information and the delay was caused by the fact that the regional authority did not apply the new provisions that would have allowed access to banking information without conducting a tax audit.

330. Kazakhstan generally did not provide status updates at the regional level during the reviewed period. It is however reported that in many cases progress in handling the request was communicated upon request via phone. As the standard requires that status updates should systematically be provided within 90 days even where not specifically requested by the requesting jurisdiction, Kazakhstan is recommended to take measures to ensure that status updates are provided in line with the standard in all cases.

Co-ordination with EOI partners

331. Information on timeliness of responses and on status of handled requests frequently differs between Kazakhstan and its EOI partners. These discrepancies relate mainly to the statistics kept at the central level as no similar statistics are available in Kazakhstan for EOI at the regional level. This is the case in particular in respect of pending requests. Four peers indicated that a few of sent requests were pending responses for more than a year. However, the statistics provided by Kazakhstan do not reflect these cases. Further discrepancies relate to the timelines of responses. One peer reported that it sent 17 requests in 2016 of which eight were replied within 90 days and another nine within 180 days. However, the statistics provided by Kazakhstan indicate that 97.5% of all cases were replied within 90 days and only one request received during 2016 was replied within 180 days.

332. There can be several reasons to explain the discrepancies. One of the reasons can be the quality of statistics or method of counting requests and responses. Further, as Kazakhstan sends all replies via regular post it is possible that these differences originate from the fact that it takes time for the post to arrive to the requesting jurisdiction or the letter can get lost during the transmission. It cannot be also excluded that some of the request letters sent by regular post did not reach the Kazakhstan Competent Authority either because of postal failure or wrong address. Nevertheless these discrepancies point at need for improvement in co-ordination between Kazakhstan and its EOI partners.

333. Kazakhstan acknowledges room for improvement in this area and has already taken several measures to address these concerns. Kazakhstan contacted peers who reported outstanding requests in view of responding to these requests expeditiously and to establish improve co-operation in the future mainly through streamlined communication. Up to date contact details of the Kazakhstan competent authority are available in the Global

Forum Competent Authority secure database. Kazakhstan also indicated its willingness to broaden the scope of electronic communication in the EOI context (see further section C.5.2). Finally, steps were taken to establish better co-ordination with the regional level so that EOI requests are consistently treated in accordance with the applicable rules and the necessary statistics for this purpose are available. These initiatives seem to address the above concerns. However, as they were taken after the period under review their impact on EOI practice remains to be seen. Kazakhstan is therefore recommended to monitor their effective implementation.

ToR C.5.2. Organisational processes and resources

334. According to Kazakhstan's DTCs and the Multilateral Convention the competent authority for EOI purposes in Kazakhstan is the Ministry of Finance. Competence for practical exchange of information has been delegated to the State Revenue Committee operating under the Ministry of Finance (Regulations on the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan).

335. In the SRC, exchange of information work is conducted at both central and regional levels. The central level exchange is co-ordinated from within the Division on Taxation of Non-residents which is divided in three working areas (Methodology, Administration and Exchange of information). In total there are 26 employees in the Division. The central EOI team consists of a Manager and four EOI officers. The team is responsible for managing the workflow of specific, spontaneous and automatic exchanges, co-ordinating Kazakhstan's overall participation in international information exchange area and administering Kazakhstan's Competent Authority arrangements. The new procedure adopted on 21 February 2018 additionally introduced a supervisory role in relation to regional exchange of information (see below). In addition, the team also works with Mutual Agreement Procedures. The Manager oversees all functions of the EOI team and works directly under the head and deputy head of the Division.

336. In addition to exchange of information through the Competent Authority at the central level, Kazakhstan exchanges information with Russia, Azerbaijan and Belarus directly at the regional level (i.e. regional and local level of tax administration). The regional offices of these three jurisdictions may send the request directly to any of the 16 regional units of the SRC. The regional unit can collect the information itself or, more frequently, forward the case to the local level depending on the location of the individual or company. Prior to the new EOI procedure adopted on 21 February 2018 the central authority only had a role in these cases if it was contacted either by the regional authority or by the requesting jurisdiction, which very rarely occurred in practice. However, in accordance with the new procedure, all

the regional authorities must submit monthly reports of all sent and received requests and on their progress to the central authority. A special template must be used to file the report which contains basic information about the EOI-case and the report must be signed by the head or deputy head of the regional authority.

337. Kazakhstan has not yet received any requests that relate to the AIFC. There is not currently a separate EOI-procedure set up which would apply only to the AIFC. As mentioned in Section B.1, the tax authority has powers to perform audits on entities operating in the AIFC. Therefore, the EOI procedure and access, in theory, would not differ from the procedure that applies normally. The AIFC and the SRC are in the process of adoption of a joint order which should be put in place in June 2018. It is understood that the order will clarify the co-operation of the AFSA and SRC when dealing with EOI cases.

Processing of incoming requests

338. The EOI requests that arrive at the central authority are first processed by the registration unit of the SRC and basic information about the case is inputted to an electronic document management system. In the case of exchange of information letters, the registration unit sets a time limit of 30 days to reply to the request and transfers the case to the Manager of the EOI-team. This time limit can later be extended upon request of the EOI-team.

339. The Manager of the EOI-team transfers the case to an EOI officer. If the request can be answered directly with the information in the possession of the SRC, the officer will proceed to draft the reply with the available information. However, in most cases a tax audit needs to be performed to collect the information. Therefore, the EOI officer creates a request to the electronic system to ask for a tax audit to be performed. The audit-request is sent electronically to the regional tax office where the target taxpayer or information holder is located. The EOI officer also sends the full EOI-request to the specific regional office via regular post. The regional office may decide to delegate the case forward to a local office or perform the tax audit itself. After the tax audit is conducted, the regional office sends the results via the electronic system to the EOI team in the central office and the EOI-officer in charge of the case prepares a draft reply.

340. In every phase the status of the case is updated in the electronic system and it is always possible to track the current status of a case.

341. The draft reply is checked and signed by the Manager of the EOI team. Before the reply is sent, it is also reviewed by the head of Division.

342. Kazakhstan did not have any binding guidelines applicable to the regional authorities prior to February 2018. Kazakhstan was able to provide only limited information about the processes in handling requests arriving directly at the regional level. The processes regarding the registration of cases, collecting information and replying to requests were reported to be similar to that at the central level. Even though the same document management system is used in the central authority and in the regional offices, the central authority does not have access to the materials of the cases processed by the regional offices. Prior to the new procedures there were no reporting obligations or co-ordination with the central authority on exchange of information.

343. The new procedure applicable from 21 February 2018 provides for significant improvements to the procedures applicable to regional authorities. Most notably 1) registration of the request to the electronic document management system, 2) acknowledgement of receipt to the requesting state within 5 working days, 3) time limit of 30 calendar days for collecting the requested information (which can be postponed by submitting a request to the director of the Methodology Division) and 4) informing the central authority when the regional authority is not able to reply within 3 months of receipt of the request. Further, the regional authorities must submit a report each month to the central authority about received and sent requests and their status by using a specific template allowing the central authority to monitor the quality and timeliness of responses and prepare the necessary statistics of all sent and received requests.

344. The peer feedback in relation to the regional exchanges during the period under review is generally positive in terms of the timeliness of responses as well as the quality of provided information. However, in certain cases the reported exchange of information was not satisfactory. The reported cases include situations where a reply was provided but it lacked the requested information, only partial replies were provided without explaining reasons and in a few cases a Kazakh taxpayer was allowed to refuse to provide information on grounds that should not be acceptable under Kazakh law (see section C.4). Most cases where no or only partial information was provided related to banking information (see further section B.1).

345. The reported issues seem to have resulted from lack of supervision of exchange of information at the regional level, which raises concerns mainly in respect of (i) consistency of applied rules and procedures, (ii) quality of provided responses, (iii) training and EOI awareness of officials dealing with requests at the regional level and (iv) efficient co-ordination with Kazakhstan's EOI partners at the central level. The new procedure addresses most of these concerns, as it introduced consistent operating rules for the regional authorities addressing concern (i) above, guidelines on improving

quality of the replies including obligation to reply to all of the questions indicated by the requesting jurisdiction (ii) and an order to ensure that the new legislation that allows access to banking information is applied effectively and that no refusals are given with regard to banking secrecy (iii). With regard to training there is still room for improvement as the order was only sent in written form and no training was yet provided. Kazakhstan had also contacted its main regional EOI partner to clarify which cases are pending and annexed the list (95 in total) to the order, ordering the regional authorities to provide a reply to all cases.

346. Given that the new EOI procedure was recently adopted, Kazakhstan is recommended to monitor that the new procedure ensures efficient exchange of information at the regional level in line with the standard.

347. Resources allocated to exchange of information upon request at the central level seem appropriate as confirmed by the statistics on timeliness of responses in section C.5.1 and as confirmed by the mainly positive peer feedback. Nevertheless, as the central level recently received more supervision and monitoring responsibilities it is likely that more resources will be needed.

Processing of outgoing requests

348. The 2016 ToR covers requirements to ensure the quality of requests made by the assessed jurisdiction.

349. Kazakhstan has substantive experience with requesting information pursuant to its EOI instruments. As in the case of incoming requests, Kazakhstan main EOI partners are its neighbours and other CIS countries. During the period under review Kazakhstan sent 294 requests for information related to direct taxes from the central authority. About 900 requests were also made directly at the regional level. The number of requests is counted per the number of taxpayers concerned.

350. The initiating tax auditor is required to submit the request for information to the EOI-Manager in writing. There is a template typically used which is distributed to tax auditors to ensure that all information needed to process an outgoing request is provided. Kazakhstan explained that the template has been in use from June 2015 and that before it was in use, information provided by auditors had varying quality, which may have reflected negatively to some of the requests Kazakhstan had sent. The request template contains the main elements to demonstrate foreseeable relevance of the request as contained in the Model TIEA Article 5(5). However, the template does not require to explain grounds for believing that the information requested is held in the requested jurisdiction (i.e. letter d) of Article 5(5)), or to provide statements that the request is in conformity with the law and administrative practices of Kazakhstan and that Kazakhstan has pursued all

means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties (i.e. letters f) and g) of Article 5(5)). Kazakhstan should therefore amend the template and bring it fully in line with Model TIEA Article 5(5) to prevent delays in processing its outgoing requests.

351. Once the EOI Manager receives a request from a tax auditor the case is assigned to one of the four EOI officers. If there is not enough information to draft a valid request, the EOI officer will contact the auditor to ask for more information. When the case fulfils all the criteria for a valid request, the EOI officer then prepares a request using the appropriate format and submits the request to the EOI Manager for review. All outgoing requests must be signed first by the Manager of the EOI team and checked by the head of Division. The process is similar to that of replies to incoming requests.

352. Kazakhstan has in place adequate processes to ensure that requests made at the central level meet the standard. The sufficient quality of requests has been also generally confirmed by peers. In cases where clarifications are requested generally the same procedure applies as in the case of replying to an incoming request. Kazakhstan reported that requested clarifications are normally responded within 90 days. During the period under review, clarifications were made in respect of (i) confirmation of the period covered by the requests, (ii) the identity of the Kazakhstan entity, (iii) whether domestic avenues had been exhausted and (iv) whether the statute of limitation has lapsed. Although the exact number of request for clarifications is not available, based on the peer input received, the proportion of requests where clarification was needed is rather low. There also does not appear to be any pattern in respect of requested clarifications. In one case a peer indicated that it had received a group request from Kazakhstan. The request did not explain the reason to believe that the taxpayers in the group for whom information was requested had been non-compliant with a tax law in Kazakhstan. The peer also indicated that they did not receive any reply to the clarification request. No other cases where clarifications remained unanswered are reported.

353. The majority of requests made by Kazakhstan is exchanged at the regional level. According to Kazakhstan authorities, procedures similar as those at the central level applied during the peer review period. The new EOI procedure explained above also contains provisions on sending requests and includes a template to be used in sending requests. The central authority has the responsibility to monitor the quality and completeness of requests made. However, as the procedure is new, its impact on EOI practice remains to be seen.

354. The quality of requests made at the regional level during the period under review was generally satisfactory but varied in some instances as it was not ensured that all requests consistently meet the standard criteria. The regional tax offices were operating independently and may have varying

processes and resources in place which impact the overall quality of requests made. A peer engaged in regional exchange indicated that the requests from Kazakhstan did not always meet the foreseeable standard, were sometimes incomplete (e.g. missing description of the requested information) and not supported by relevant documents. Nevertheless, the peer also mentioned that these deficiencies did not cause significant delays because the doubts were quickly resolved through direct communication with the respective regional office.

355. The same general concerns (i.e. consistency, quality, training and co-ordination with EOI partners) as in respect of incoming requests arise. However, as was the case with incoming requests, the new procedure seems to address these concerns. Given that the new EOI procedure was recently adopted, its impact on EOI practice remains to be seen. Kazakhstan is recommended to monitor that the new procedure ensures efficient exchange of information in line with the standard.

Communication

356. Kazakhstan accepts requests in English or Russian. If the request is not in English or Russian the requesting competent authority will be asked to translate the request. Kazakhstan sends outgoing requests in both English and Russian as agreed with the particular treaty partner. Internal communication in which the EOI-team communicates with regional offices of the SRC is conducted via the internal system used to manage documents, secured internal e-mail, by telephone, or sometimes in person.

357. Kazakhstan's regulatory framework and administrative practices require that all official communication must be done via regular post and this is also the case for international exchange of information. However, e-mail is sometimes used for non-classified communication, including confirmation of receipt and simple clarifications. In case a treaty partner would send a request to Kazakhstan via e-mail, Kazakhstan explained that they would contact the particular partner and ask them to send the request via regular post. However, there has been no such case in practice. Given that regular post may not ensure confidentiality of exchanged information and timeliness of transmission in all cases (see also section C.5.1), Kazakhstan should use more efficient communication tools such as emails with encrypted attachments.

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

358. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report in section B.1, there are no further issues that would appear to restrict effective exchange of information in Kazakhstan.

Annex 1: List of in-text Recommendations

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

- Section A.1.1: Kazakhstan is recommended to put in place appropriate mechanism to ensure that ownership information kept by a company registered in the AIFC is required to be up to date.
- Section A.1.3: Kazakhstan should take measures to ensure that adequate, accurate and up to date ownership information is available in respect of all domestic partnerships entered in the Register of Legal Entities.
- Section A.1.3: Kazakhstan should introduce sanctions for failure to maintain register of partners applicable on general and limited liability partnerships registered in the AIFC.
- Section A.2.1: Kazakhstan should take further measures to improve the corporate income tax filing rate.
- Section B.1.1: Kazakhstan should monitor that the requested banking information can be provided also in cases where the account-holder is not identified by the name or TIN.
- Section C.1.1: Kazakhstan is recommended to monitor its ability to provide all information requested pursuant to a valid group request.
- Section C.1.3: Kazakhstan should work with Belarus, Iran, Kyrgyzstan, Mongolia, Montenegro, Tajikistan, Turkmenistan and Uzbekistan to ensure that their EOI relations are in line with the standard.

- Section C.2: As the standard ultimately requires that jurisdictions establish an EOI relation up to the standard with all partners who are interested in entering into such relation Kazakhstan is recommended to ensure that its exchange of information network continues to cover all relevant partners.
- Section C.3.1: Kazakhstan is recommended to monitor the scope of information disclosed to banks so that only the necessary information is disclosed as required under the standard.
- Section C.3.1: Kazakhstan should ensure that the requesting jurisdiction is contacted before disclosure of the EOI request to determine whether the EOI request letter can or cannot be disclosed.
- Section C.5.2: Kazakhstan should amend its template request and bring it fully in line with Model TIEA Article 5(5) to prevent delays in processing its outgoing requests.
- Section C.5.2: Kazakhstan should use more efficient communication tools such as emails with encrypted attachments.

Annex 2: List of Kazakhstan’s EOI mechanisms

1. Bilateral instruments for the exchange of information

EOI partner	Type of agreement	Date signed	Date entered into force
Armenia	DTC	06-Nov-06	19-Jan-11
Austria	DTC	10-Sept-04	1-Mar-06
Azerbaijan	DTC	16-Sept-96	7-May-97
Belarus	DTC	11-Apr-97	13-Dec-97
Belgium	DTC	16-Apr-98	13-Apr-00
Bulgaria	DTC	13-Nov-97	24-Jul-98
Canada	DTC	22-Sept-94	26-Feb-97
China (People’s Republic of)	DTC	12-Sept-01	09-Aug-03
Croatia	DTC	12-Oct-17	Not yet in force
Czech Republic	DTC	25-Oct-94	22-May-95
Estonia	DTC	1-Mar-99	19-Jul-00
Finland	DTC	24-Mar-09	05-Aug-10
France	DTC	03-Feb-98	01-Aug-00
Georgia	DTC	11-Nov-97	05-Jul-00
Germany	DTC	26-Nov-97	21-Dec-98
Hungary	DTC	7-Dec-94	03-Mar-96
India	DTC	09-Dec-96	02-Oct-97
Iran	DTC	01-Jan-96	03-Apr-99
Ireland	DTC	26-Apr-17	01-Jan-18
Italy	DTC	22-Sep-94	26-Feb-97
Japan	DTC	19-Dec-08	30-Dec-09
Korea	DTC	18-Oct-97	09-Apr-99
Kyrgyzstan	DTC	8-Apr-97	31-Mar-98

EOI partner	Type of agreement	Date signed	Date entered into force
Latvia	DTC	06-Sep-01	02-Dec-02
Lithuania	DTC	7-Mar-97	11-Dec-97
Luxembourg	DTC	26-Jun-08	11-Dec-13
Former Yugoslav Republic of Macedonia	DTC	2-Jul-12	01-Jan-16
Malaysia	DTC	26-Jun-06	27-May-10
Moldova	DTC	15-Jul-99	25-Feb-02
Mongolia	DTC	12-Mar-98	02-Dec-99
Netherlands	DTC	24-Apr-96	27-Apr-99
Norway	DTC	03-Apr-01	24-Jan-06
Pakistan	DTC	23-Aug-95	29-Jan-97
Poland	DTC	21-Sept-94	13-May-95
Qatar	DTC	19-Jan-14	Not yet in force
Romania	DTC	21-Sept-98	21-Apr-00
Russia	DTC	18-Oct-96	29-Jul-97
Saudi Arabia	DTC	07-Jun-11	1-sept-2016
Serbia	DTC	28-Aug-15	01-Jan-17
Singapore	DTC	19-Sep-06	14-Aug-07
Slovak Republic	DTC	21-Mar-07	1-Jan-11
Slovenia	DTC	10-Mar-16	1-Jan-2017
Spain	DTC	02-Jul-09	18-Aug-11
Sweden	DTC	19-Mar-97	02-Oct-98
Switzerland	DTC	21-Oct-99	24-Nov-00
Tajikistan	DTC	16-Dec-99	07-Nov-00
Turkey	DTC	15-Aug-95	23-Dec-03
Turkmenistan	DTC	27-Feb-97	10-Mar-00
Ukraine	DTC	9-Jul-96	04-Apr-97
United Arab Emirates	DTC	22-Dec-08	27-Nov-13
United Kingdom	DTC	21-Mar-94	15-Dec-96
United States	DTC	24-Oct-93	01-Jan-96
Uzbekistan	DTC	12-Jun-96	21-Apr-97
Viet Nam	DTC	31-Oct-11	01-Jan-16

2. Other bilateral arrangements that allow for exchange of tax information

Agreement between Government of Russian Federation and Government of Republic of Kazakhstan on cooperation and mutual assistance on tax legislation compliance (Minsk city, 1998, September 30)

3. Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Multilateral Convention).⁷ The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The amended Convention was signed by Kazakhstan in December 2013 and entered into force on 1 August 2015 in Kazakhstan. Kazakhstan can exchange information with all other Parties to the Multilateral Convention.

As of 12 June 2018, the amended Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People’s Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,⁸ Czech Republic, Denmark, Estonia, Faroe Islands (extension by

7. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.
8. 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

Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the following are the jurisdictions that have signed the amended Convention, but where it is not yet in force:⁹ Armenia, Bahamas (entry into force on 1 August 2018), Bahrain (entry into force on 1 September 2018), Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Grenada (signature on 18 May and instruments deposited on 31 May; entry into force on 1 September 2018), Hong Kong (China) (extension by China, entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Macau (China) (extension by China, entry into force on 1 September 2018), Morocco, Paraguay (signature on 29 May 2018), Peru (entry into force on 1 September 2018), Philippines, Qatar, Turkey (entry into force on 1 July 2018), United Arab Emirates (entry into force on 1 September 2018) and United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

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.

9. Note that while the last date on which the changes to the legal and regulatory framework can be considered was 18 April 2018, changes to the treaty network that occur after that date are reflected in this Annex.

Annex 3: Methodology for the review

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

This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 24 April 2018, Kazakhstan's EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2014 to 30 June 2017, Kazakhstan's responses to the EOIR questionnaire and the follow-up questions, information supplied by partner jurisdictions, information independently collected by the assessment team, as well as information provided by Kazakhstan's authorities during the on-site visit that took place from 15-18 February 2018 in Astana, Kazakhstan.

List of laws, regulations and other material received

Commercial laws

Law On State Registration of Legal Entities and Record Registration of Branches and Representatives

Law on Joint Stock Companies

Law on securities Market

Regulatory and anti-money laundering/anti-terrorist financing laws

Civil Code of republic of Kazakhstan

Law On Counteraction of Legitimation (Laundering) of Incomes Received by Illegal Means and Financing of Terrorism

Law on Administrative Infractions

Law on National Archival Fund and Archives

Law on Lawyer activities

Law on Notaries

Tax laws

Tax Code

Regulations on the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan

SRC guidance on international treaties

Astana International Financial Centre

Laws and regulations available at www.aifc.kz/

Constitutional Statute of the Republic of Kazakhstan of the Astana International Financial Centre No. 438 ZRK (7 December 2015).

Decree of the president on Approval of the Statute of the Astana International Financial Centre Management Council and its Composition (31 December 2015).

AIFC Regulations On AIFC Acts 2017 (20 December 2017)

AIFC Companies regulations 2017 (20 December 2017)

AIFC Companies Rules 2017 (GR004 of 2017)

AIFC Special Purpose Companies Rules (GR001 of 2017)

AIFC AML Rules 2017 (FR0007 of 2017)

Authorities interviewed during on-site visit

Ministry of Justice

State Revenue Committee of Ministry of Finance

- Division on Taxation of Non-residents/EOI-team
- Financial Monitoring Committee
- Economic investigation service

National Bank of Kazakhstan

Astana Financial Services Authority (of Astana International Financial centre)

Current and previous review(s)

This report is the second review of Kazakhstan conducted by the Global Forum. Kazakhstan previously underwent an EOIR review of the first round of reviews: the 2015 Phase 1 Report. Kazakhstan’s assessment during the first round of reviews was conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology (2010 Methodology) used in the first round of reviews. The 2015 Phase 1 Report reviewed Kazakhstan’s legal and regulatory framework. This second round review analyses Kazakhstan’s legal and regulatory framework as well as its implementation in practice.

Summary of Reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
EOIR report 1st round of reviews, Phase 1 report	Ms Ann Andréasson, International Tax Office, Swedish Tax Agency, Sweden; Mr Manav Bansal, Department of Revenue, Ministry of Finance, India and Mr Radovan Zidek of the Global Forum Secretariat.	n.a.	4 March 2015	8 May 2015
EOIR report, 2nd round of reviews	Mr Ionuț Nicolae, National Agency for Tax Administration, Romania; Ms Nurwaheeda Omar, Ministry of Finance, Malaysia and Mr Jani Juva and Mr Radovan Zidek of the Global Forum Secretariat.	1 July 2014 to 30 June 2017	24 April 2018	13 July 2018

Annex 4: Jurisdiction’s response to the review report¹⁰

Kazakhstan would like to thank the assessment team for their hard work and want to point out the below developments taken by Kazakhstan in the area of transparency and exchange of information in tax matters.

Kazakhstan signed the Convention on Mutual Administrative Assistance in Tax Matters on November 29, 2013, and ratified it by the Law of the Republic of Kazakhstan on December 26, 2014.

In addition, a letter signed by the Minister of Finance on April 26, 2016 expressed Kazakhstan’s interest in participating in the newly formed OECD/G20 (BEPS) structure.

In order to implement one of the minimum steps of the BEPS on June 4, 2018, the Government of the Republic of Kazakhstan issued Decree “On signing the MLI, the official signing of which will be held on June 27-28 2018 in Lima (Peru).

In addition, at the moment all domestic procedures for accession to the Standard of the Automatic Exchange of information (MCAA) have been completed.

At the same time, we want to note the fact that according to the Plan of the Nation from January 1, 2018, the International Financial Center “Astana” started functioning in the country.

The Astana Financial Services Authority and Kazakhstan are committed to meeting the standards established by the Global Forum by amending its legislation, before the end of December 2018.

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

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

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

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

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

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

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

Consult this publication on line at <https://doi.org/10.1787/9789264302792-en>.

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