

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

THE BAHAMAS



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Bahamas 2011

PHASE 1

April 2011
(reflecting the legal and regulatory framework
as at November 2010)



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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 90 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

All review reports are published once 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 review reports, please refer to www.oecd.org/tax/transparency.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in The Bahamas.
2. The international standard which is set out in the Global Forum's *Terms of Reference* to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.
3. The Bahamas has worked with the OECD in respect of tax information exchange since 2002 when it committed to implementing the international standards of transparency and information exchange. The Bahamas does not have direct taxation and consequently the usual framework for tax authorities to have access to information for income tax purposes is not in place. In 2009, The Bahamas renewed its commitment which it then worked quickly to implement and by March 2010 it had concluded more than 12 tax information exchange agreements (TIEAs). As at November 2010, The Bahamas has an exchange of information (EOI) network covering 22 jurisdictions; seven of these agreements are presently in force, and The Bahamas has taken all steps for its part which are necessary to bring the remaining agreements into force. Recently concluded, these agreements, with the exception of its TIEA with the US, are based on the OECD's 2002 Model TIEA.
4. The principal concern identified in the report relates to the availability of accounting information and the report notes that essential element A.2. of the *Terms of Reference* is not in place. The shortcomings in the legislative requirements to retain accounting records in respect of international business companies, partnerships, authorised purpose trusts and foundations are such that this information may not be available in certain cases in respect of these entities and arrangements. In respect of the remainder of the report, each of the elements is found to be in place. For some elements, recommendations have been made concerning ownership and identity information (element A.1.), access powers (element B.1.) and appeal rights (element B.2.).

5. Whilst The Bahamas' commitment to the international standard is not in doubt, with The Bahamas having taken all necessary steps to bring the TIEAs it has signed into force, it is unclear whether some provisions in its domestic law may hinder its ability to achieve effective exchange of information in all instances. The availability of accounting records is an essential component of effective EOI, and the present legal and regulatory framework does not meet the standard in this regard. The Bahamas' progress in these areas, as well as its actual practice in exchange information with its EOI partners, will be considered in its Phase 2 review which is scheduled to commence in the second half of 2012.

Introduction

Information and methodology used for the peer review of The Bahamas

6. The assessment of the legal and regulatory framework of The Commonwealth of The Bahamas (The Bahamas) was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at November 2010, other materials supplied by The Bahamas, and information supplied by partner jurisdictions.

7. The *Terms of Reference* break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses The Bahamas' legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

8. The assessment was conducted by an assessment team, which consisted of two expert assessors: Mr Philippe Cahanin, Deputy Director in the Large Business Audit Branch of the French Revenue Administration; and Mr Malcolm Campbell, Comptroller of Taxes for the Jersey Competent Authority; and one representative of the Global Forum Secretariat, Miss Caroline Malcolm. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in The Bahamas.

Overview of The Bahamas

10. The Bahamas is an archipelago extending across the western Atlantic Ocean and consisting of 700 islands and cays with an area of 13 878 square kilometres. Thirty of the islands are inhabited, with a population of approximately 320 000 persons, mainly concentrated on the islands of New Providence (on which the capital, Nassau, is situated) and Grand Bahama.

11. The Bahamas achieved independence from Great Britain on 10 July 1973 and is now a self-governing, sovereign member of the Commonwealth of Nations and a member of the United Nations.

12. Queen Elizabeth II is the titular head of state in The Bahamas, represented by a Governor-General. Legislative power is vested in a bicameral parliament which consists of a 41-member House of Assembly (the lower house) and a 16-member Senate. The House of Assembly carries out all major legislative functions. The Prime Minister may dissolve Parliament and call a general election any time within a 5 year term.

13. The Bahamas has a written constitution that was published when it gained its independence in 1973 and which is the supreme law of the land. All other laws must be consistent with the Constitution to be enforceable. The Constitution empowers parliament to make laws by the passing of bills, which must be passed by the House of Assembly and Senate, and be agreed by the Governor-General before becoming law.

14. Historically, the basis of the Bahamian law and legal system is the English common law. The judiciary is independent of the executive and the legislature. Judicial authority is vested in the Judicature, which comprises Magistrate Courts, the Supreme Court, the Court of Appeal and the UK's Judicial Committee of the Privy Council as the final court of appeal.

15. The Bahamas imposes no taxes on income. Instead, it derives revenue principally from indirect taxation on economic activity in the form of import, export, excise and stamp duties and direct taxes on tourism-related items. Another major source of revenue for the government is business license fees, which are determined in relation to the size and profits of a business operating in or from The Bahamas.

16. The Bahamas' currency is the Bahamian dollar (BSD), which is pegged to the U.S. dollar at parity. The US dollar is also accepted in The Bahamas, but the Bahamian dollar is not legal tender outside of The Bahamas.

17. The Bahamian economy is service based, with tourism and financial services the leading industries and sources of employment. The Bahamas' gross domestic product was approximately BSD 7 billion in 2009, of which tourism made up 40% and financial services 20%. Over half of the Bahamian

workforce was employed in the tourism industry in 2009, with the financial services sector accounting for approximately 3-4% of employment.¹

Overview of The Bahamas' commercial laws and financial sector

18. The Bahamas has a large financial services industry offering both resident and non-resident services and which is dominated by the banking and trust company sector. As of 30 September 2010, there are approximately 240 international banks and trust companies registered in The Bahamas which hold BSD 516 billion in assets on their balance sheet. In addition, there are 38 domestic banks and trust companies which hold BSD 9.89 billion in assets. The Central Bank of the Bahamas is responsible for regulating all banking and trust companies. Banking businesses must be carried on by companies, trust services may be conducted by individuals, and in those instances the individuals are regulated separately under the Financial and Corporate Service Providers Act.

19. The investment fund and insurance sectors also make a significant contribution to The Bahamas' economy. The Securities Commission regulates the securities and investment funds industry, which includes as at December 2009, 764 licensed investment funds and 64 licensed investment fund administrators holding assets valued at almost BSD 190 billion. The insurance industry in The Bahamas as at December 2008, is comprised of 174 insurance companies and licensed agents with BSD 2.283 billion in assets, and is regulated by the Insurance Commission.

20. In respect of anti-money laundering/counter-financing of terrorism (AML) obligations, the Compliance Commission has supervisory responsibility as part of an arrangement with the Inspector of Financial and Corporate Services for financial and corporate service providers (FCSPs) and for designated non-financial businesses and professionals (DNFBPs), whilst the licensing regulators such as the Securities Commission, Insurance Commission and the Central Bank supervise compliance with AML obligations for the sectors which they regulate.

Overview of The Bahamas' framework for the exchange of information for tax purposes

21. There are two main laws governing international cooperation for tax matters in The Bahamas: The Bahamas and the United States of America Tax Information Exchange Agreement Act 2003, and the International Tax

1. Data taken from The Bahamas' Central Bank Quarterly report to March 2010, and the Labour force survey to December 2009.

Cooperation Act 2010 which gives effect to all other TIEAs signed by The Bahamas.

22. The legal authority to exchange information for tax purposes derives from Tax Information Exchange Agreements (TIEAs) once these agreements become part of domestic law. As at November 2010, The Bahamas had signed TIEAs with 22 jurisdictions, of which seven agreements are currently in force. Sixteen of these agreements are with OECD members, and 12 of them have been signed since the beginning of 2010. Most recently it has signed agreements with Australia, Germany and Canada. By enacting the International Tax Cooperation Act in July 2010, The Bahamas has now taken all necessary steps to bring each of the remaining 21 agreements into force.

23. In addition to its TIEA network, cooperation in criminal tax matters may be provided in accordance with the provisions of the Criminal Justice (International Cooperation) Act; and the terms of the mutual legal assistance treaties with the United States and Canada under the Mutual Legal Assistance (Criminal Matters) Act 1988.

Recent developments

24. As noted above, The Bahamas passed the International Tax Cooperation Act (ITC Act) on 1 July 2010, which gives effect to tax treaties signed by The Bahamas. Further, recent amendments to the United States of America Tax Information Exchange Agreement Act now permits the US competent authority to conduct tax examinations in The Bahamas consistent with provisions contained in the OECD 2002 Model Agreement on the Exchange of Information in Tax Matters, and brings the arrangements into line with the options available to the competent authorities of The Bahamas' other EOI partners, under the ITC Act.

Compliance with the Standards

A. Availability of information

Overview

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

26. In respect of ownership and identity information, the requirements in The Bahamas to retain relevant information in respect of companies, partnerships, trusts and foundations are sufficient to meet the international standard. An exception, contained in the binding Security Commission guidelines, for investment funds to the client identity information requirements of the AML regime make it unclear whether such information for all funds is required to be kept, regardless of their legal form. However, The Bahamas notes that the guidelines are inconsistent with the regulations on this issue and the regulations will take precedence. Noting The Bahamas significant investment fund industry, it is recommended that The Bahamas clarify their legal requirements in this regard. Essential element A.1. of the *Terms of Reference* is found to be in place.

27. The requirements under The Bahamas’ law in respect of accounting records do not fully meet the standard described in element A.2. of the *Terms of Reference*. Of particular concern is the insufficiency of the obligations applicable to international business companies (IBCs), partnerships, authorised purpose trusts and foundations in the context of more than 162 912 IBCs² alone which are registered in The Bahamas. Moreover, in respect of private general companies and foreign-incorporated companies registered in The Bahamas, the obligation to keep underlying documentations and an express requirement to retain records for 5 years is not established.

28. In respect of banks and other financial institutions, the application of the anti-money laundering/counter-financing of terrorism (AML) regime to these entities ensure that all relevant records pertaining to customers’ accounts and transaction information is available for all account-holders. This element (A.3. of the *Terms of Reference*) is found to be in place.

29. In general, where an obligation exists in The Bahamas for relevant records to be kept, there are enforcement provisions in place to address the risk of non-compliance. Enforcement options include fines, licensing conditions or revocation, and imprisonment. In respect of certain sanctions imposed on exempted limited partnerships and foundations however, the penalties which may be imposed are significantly lower than in the case of penalties imposed on other persons. The effectiveness of these enforcement provisions will be considered as part of The Bahamas’ Phase 2 review.

A.1. Ownership and identity information

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

Companies (ToR³ A.1.1)

30. Companies may be incorporated and registered in The Bahamas under either the Companies Act 1992 (Companies Act, such companies herein referred to as a General Companies or GCs) or the International Business Companies Act 2000 (IBC Act, such companies herein referred to as IBCs), and may be limited liability (by shares or guarantee), or unlimited liability companies. Additionally a subset type of company, the segregated account company (SAC), may be incorporated under either the Companies Act or the IBC Act.

2. Of which 42,825 are “active” IBCs *i.e.* with registration fees paid up to date. Figures as at 30 November 2010.
3. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

General Company

31. A General Company must have at least 60% of its ultimate owners as Bahamian residents to be a Bahamian company.

International Business Company

32. An IBC has no minimum residency requirement in respect of shareholders, and may be established for a fixed limited duration under Part X of the IBC Act. An IBC may only be incorporated by, and must at all times have a registered agent resident in The Bahamas which is a licensed bank or trust company, or a licensed financial and corporate service provider (FCSP) (sections 4 and 38, IBC Act). There are no residency requirements in respect of IBC directors or shareholders. It is exempt from stamp duty, and all other taxes and estate duties for 20 years from the date of incorporation.

Segregated Account Company

33. The specific rules governing an SAC are set out in the SAC Act 2004 (SAC Act), in addition to which either the Companies Act or IBC Act will apply. A SAC must appoint and maintain a representative in the Bahamas (s10, SAC Act), who must be resident in the Bahamas and a Regulated Licensee or licensed bank or trust company. Where there is a failure to notify the relevant regulator of a change in this representative, that regulator “shall” recommend to the Registrar that the SAC be deregistered (s11, SAC Act).

34. An SAC is made up of segregated accounts (SAs) which each have their own assets and liabilities maintained separately from other SAs and from the company’s general assets and liabilities. Each SA may also have its own owners however each SA is not a separate legal entity from the SAC.

35. A SAC must be an investment fund; engaged in the business of issuing securities or insurance; be a subsidiary of a licensed bank or trust company; or carry on some other business if written consent is obtained from a regulator (s3, SAC Act).

Company ownership and identity information required to be provided to government authorities

36. The Companies Registrar maintains registers of all companies registered under the Companies Act, all IBCs and all SACs. The Companies Registrar does not maintain a register of SAs within a SAC. At the time of incorporation, all Bahamian companies must register and provide their memorandum of association to the Registrar.

37. For a GC, a memorandum must specify the location of its registered office (which must be in the Bahamas), the amount of capital and the number and value of its shares (sections 5-8, Companies Act), and any change to these details must be advised to the Registrar within 14 days (s9, Companies Act). A GC must also file its articles of association within 6 months of incorporation (s14, Companies Act). In addition, a GC is subject to an obligation to file an annual return with the Registrar which includes the name, address and occupation of all legal owners, as well as any person who ceased to be an owner during the previous year, and to confirm that 60% of its shares are ultimately owned by Bahamian residents.

38. In the case of an IBC, as well as its memorandum, it must also provide its articles of association to the Registrar at the time of incorporation. The memorandum must contain details including the location of the registered office and registered agent of the company, the amount of capital and the number and class of shares. An IBC must provide the Registrar with an authenticated copy of its Memorandum or Articles within 28 days of any amendment (s18, IBC Act).

39. Failure by either a GC or an IBC to file any required document carries a penalty of BSD 10 000 or up to 2 years imprisonment (sections 292-293, Companies Act; and sections 181-182, IBC Act).

Foreign companies

40. Once a foreign-incorporated company is carrying on an “undertaking” or has a “trading branch” in The Bahamas, Part VI of the Companies Act will apply, and it is required to register with the Registrar of Companies. In order to be registered, the foreign company must file certain information with the Registrar, including:

- a copy of its memorandum or articles of association;
- full address of the principal office of the company, both within and outside of The Bahamas;
- full name, address and occupation of each of the directors of the company.

41. The foreign company must also maintain a registered office in The Bahamas, and its address must be notified to the Registrar (s181, Companies Act).

42. Following registration, the foreign company must meet all of the obligations imposed on General Companies incorporated and registered under the Companies Act which relevantly includes maintaining an up to date register of shareholders. A foreign company which is registered in The Bahamas may in turn establish as an IBC and in that case would be subject to the IBC Act obligations.

Company ownership and identity information required to be held by companies

43. All Bahamian registered companies must maintain an up to date register of shareholders (s56, Companies Act; and s29, IBC Act), and a failure to do so carries a penalty of BSD 10 000 or up to 2 years imprisonment (s297, Companies Act; and s180, IBC Act). The register must include:

- name, and address of all members
- the number of shares, distinguished by class, held by each member; and
- the date the person became and ceased to be, a member

44. In respect of IBCs, under s31 of the IBC Act shares may be transferred, not necessarily by a written instrument: s31(2); and such a transfer is not required to be notified to the company. Under s31(3), the company “*shall not be required* to treat a transferee... as a member until the transferee’s name has been entered in the Share Register”, which leaves open the possibility that the IBC may elect to treat the transferee as a member, notwithstanding that their name is not in the share register. However, as all IBCs are required to have a registered agent subject to the AML regime, that AML Service Provider is required to know and verify the owners of the IBC.

45. Companies registered under the Companies Act (including general registered foreign companies) must also maintain information which will enable them to meet the obligation to file an annual return with the Registrar.

46. All SACs must maintain a register of its owners, as well as a register of the owners of each of the individual SAs (s27, SAC Act). These registers must be maintained in line with the obligations under the Companies Act and the IBC Act as applicable.

47. Ownership and identity information on companies in The Bahamas is generally available through a combination of requirements imposed by The Bahamas’ company formation laws, AML laws and its laws regulating financial and corporate service providers.

Nominee identity information

48. Where a nominee acts in respect of a beneficial owner of an IBC, they fall within the definition of financial and corporate service provider (s2(e), FCSP Act) who is required to keep identity information in respect of their clients, pursuant to the regulatory laws and AML regime. In addition, the Exchange Control Regulations provide clear requirements in respect of

nominee holdings concerning non-residents under regulation 14. Prior permission from the Exchange Controller must be obtained where:

- a person resident in The Bahamas does any act whereby the holder of a security becomes his nominee in respect of the security, or whereby he becomes a nominee for a person resident outside of The Bahamas;
- a person resident in The Bahamas for whom a security is held as a nominee, does any act by which the nominee holds the security other than as his nominee, or for another person resident outside The Bahamas
- the nominee or his agent resident in The Bahamas does any act by which the person for whom the nominee acts is substituted for another person, or ceases to hold the security as nominee.

49. However, it is not clear that obtaining permission from the Controller in these circumstances imposes a requirement that a nominee keep identity information on the person on whose behalf the security is held. The Bahamas notes that to date, the only nominees presenting under this provision are licensed service providers who are already under obligations stemming from AML and regulatory laws, to maintain identity information on persons that they represent.

50. Where the nominee is not acting in respect of a beneficial owner of an IBC, or the Exchange Control requirements do not create a requirement to hold information, there are no obligations imposed on a nominee to retain identity information on the persons for whom they act as the legal owner. In The Bahamas' view, the number of nominees who would fall within this class is negligible and would not prevent effective exchange of information. The impact of this exception on EOI will be reviewed in the Phase 2 review of The Bahamas.

Business Licences

51. Any person who carries on any business with a view to obtaining any amount of gross turnover in a given year must obtain a business license under the Business License Act (BL Act). However, certain Private Trust Companies that may otherwise fulfil this criterion will be exempt under regulation 3 of the Banks and Trust Companies (Private Trust Companies) Regulations. However, it is noted that PTCs are regulated by the Central Bank (see paragraph 107).

52. At the time of application for a business licence and on an annual basis, the BL Act requires that the applicant must provide the names of owners of the business and the applicant's address.

53. The penalty for non-compliance with the BL Act, including the carrying on of a relevant business without a licence, is either a fine of up to BSD 10 000 or imprisonment up to 2 years. Additionally, a fine of between BSD 250 and BSD 1 000 per day in breach may be imposed, as well as a fine of up to five times the licence fee that would have been payable. A Court may also order the confiscation of business goods and machinery as it sees fit.

Regulatory laws

54. Regulation of The Bahamas' finance sectors are overseen by sector-specific regulators. The regulatory framework is complemented by the AML regime, and which applies to all regulated licensees in addition to some non-licensed persons.

55. The licensing and supervision of the financial services sector is arranged as follows:

Sector	Regulator	Main legislation
Banks and Trust Companies (NB. Non-corporate commercial trust service providers are regulated as a "Financial and Corporate Service Provider)	Central Bank of The Bahamas	Banks and Trust Companies Regulation Act (BTCR Act)
Investment Funds and Fund Administrators ⁴	Securities Commission	Investment Funds Act (IF Act)
Insurance Companies and insurance business except national insurance	Insurance Commission	Insurance Act and External Insurance Act

4. The Bahamas has foreshadowed that it will consolidate the non-bank regulators although the date for the conclusion of this reform exercise is not yet determined. Such changes are not anticipated to materially affect the relevant obligations imposed on licensed entities.

Sector	Regulator	Main legislation
Financial and Corporate Service Providers ⁵ (“FCSP”, includes individual trust service providers and nominees providing services on a commercial basis ⁶)	Inspector of Financial Corporate Services (presently the Securities Commission)	Financial and Corporate Service Provider Act (FCSP Act)
Securities Dealers and Investment Advisors	Securities Commission	Securities Industry Act

56. In addition, credit unions (which are restricted to operations in the domestic market) are regulated by the Department of Cooperative Societies under the Co-operative Societies Act.

57. Any person who fails to obtain a licence as required (that is, is providing a prescribed service for profit or reward) commits an offence and is liable for significant penalties. Under section 18 of the FCSP Act for instance, such a person will be liable upon summary conviction to a fine of BSD 75 000, and a further BSD 1 000 per day in default.

58. Persons who are regulated pursuant to these laws with the exception of Banks and Trust Companies are referred to herein as Regulated Licensees. The relevant ownership and identity obligations on Banks and Trust Companies in respect of their clients only stem directly from the AML regime. In respect of Regulated Licensees, there are applicable identity and ownership obligations in respect of their clients, under both the regulatory laws and the AML regime.

59. The main legislation noted in the table above is accompanied by regulations and may be supplemented by instructions (Guidelines and Codes

5. “Financial and Corporate Services” means the provision of such services for profit or reward either in or from within The Bahamas, and is inclusively defined to comprise persons who register, manage or administer IBCs; conduct or carry on “financial services”; or provide partners, registered agent or registered office services for exempted limited partnerships. The term “financial services” is not defined in the FCSP Act, however the Inspector of Financial and Corporate Services has advised that the definition of the WTO will be adopted, which definition includes money broking, lending of all types and related activities.
6. Individual trustees and nominees who are not carrying on business or providing relevant services for profit or reward are not required to be licensed, and therefore are not subject to the regulatory obligations.

of Practice) issued by the regulator. Specific obligations vary according to the type of licence, however there are some general requirements in respect of maintaining ownership and identity information on clients. Reference is made here to the regulatory regime for FCSPs however equivalent provisions and instructions apply to other Regulated Licensees.

60. At the time that a request for provision of services is made by a new client, all Regulated Licensees must undertake certain checks including (s14, FCSP Act):

- Verify the identity of the prospective client; and
- Obtain details of their principal place of business; business address and telephone, facsimile and electronic contact details.

61. Further, where the client is an IBC, the Regulated Licensee must keep a record of the name and address of all of the beneficial owners; and in the case of an exempted limited partnership (ELP), a record of the name and address of all partners registered under the Exempt Limited Partnerships Act.

62. In addition to these obligations, a Regulated Licensee must maintain adequate information on file to enable it to fulfil its obligations under the Act or any rules or regulations made pursuant to the Act (s15, FCSP Act). An exception applies in respect of persons already subject to licensing by a financial services regulator, in which case, for the exemption to apply the client must produce a valid and current license.

63. Where the regulator is of the view that the Regulated Licensee is failing to meet the obligations imposed by the Act, including verifying or obtaining client information, the Regulator may take necessary steps to rectify the matter, or may suspend the licence for a period of not more than 30 days, or up to a maximum of 60 days if it is in the public interest to do so (s16, FCSP Act). The regulator may also revoke the licence in certain circumstances including when he is of the opinion that the Regulated Licensee is carrying on his business in a manner detrimental to the public interest (s17, FCSP Act).

64. Sections 18 and 18A of the FCSP Act set out the range of available sanctions for non-compliance. Any licensee who commits an offence under the FCSP Act or any other Act dealing with the regulation of financial services in The Bahamas is liable to a fine of up to BSD 100 000. Any person who contravenes the Act where no specific penalty is prescribed, is liable on summary conviction to a fine of BSD 10 000. Failure to keep a record of the beneficial owners of an IBC or of all registered partners in an ELP carries a penalty of BSD 50 000. Any contravention of the Act with an intent to deceive, is liable on summary conviction to a fine of BSD 100 000. Regulated Licensees must keep all prescribed records for at least 6 years.

Investment Funds

65. With the banking and trust company sector, the investment funds sector is a significant part of The Bahamas' financial services industry, holding assets valued at almost BSD 190 billion as of 31 December 2009. A more specific regime for maintaining identity information applies to investment funds, which may take a variety of legal forms including a company or trust. As at 30 November 2010, there were 764 investment funds in The Bahamas, of which 698 were companies (including IBCs), 13 were trusts, and 53 were partnerships. An investment fund, is defined in s2 of the IF Act, and must be either licensed by the Securities Commission or registered with the Commission as a recognized foreign fund (which must be from a prescribed jurisdiction). A different licensing process applies to fund administrators than to the funds themselves.

66. All fund administrators are required by s32 of the IF Act to be licensed (Regulated Licensees), except where they meet certain conditions including that they will be administering no more than one specified fund: s32(3), IF Act. As Regulated Licensees they are subject to the AML regime however an exception in the AML regime provides that documentary evidence in respect of client identity information will not be required in respect of an investment fund licensed or registered in The Bahamas.⁷

67. There are three types of resident investment funds in The Bahamas: "professional", "standard", or "SMART" funds (Specific Mandate Alternative Regulatory Test fund). Under s11 of the IF Act, all Bahamian investment funds must seek a licence from either the Commission, or an investment fund administrator who holds an unrestricted license pursuant to section 34(1) of the IF Act. An unrestricted license-holder may only issue a license for those funds for which it is the fund administrator and provides the principal office. In the case of self-administered funds, only the Securities Commission may be the licensor (s8(3), IF Act).

68. Both professional and standard funds are required to appoint an investment fund administrator to provide a principal office (who is a Regulated Licensee, noting the exception referred to in paragraph 66 concerning the exception from documentary evidence for client identity information). However, there is no requirement to appoint an investment fund administrator for professional or standard funds which are self-administered. The person responsible for administering a self-administered professional or standard fund may only administer one fund and may not act as a principal in respect of that fund.

7. See paragraph 7 of the Securities Commission Guidelines on the Prevention of Money Laundering & Countering Financing of Terrorism), which refers in turn to paragraph 137 (vii) of the Central Bank's Guidelines).

69. A SMART fund is required to be registered with the Securities Commission. It is not required to have a fund administrator, but must comply with the written rules of the Securities Commission whereby each SMART fund model must be approved by the Commission (there are presently 6 approved model funds) and remain subject to all the supervisory, disciplinary and enforcement authority of the Commission. There are no pre-established legal requirements for a SMART fund, however The Bahamas has advised that SMART funds must satisfy the parameters and requirements of a category, class, or type of investment fund previously approved by the Securities Commission. The regulatory regime of SMART funds is specified in the approval of each model. Generally they will have a limited number of investors, the class of which may be limited to professional investors, or people who are related entities or existing clients of a fund promoter or administrator.

70. The binding guidelines issued by The Bahamas' Security Commission create an exception from the regulations in the AML regime that would otherwise impose client identity obligations to investment funds. The guidelines note that investment funds are exempt from the client identity information requirements of the AML regime (see paragraph 66). These guidelines note that this exemption does not apply where money laundering is known or suspected (which does not include tax evasion as a predicate offence, or terrorist financing). The Bahamas notes that this exception may be inconsistent with the requirements of the regulations, under which the guidelines are made and that as a matter of law, the regulations will override the subordinate guidelines.

71. In addition to any AML requirements, obligations to keep ownership information on investment funds will arise where required by the law under which the fund is formed. This will be the case for example for an IBC under the IBC Act or an Authorised Purpose Trust under the Purpose Trust Act although it is not clear that this is the case in respect of all funds in the form of non-Authorised Purpose trusts. With 13 investment funds in the form of trusts in The Bahamas, managing an unknown total asset value, there are potentially adverse consequences on the availability of information in respect of these types of funds if these are not regulated trusts. The practical effect of this omission will be considered in the Phase 2 Peer Review of The Bahamas.

72. Under s54 of the IF Act, the Securities Commission may conduct regulatory hearings to determine whether there has been or is likely to be a failure to comply with the IF Act or any regulations or rules made pursuant to that Act. Where appropriate, the Securities Commission may take measures including the imposition of fines of up to BSD 300 000; suspend or revoke a fund or administrator's licence or registration; or appoint a person to advise a fund or administrator on the proper conduct of its affairs; or impose "any other sanctions or remedies as the justice of the case may require" (s55, IF Act).

Anti-Money Laundering/Counter Financing of Terrorism Laws.

73. Supervision of The Bahamas' AML regime is generally undertaken by the licensing regulator for each sector (the Central Bank in respect of banks and trust companies, the Securities Commission in respect of investment funds etc) except in the case of FCSPs, whose compliance with AML obligations is overseen by the Compliance Commission. The Compliance Commission is also responsible for overseeing compliance by "financial institutions" providing prescribed services that are not otherwise regulated. Herein, persons subject to The Bahamas' AML regime whether supervised by the Compliance Commission or another regulator, will be referred to as AML Service Providers.

74. As noted in this report, many types of relevant entities and arrangements are required to engage an AML Service Provider. For instance, an IBC must have a resident registered agent who is a Regulated Licensee (IBC Act s38), a trustee of an authorised purpose trust must be a Regulated Licensee, and a foundation must have either or both, a Secretary or Foundation agent that is a Regulated Licensee. Each of these Regulated Licensees will be subject to the AML regime as an AML Service Provider. Even where there is no obligation to engage a Regulated Licensee, other types of entities and arrangements such as an Exempted Limited Partnership may nonetheless do so.

75. The legislative framework of the AML regime remains the same regardless of the relevant regulator. The key pieces of legislation are:

- the Proceeds of Crime Act,
- the Financial Transactions Reporting Act (FTR Act), and
- the Financial Intelligence Unit Act (FIU Act).

76. This legislation is accompanied by regulations as well as other instructions such as guidelines and codes of practice which are issued by the regulators. Significantly, such instructions⁸ are legally binding (s8, FTR Act) whereby a breach will be liable upon summary conviction to a fine of up to BSD 10 000; or upon conviction on information, to fines up to BSD 50 000 or for subsequent offences, to BSD 100 000. The key instructions are the Central Bank's Guidelines ("Guidelines for Licensees on the Prevention of Money Laundering and Countering the Financing of Terrorism"), the Securities Commission's Guidelines (which largely adopt the Central

8. Where issued by a Regulator that is a "relevant agency" defined as "agencies responsible for those financial institutions mentioned in section 3(1) of the Financial Transactions Reporting Act, 2000, including the Central Bank of The Bahamas, the Compliance Commission, the Securities Commission, the Registrar of Insurance, and the Gaming Board".

Bank’s Guidelines), and AML Codes of Practice issued by the Compliance Commission for specific sectors such as FCSPs and other designated non-financial businesses and professions (DNFBPs).

77. AML Service Providers are subject to “know your customer” (KYC) rules, which require them to verify the identity of all facility holders (s6, FTR Act), persons conducting occasional transactions and extended verification requirements where the value is more than BSD 15 000 (s7, FTR Act),⁹ or where the transaction is suspected to involve proceeds of criminal conduct (s10A, FTR Act). Verification must occur before the person becomes a client, and where a facility is to be held by more than one person, the identity of all persons shall be verified. There are exceptions from the requirement to verify identity in respect of particular clients including superannuation funds, government agencies and investment funds (see paragraph 137 of the Central Bank’s Guidelines for a complete list of clients where full documentary evidence of identity will not normally be required). These exceptions will not apply if money laundering or terrorist financing is known or suspected.

78. Verification of the identity of any beneficial owner is also required; however in the case of corporate entities this obligation is limited to those beneficial owners that hold a controlling interest (regulation 7A, FTR Regulations).¹⁰ This obligation also arises where the AML Service Provider has reasonable grounds to believe that the person conducting the transaction does so on behalf of another person.

79. Verification requires obtaining documentary or other evidence that is reasonably capable of establishing a person’s identity (s11, FTR Act) and which must be kept for 5 years, including:

- full name and address;
- date and place of birth; and
- purpose of the account, and nature of the business relationship.

80. The Guidelines note that identity verification may require further details depending on the circumstances of the particular case, including the specific details appropriate where the client is a company or partnership described in regulations 3(2), 4 and 5 of the Financial Transaction Reporting Regulations (FTR Regulations). Following the initial verification, an AML Service Provider is required to re-verify the identity where they have reason to doubt the facility holder’s identity, or where there is a change in ownership or

9. Including where there is reasonable grounds to believe that transactions are being structured to avoid the prescribed limit: s7(1)(b), FTR Act.

10. Controlling interest for the purposes of the Central Bank Guidelines and Compliance Commission’s Codes of Practices means 10% or more shareholding in a company.

a new holder is added to the facility. All identity verification documents which are obtained must be held for not less than five years from the end of the relationship or from the date of the transaction, whichever is longer (s24, FTR Act).

81. A breach of the customer verification obligations is an offence under section 12 of the FTR Act, liable to a fine on the AML Service Provider of up to BSD 20 000 for individuals, or BSD 100 000 for s body corporate. A failure to comply with any regulation, or an instruction issued by a regulator, upon summary conviction carries a maximum fine of BSD 10 000; or upon a conviction on information, BSD 50 000 for a first offence, or a maximum of BSD 100 000 for a subsequent offence.

Bearer shares (ToR A.1.2)

82. The laws of The Bahamas do not allow for the issuance of bearer shares or any form of share warrant, certificate or coupon which is issued to bearer, pursuant to the Exchange Control Regulations which provide in regulation 10 that:

Except with the permission of the Controller, no person shall, in The Bahamas, issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon...”

83. The Bahamas has also advised that there is no record of any such permission having been granted, which would be inconsistent with the Exchange Control Department’s policy on transparency.

Partnerships (ToR A.1.3)

84. The key legislation with respect to partnerships formed in The Bahamas is the Partnership Act of 1904, the Partnership Limited Liability Act of 1861 (PLL Act) and the Exempted Limited Partnership Act of 1995 (ELP Act) These laws provide for three types of partnerships:

- General partnerships;
- Limited liability partnerships (LLPs); and
- Exempted limited partnerships (ELPs).

85. General Partnerships arise where two or more people form a relationship with a view to carrying on a business in common for profit, and are governed by the common law except to the extent of any specific provision of the Partnerships Act (section 47). The Partnership Act codifies some of the laws concerning general partnerships which would otherwise be found in the common law, and to the extent that there is any inconsistency between a common law obligation and an obligation under the Act, the Act prevails

(s47). The Partnerships Act predominantly concerns the legal relationship of the partnership to third parties, as well as regulating the relationship between the partners. As with other entities or arrangements, a partnership wishing to carry on a business in The Bahamas must comply with the Business Licence Act (see paragraph 51).

86. LLPs may be formed by two or more persons for the purpose of transacting a mercantile, mechanical or manufacturing business within the Bahamas, however they may not be formed for the purpose of carrying on banking or insurance business. At least one general partner (who may be a body corporate) must be appointed, and other partners will be known as “special” partners with their liability for the partnership’s debts limited to their capital contribution. An LLP may be established for a limited duration and must be registered with the Registrar of Records. Either in respect of General Partnerships or LLPs, there are no requirements under The Bahamas’ law to engage a Regulated Licensee which would trigger ownership and identity obligations imposed by the regulatory laws or the AML regime.

87. ELPs are governed by the provisions of the Partnership Act except to the extent of any inconsistency with the ELP Act (s3, ELP Act). ELPs shall not undertake business with the public in The Bahamas, except to the extent necessary for carrying on of its business exterior to The Bahamas. Pursuant to s4 of the ELP Act, an ELP must have at least one general partner (who may be a body corporate or partnership), and who must be resident or incorporated in The Bahamas. The general partner may also have an additional interest as a limited partner, and all limited partners’ liability for the partnership’s debts is limited save as for provided in the partnership agreement. However, to the extent provided by sub-sections 7(3) and 7(4) of the ELP Act, a limited partner may participate in the conduct of the ELP. An ELP must maintain a registered office in The Bahamas (ELP Act s9) and a person who provides such a registered office will be regulated under the AML regime (FCSP Act, s2(g)). ELPs are exempt from any business license fee, income tax, capital gains tax or any other tax on income or distributions accruing to the partnership (ELP Act s17). All ELPs must be registered with the Registrar of Companies (who is the Registrar of ELPs) pursuant to section 5 of the ELP Act.

Ownership and identity information required to be provided to government authorities

88. The ownership and identity information required to be provided to government authorities varies for each type of partnership.

General Partnerships

89. Neither the common law nor the Partnership Act creates any obligations for general partnerships to provide any identity information to government authorities. However, a partnership is a relationship formed for the carrying on of a business, and when a partnership (including a General Partnership) is carrying on that business in The Bahamas, it must obtain a licence pursuant to the Business License Act. In applying for the licence and on an annual basis, the partnership must provide the names of the owners of the business (see paragraph 51).

Limited Liability Partnerships

90. A LLP is formed by registration with the Registrar of Records, and under section 4 of the PLL Act, it must file a memorandum of co-partnership with the Registry, which must contain identify information including:

- The name of the LLP, and where the business is to be carried on;
- The names of each of the general partners and special partners, identifying whether they are general or special partners, and their respective places of residence or incorporation;
- The amount of capital stock contributed by each partner; and
- The duration of the limited partnership.

91. Any change to any of the particulars recorded in the memorandum, will result in the partnership being deemed to not be a partnership with limited liability under the PLL Act. Therefore, a LLP must be dissolved, and a new partnership formed if any such change is sought. A copy of the memorandum, with names of special partners deleted, is publicly available, and all filed partnership records must be retained by the Registrar in accordance with the Public Records Regulation.

Exempted Limited Partnerships

92. All ELPs must be registered (s5) and upon registration, information must be provided in a signed statement by or on behalf of a general partner (s9), including:

- name of the ELP and general nature of its business;
- address of the ELP's registered office, which must be in The Bahamas; and
- full name and address of each of the general partners (including the certificate of incorporation for a corporation).

93. A change to any of the above details must be advised to the Registrar within 60 days; however a change whereby a person ceases to be a general partner must be notified within 15 days (s10, ELP Act). Failure to comply with these obligations shall incur liability on each general partner of BSD 25 per day in default.

Ownership and identity information required to be held by partnerships

General Partnerships

94. Under s29 of the Partnership Act, partners in a General Partnership are bound to “render true accounts and full information of all things affecting the partnership” to any partner. It is unclear whether this obligation includes a requirement for identity information in respect of the partners to be retained. These types of partnerships would need to obtain a business licence and provide identity information annually to the Business Licence Authority (see paragraph 51).

Limited Liability Partnerships

95. An LLP must have information available at the time of registration which allows it to provide all required information to the Registrar, including the names and residences of all general and special partners. Any change in this information results in dissolution of the partnership, and any resulting new partnership must re-register and file a new memorandum.

Exempted Limited Partnerships

96. Under section 11 of the ELP Act, a general partner is required to maintain at its registered office a list of the name and address, amount and date of the contributions of each partner, which must be updated within 21 days of any change. Under section 11(4), failure to maintain such a register shall incur liability on each general partner of BSD 25 per day in default.

97. The partnership must also maintain such information which allows the general partners to meet their obligations under section 12 to provide each limited partner, upon demand, “true and full information regarding the state of the business and financial condition” of the ELP. However, this may be overridden by an express or implied provision of the partnership agreement.

Trusts (ToR A.1.4)

98. Bahamian law provides for the creation of ordinary trusts (which includes charitable trusts), and authorised purpose trusts (APTs). In addition to The Bahamas' common law framework under which trusts may be created and are recognized, the relevant legislation for trusts is:

- the Trustee Act of 1998, which creates obligations on Bahamian resident trustees administering trusts, regardless of whether those trusts are governed by Bahamian or foreign law. The Trustee Act also provides for a settlor or protector to hold certain powers in respect of the trust;
- the Fraudulent Dispositions Act of 1991 (FD Act) which establishes an additional legal framework specifically for asset protection trusts (being ordinary or authorized purpose trusts); and
- the Purpose Trusts Act of 2004 (PT Act) which concerns the establishment of “Authorised Purpose Trusts” (APTs) for non-charitable purposes or individuals.

99. The trustee of an APT must be a licensed bank or trust company, or a licensed FCSP (s7(1), PT Act), and any person administering such a trust where the trustee is not so licensed, is guilty of an offence liable to a fine of up to BSD 5 000 (s7(5), PT Act). Every APT will also have “authorized applicants” who have certain rights including the same rights as beneficiaries of an ordinary trust (s6, PT Act). Authorised applicants by definition include the settlor (unless otherwise provided in the trust instrument), and any other person so appointed by the trust instrument, or by a Court or the Attorney-General (in certain circumstances). Except where a specific provision of the PT Act applies, the law applicable to ordinary trusts will apply to APTs (s10, PT Act)

Trust ownership and identity information required to be provided to government authorities

100. There is no general obligation for trusts to be registered in The Bahamas, whether they are created or administered in The Bahamas, or where the trustee is resident in The Bahamas. Moreover, section 94 of the Trustee Act specifically exempts a resident trustee from any obligation to register the trust deed, by virtue of an express provision in that Act that the Registration of Records Act does not apply.

Trust ownership and identity information required to be held by the trust

101. In respect of ordinary trusts, aside from professional trustees (corporate trustees and non-corporate trustees that carry on a business of offering trust services) which are subject to relevant ownership and identity obligations concerning the trust, there are no statutory obligations imposed for any person including non-professional trustees to maintain any particular identity or ownership information relating to the trust including its settlors or beneficiaries. Whilst all trustees are subject to the common law requirements to have knowledge of all documents pertaining to the formation and management of a trust, the extent of such requirements could not be ascertained during the Phase 1 review. An in-depth assessment of the effectiveness of this common law regime will be considered as part of the Phase 2 review of The Bahamas.

102. Trustees of an APT are required by section 7(2) of the PT Act to maintain information in The Bahamas including:

- a copy of the trust instrument, and all amending or supplemental instruments, or instruments executed pursuant to those documents; and
- a register for each trust administered, which includes the name of the creator of the trust and the name and address of any authorized applicants named in the trust instrument.

103. A trustee of an APT who fails to maintain such a register, or who makes an untrue statement in an instrument, register or document, will be guilty of an offence and liable upon conviction to a fine of up to BSD 5 000.

Trust ownership and identity information required to be held by regulated trust companies

104. Corporate trustees are regulated by the Central Bank and subject to relevant ownership and identity obligations concerning the trust, pursuant to the BTCR Act, unless they are exempt as a Private Trust Company (see paragraph 107). Non-corporate trustees that carry on the business of offering trust services (*i.e.* for profit or reward) must obtain a license from and be regulated by, the Securities Commission pursuant to the FCSP Act. Trustees that do not carry on the business of offering trust services are not required to be licensed and are not subject to regulatory laws or the AML regime.

Licensed Corporate Trustees

105. Corporate trustees, as a result of both the AML regime, and indirectly through the application of the BTCR Act (s13), are required to meet certain know your customer, and record-keeping requirements. The details of these requirements are described in detail in the binding “Guidelines

for licensees on the Prevention of Money Laundering and Countering the Financing of Terrorism”, which are issued by the Central Bank. In particular in respect of trusts, the Central Bank’s Guidelines state:

[95] The Licensee should normally, in addition to obtaining identification evidence for the trustee(s) and any other person who has signatory powers on the account:

(i) make appropriate enquiry as to the general nature and the purpose of the legal structure and the source of funds;

(ii) obtain identification evidence for the settlor(s) and for such other person(s) exercising effective control over the trust which includes an individual who has the power (whether exercisable alone, jointly with another person or with the consent of another person) to:

(a) dispose of, advance, lend, invest, pay or apply trust property;

(b) vary the trust;

(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(d) appoint or remove trustees;

(e) direct, withhold consent to or veto the exercise of a power such as is mentioned in subparagraph (a), (b), (c) or (d).

(iii) in the case of a nominee relationship, obtain identification evidence for the beneficial owner(s).

...

[100] Licensees are also required by the FTRA to verify the identity of any underlying beneficiary of a legal structure. It is recognized that it may not be possible to identify the beneficiaries of trusts precisely at the outset. For example, some beneficiaries may be unborn children and some may only become vested on the occurrence of specific events. Where the beneficiary has a vested interest in the legal structure, verification must be carried out by the Licensee providing the facility

106. It is noted that banks and trust companies may rely on “eligible introducers” in respect of their KYC obligations, however they must still obtain copies of all KYC documentation within 30 days of the eligible introducer’s customer due diligence being complete.¹¹

11. Except where the eligible introducer fulfils certain criteria, including that the respective bank or trust company provides company incorporation or registered agent/

Private Trust Companies

107. Under the BTCR Act, a PTC (which may be an IBC or a General Company) may be established to provide trustee services to a defined class of trusts, all of which trusts must be created by or at the direction of persons linked by a blood or family relationship. Such a PTC will be prohibited from soliciting trust business and is exempt from the licensing obligations imposed on other corporate trustees. However, a PTC must have a Registered Representative (which must be a licensed bank or trust company or a licensed FCSP), and must be approved by the Governor of the Central Bank.

108. PTCs are covered by the Banks and Trust Companies (Private Trust Companies) Regulations 2007 (PTC Regulations). Under those Regulations, the Registered Representative must maintain in The Bahamas certain documents including the memorandum and articles of association of the PTC, the trust instrument for each trust administered by the PTC (including any sub-trusts or appointed trusts); and a list of all PTCs for which he acts as the Registered Representative.

109. Whilst a PTC is not subject to the provisions of the FTR Act as they are not a “financial institution” within the definition in s3 of that Act, they are nonetheless required to meet some of the obligations it establishes. Under regulation 13 of the PTC Regulations, the Registered Representative of a PTC must verify the identity of the following persons, in accordance with the FTR Regulations:

- the settlor and any person providing the funds or assets the subject of the trust;
- the person(s) who created or at whose direction, the trust was created;
- the protector of the trust; and
- any person with a vested interest under the trust.

110. The Registered Representative must also report suspicious transactions. The Governor may impose a fine up to BSD 5 000 on any Registered Representative who unreasonably fails to comply with a provision of the PTC Regulations (regulation 15). A person who with intent to deceive contravenes a provision of the PTC Regulations, or makes a representation that they know to be false or do not believe to be true, is liable on summary conviction to a fine of up to BSD 25 000 (regulation 14).

office services to it, and is part of the bank or trust company’s financial group. In those cases, the KYC information need not be provided to the bank or trust company but must be available to it within 3 days upon request to the eligible introducer.

111. The mechanisms in The Bahamas described in this section ensure the availability of information on trusts, whether The Bahamas or foreign law trusts, where significant elements of the trust such as a resident professional trustee, are connected with The Bahamas. Nevertheless, it is conceivable that a trust could be created under the laws of The Bahamas which has no other connection with The Bahamas. In that event there may be no information about the trust available in The Bahamas.

Foundations (ToR A.1.5)

112. A foundation as a distinct legal entity may be established in The Bahamas under the Foundations Act of 2004, provided that it is established by foundation charter (or by will) and is registered and has a registration certificate issued by the Registrar of Foundations (s3 and s5, Foundation Act). The founder may be a natural or legal person, or a nominee founder. The foundation must hold a minimum asset value of BSD 10 000, and may be for private, commercial or charitable purposes.

113. At the time of establishment, there shall be appointed to the foundation either or both a foundation agent and secretary, pursuant to section 12 of the Foundation Act, who shall be “officers” of the foundation. Officers assume the role of the Foundation Council, in the absence of such a council (s11). The foundation agent (or the secretary where no foundation agent is appointed) must be either a licensed trust company or a licensed FCSP (s12), and as a result the regulatory and AML laws will apply. Further, the foundation itself remains at all times subject to the regulatory oversight of the regulator that licenses the foundation agent (or secretary).

Foundation ownership and identity information required to be held by government authorities

114. Foundations are required to register with the Registrar of Foundations, and must provide certain information in a statement signed by a foundation officer, or an attorney, including (s21, Foundation Act):

- name and address of the secretary and foundation agent (if appointed, s12);
- address of the foundation’s registered office, which must be in The Bahamas and must be the address of the secretary or foundation agent (s13); and
- a list of the foundation’s first officers.

115. Any change to the registered office of the Foundation must be notified to the Registrar within 28 days, and any change to the other information

provided at the time of registration must be advised within 30 days. The Registrar must retain the original of documents delivered to him for the duration of the foundation, and for ten years thereafter (s59).

116. Any foundation which fails to make good any default in its obligations to file any information with the Registrar, may be subject to an order from the Court to do so, and to bear the costs of such an order (s61). There is no other financial sanction for failure to provide such updated information, however in the case of falsification of any document delivered to the Registrar, a fine of BSD 10 000 or imprisonment or both may be imposed. In addition, the Attorney General may seek a court order against a foundation for failing to meet any obligation under the Act.

117. There is no obligation to advise the Registrar of the identity of the founders, members of the foundation council, the officers of the foundations (other than the officers at the time of registration) or the foundation's beneficiaries; and neither the foundation's charter nor articles are required to be filed.

Foundation ownership and identity information held by the Foundation and members of the Foundation Council

118. Every foundation must maintain a file at its registered office in The Bahamas that must include:

- copy of the foundation charter and articles (if any);
- name and address of the founder, and his address for service in The Bahamas; and
- name and address of the foundation council, or other governing body or supervisory person

119. There is no obligation for the foundation to specifically identify the beneficiaries of the foundation, other than the obligation that the foundation charter must include the designation of the beneficiary or the identification of a body by which the beneficiary is to be ascertained, or a statement that a foundation has been formed to benefit the public at large. In cases where a foundation agent assumes the role of the foundation council, the relevant AML and regulatory laws will apply.

120. In the case of falsification of any document required to be maintained, a fine of BSD 10 000 or imprisonment or both may be imposed and the Attorney General may seek a court order against a foundation for failing to meet any obligation under the Act.

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

121. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information. Non-compliance affects whether the information is available to The Bahamas to respond to a request for information by its EOI partners in accordance with the international standard.

122. In The Bahamas, in general where an obligation to retain relevant information exists, it is supported by an appropriate enforcement provision to address the risk of non-compliance. It is noted that in respect of certain sanctions imposed on ELPs and foundations, the level of available penalties are significantly lower than in respect of obligations on other persons. However, both ELPs and foundations are required by law to engage a licensed Service Provider who would be subject to other more robust enforcement provisions under the AML regime.

123. The enforcement provisions which address the key information obligations are set out below:

- a General Company, IBC or registered foreign company that fails to file a required document with the Registrar, or that fails to keep an up to date register of shareholders is liable to a fine of up to BSD 10 000 or two years imprisonment.
- a FCSP that contravenes the FCSP Act where no specific penalty is provided, is liable to a fine of BSD 10 000, whilst a contravention of the Act with intent to deceive is liable to a fine of up to BSD 100 000.
- regulators may take administrative measures against Regulated Licensees that fail to meet their obligations including the suspension of the licence for up to 60 days.
- an investment fund or fund administrator which fails to comply with the Investment Fund Act, may have a fine imposed by the Securities Commission of up to BSD 300 000, or the Commission may suspend or revoke the fund or administrator's license, or the Commission may impose "any other sanctions or remedies as the justice of the case may require".
- a failure to meet the customer verification obligations under the FTR Act, creates a liability for a fine of up to BSD 20 000 for individuals, and BSD 100 000 for a body corporate.
- a failure to comply with AML obligations pursuant to any regulation or instruction issued by a regulator, can result in a fine on summary

conviction of up to BSD 10 000, or on conviction on information, BSD 50 000 which can rise up to BSD 100 000 for subsequent offences.

- a failure of an exempted limited partnership to advise the Registrar of changes to the information provided upon registration, incurs a liability on each general partner of BSD 25 per day in default.
- any person administering an authorised purpose trust who is not a licensed FCSP or bank or trust company, is guilty of an offence and liable to a fine of up to BSD 5 000.
- a foundation that fails to notify the Registrar of any change to any information provided upon registration is not subject to any direct penalty but may be subject to an order from the Court to remedy the deficiency and be ordered to pay the costs of such order.

124. The effectiveness of the enforcement provisions which are in place in The Bahamas will be considered as part of its Phase 2 review.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
It is unclear whether an exemption for investment funds in the Security Commission’s Guidelines is subordinate to the more general requirement in AML regulations for ownership and identity information. Whether an exemption does exist is particularly relevant for determining ownership and identity information requirements for self-administered private funds.	The Bahamas should ensure that any exemption in respect of investment funds is consistent with the AML regulations to ensure that all such funds are subject to appropriate ownership and identity requirements.

A.2. Accounting records

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

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

Accounting records to be kept in respect of companies

125. All companies registered under the Companies Act (General and foreign-incorporated companies) must table financial statements at every annual general meeting of the company (s118, Companies Act). Public companies are subject to additional accounting requirements including that its accounts be audited annually, and the Registrar may request “at any time” that a public company provide a copy of its annual financial statement. Companies carrying on business in The Bahamas will also be subject to the obligations under the Business Licence Act (paragraph 51). It is not clear that these obligations, particularly in respect of private or foreign-incorporated companies registered under the Companies Act, will satisfy the requirements of element A2 of the *Terms of Reference*. In particular, there is no obligation to maintain underlying documentation, and there is no express obligation to maintain accounting records for a minimum of a 5 year period under the Companies Act.

126. An IBC is required to “keep such financial statements, accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company” (s67, IBC Act) and no time period is specified for which any such records must be kept. IBCs are required to have a registered agent in the Bahamas who is a licensed FCSP or bank or trust company (s38, IBC Act), thus the regulatory and AML obligations will apply to require that person to maintain transaction records in respect of the IBC where a transaction is conducted through them.

127. For SACs, sections 24 and 25 of the SAC Act impose an obligation to maintain:

- in respect of each SA, records in accordance with generally accepted accounting principles, showing details that include share capital, assets and liabilities, income and expenses, and dividends. Financial statements shall also be prepared annually in respect of each SA;
- a record of each transaction entered into by the SAC; and
- in respect of the SAC, a general account which records all assets and liabilities.

128. In respect of each SA, the obligation to lay the financial statements at a general meeting may be waived indefinitely (although the waiver is revocable) by the owners of that SA. Each year an SAC must file a declaration that it has complied with the Act. Any person who makes a statement that he knows or has reasonable grounds to believe is false, deceptive or misleading he is liable on summary conviction to a fine of BSD 50 000 or imprisonment or both. There is no express obligation for an SAC to maintain underlying documentation, and there is no express obligation to maintain accounting records for a minimum of a 5 year period under the SAC Act.

Accounting records to be kept by Business Licensees

129. Section 9(2) of the BL Act requires that:

Every person who carries on a business shall keep accounts and records of the activities of the business and shall, for a period of not less than two years from the date of any transaction relating to the business, maintain accounts and records in respect of the transaction

130. In the case of persons carrying on a medium, large or very large business, the accounts and records shall also be maintained for not less than 2 years.

Accounting records to be kept under regulatory laws

131. The specific obligations to keep accounting records under the regulatory laws vary greatly according to the sector being regulated. In all cases however, Regulated Licensees as well as bank and trust companies, and DNFBPs will be subject to the obligations of the AML regime, which requires them to maintain transaction records on each client for a minimum period of 5 years, as they are “financial institutions” for the purposes of the FTR Act.

132. The FCSP Act does not create any obligations to retain accounting records in respect of their clients. Persons licensed under the Securities Industry Act, are subject to an obligation to maintain *inter alia* “records relating to the trading of securities either on a principal or agency basis including, but not limited to, purchase and sale ledgers, order tickets and customer account statements” (regulation 52, Securities Industry Regulations).

133. An investment fund (in whichever legal form) must, under section 23 of the IF Act, keep and maintain “proper books of accounts, records and documents” such that explain its transactions and disclose at any point in time the financial position of the fund; including a fair presentation in all material respects of the financial position, results of operations, changes in owner’s

equity and cash flows of the fund. Except where exempted by the Securities Commission, a licensed investment fund must also have its financial statements audited annually by an approved auditor (s31, IF Act). There is no express obligation to maintain underlying documentation, and there is no time period specified for the retention of records.

Accounting records to be kept by AML Service Providers

134. Section 23 of the FTR Act requires AML Service Providers in respect of every transaction conducted through them, to keep “such records as are reasonably necessary to enable that transaction to be readily reconstructed”. Under section 24, these records shall be maintained for not less than five years and shall include the nature, amount, and currency of the transaction, and the date and parties to the transaction. The legally binding instructions issued by the AML regulators (notably the Central Bank’s Guidelines, the Securities Commission’s Guidelines and the Compliance Commission’s Codes of Practice) provide further detail on the application of these requirements.

135. For instance, the Central Bank’s Guidelines notes at paragraph 208 that in respect of transaction records, compliance with the FTR Act requires:

At a minimum therefore, the records relating to transactions which must be kept must include the following information:

- the nature of the transaction;
- details of the transaction including the amount of the transaction, and the currency in which it was denominated;
- the date on which the transaction was conducted;
- details of the parties to the transaction;
- where applicable, the facility through which the transaction was conducted, and any other facilities directly involved in the transaction; and
- the files and business correspondence and records connected to the facility.

136. The AML regime in respect of accounting records is limited to records relating to a “transaction”, which as defined in section 2 of the FTR Act means “any deposit, withdrawal, exchange or transfer of funds... or any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation”. These requirements will therefore not capture all of the relevant accounting records including underlying documentation, such as contracts. In addition, where an entity or arrangement is required to engage an AML Service Provider,, there is no obligation that it conducts all transactions

through them. Given the reliance that many entities and arrangements, particularly IBCs, authorised trust companies and foundations place on the AML regime to ensure that relevant accounting records are maintained (in the absence of satisfactory obligations imposed directly on those entities and arrangements), these limitations are such that full accounting records may not be available in certain cases in respect of these entities and arrangements.

Accounting records to be kept in respect of partnerships

137. Section 29 of the Partnership Act (which also applies to LLPs) provides that “partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representative”. This obligation will also apply to an ELP under section 12 of the ELP Act, subject to any express or implied term to the contrary in the partnership agreement. General partnerships and LLPs are also subject to those accounting obligations under the Business Licence Act (as described in paragraphs 51 and 129); whilst ELPs are subject to those transaction record keeping obligations under the AML laws (as described in paragraph 134). It is not clear that these obligations will, in sum, satisfy the requirements of element A2 of the *Terms of Reference*.

Accounting records to be kept in respect of trusts

138. At common law, all trustees resident in the Bahamas are subject to a fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship. There are no additional statutory requirements in respect of an ordinary trust, and it is not clear that this duty would ensure that all accounting records are kept in accordance with the requirements of element A.2. of the *Terms of Reference*.

139. In respect of an APT, the trustee must be a licensed bank or trust company, or a licensed FCSP (s7(1), PT Act) and who will therefore be subject to accounting record obligations established by the AML regime. In addition, section 7(2) of the PT Act creates an obligation on the trustee to keep in The Bahamas “such documents as are sufficient to show the true financial position of each such trust at the end of the trust’s financial year, together with details of all applications of principal and income during that financial year”. A trustee of an APT who fails to maintain such records or makes an untrue statement in such a record, will be guilty of an offence and liable upon conviction to a fine of up to BSD 5 000.

Accounting records to be kept by foundations

140. Under section 42, the Foundations Act only requires that “such financial statements, accounts and records” be kept as the financial council “consider necessary or desirable in order to reflect the financial position of

the foundation”. These are to be kept at the registered office of the foundation, or such other place as the officers think fit. An income and expenditure account shall be prepared annually, however this obligation may be waived by the foundation council or other supervisory person (s43, Foundation Act). However, foundations are required to have either or both a foundation agent and secretary who are licensed FCSPs or bank or trust companies (s12, Foundation Act), and therefore the regulatory and AML obligations will apply to require the maintenance of accounting records in respect of the foundation.

141. The Bahamas has requirements for legal entities and arrangements to maintain certain forms of accounting records but the approach taken is inconsistent and these requirements are not sufficient in terms of their comprehensiveness or the minimum retention period.

Determination and factors underlying recommendations

Determination	
The element is not in place	
Factors underlying recommendations	Recommendations
All relevant entities and arrangements including international business companies, registered private and foreign-incorporated companies, authorised purpose trusts and foundations are not subject to express obligations to maintain reliable accounting records for a minimum five year period	The Bahamas should ensure that reliable accounting records, including underlying documentation, are required to be kept in respect of all relevant entities and arrangements for a minimum five year period.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

142. Persons carrying on banking business from or within The Bahamas must be licensed by the Central Bank and are subject to the general regulatory requirements imposed on Regulated Licensees and the specific requirements of the Banks and Trust Companies Act. In addition, a licensed bank is a “Financial Institution” within the ambit of the FTR Act, and is therefore subject to The Bahamas’ AML regime.

143. As part of these obligations, banks are subject to the Guidelines issued by the Central Bank. These Guidelines are binding, with any “financial institution” (including a bank) that fails to comply with any “guidelines, codes of practice or other instructions” issued by the Central Bank,¹² liable upon summary conviction to a fine of up to BSD 10 000; or upon conviction on information, to fines up to BSD 50 000 or for subsequent offences, to BSD 100 000.

144. As concerns the requirement that banking information is available for all account-holders, the Central Bank’s “Guidelines for licensees on the prevention of money laundering and countering the financing of terrorism” sets out the binding obligations to keep transaction records, which expands on the obligations in sections 23-25 of the FTR Act. In particular, paragraphs 206-208 of the Guidelines specify that the following transactional information must be retained:

- the parties to a transaction;
- the facility through which the transaction was conducted any other facilities directly involved n the transaction;
- the beneficial owner of the account/facility and any intermediaries involved;
- the volume of funds flowing through the account/facility;
- the date, amount and currency of a transaction; and
- the files and business correspondence and records connected to the facility.

145. All such transaction records must be kept for a minimum five year period from the date the transaction is completed.

146. Considered in conjunction with the client identity obligations imposed on banks found in the Central Bank’s Guidelines at paragraphs 49 and 57 in particular (similar to the obligations on trust companies, described in paragraph 104 of this report), The Bahamas requires that banking information is required to be available for all account holders.

Determination and factors underlying recommendations

Determination
The element is in place.

12. Or other “relevant agency”, which is defined to include the Compliance Commission, the Securities Commission, the Registrar of Insurance and the Gaming Board”: regulation 2, Financial Intelligence (Transactions Reporting) Regulations, 2001.

B. Access to Information

Overview

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

148. The Bahamas' Minister of Finance (the Minister) or his duly authorised representative has a broad power to obtain relevant information from any person within its jurisdiction who has relevant information in his possession, custody or under his control. In the case of requests under The Bahamas-US TIEA, the Minister only has power to access information held within The Bahamas. The Minister's access powers are predominantly exercised by the issue of a notice requesting the production of information, where non-compliance can be sanctioned with significant penalties. The notice will include details of the request, which have been agreed with the EOI partner. With the oversight of a Court, the Minister also has the power to search premises and seize information where there is a reasonable doubt that relevant information is endangered.

149. Any obligations to which a person would otherwise be subject in respect of the information sought are overridden where provision of the information to the Minister is in relation to an EOI request. Further, a person providing such information has an absolute defence to any confidentiality obligation. The rights of a person in respect of the protection of legally privileged information, as well as their rights to seek judicial review of a decision of the Minister remain protected by domestic legislation. However,

an obligation on the Minister to delay providing the information to an EOI partner, with the exception of the US, exists where judicial redress is sought and a recommendation is made for The Bahamas to address this issue. Both of the elements in this Part are found to be in place.

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).

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2.)

150. The Minister’s powers to access information are found in The Bahamas and the United States of America Tax Information Exchange Agreement Act 2003 (US TIEA Act) and the International Tax Cooperation Act 2010 (ITC Act). The ITC Act covers access to, and exchange of information, in respect of requests pursuant to all agreements that provide for the exchange of information with respect to tax matters that are entered into by The Bahamas, other than its agreement with the US. Under these Acts, the Minister has powers to access information by issuing notices for its production, or in certain instances through the use of search and seizure warrants under the compulsory processes set out below.

151. The powers of the Minister to obtain relevant information to respond to an EOI request are consistent regardless from whom the information is to be obtained, for example from a government authority, bank, company, trustee or individual; or whether the information to be obtained is ownership, bank or accounting information. There is also no variation of the powers between instances where the information is required to be kept pursuant to a positive legal obligation, or not.

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

152. The information gathering powers of the Minister are not subject to The Bahamas’ requiring such information for its own tax purposes. The EOI agreements are incorporated directly into the domestic law of The Bahamas which contains the access powers (the US TIEA Act and the ITC Act).

Compulsory powers (ToR B.1.4)

153. In The Bahamas, the powers to access information relevant to an EOI request reside with the Minister or his authorised representative. They consist of a power to require the production of information by issuing a notice, or to use a search and seizure warrant (search warrant) to access the information. In addition, the legislation also makes provision for the Minister to obtain relevant information by way of witness deposition or certified copy.

154. Once a request is received by The Bahamas which is in accordance with the relevant TIEA, the Minister may issue a notice requiring a person to produce specified relevant information. The notice must contain “details of the request to which the notice relates”: section 5(3), ITC Act; and section 5(5) (a), US TIEA Act. These details would not be released unless they are agreed with each of The Bahamas EOI partners as part of a confidential memorandum of understanding signed pursuant to the relevant TIEA. A person will have 28 days from the date of service of the notice to produce the information, although the Minister may extend this time.

155. Under s6 (ITC Act and US TIEA Act), the Minister may apply to a judge for a search warrant, which will be granted where the judge is satisfied there are reasonable grounds to suspect that an offence has been, is, or will be committed that will endanger the delivery of the information to the Minister.

156. Once information has been received by the Minister pursuant to either a notice or a search warrant, the Minister must not disclose the information to any person for a period of twenty days, after which he may provide copies of the information to the requesting jurisdiction (s7, ITC Act and US TIEA Act).

157. Both the ITC Act (s8) and the US TIEA Act (s10) also establish mechanisms to require persons to provide information in the form of witness depositions, and authenticated or certified copy documents to the extent so permitted under Bahamian laws and practices.

158. The ITC Act (s9) and the US TIEA Act (s12) establish offences where a person

- fails to deliver the information required pursuant to a notice;
- wilfully obstructs the execution of a search warrant;
- wilfully tampers with, or alters any information such that it is false when received by the Minister; or
- wilfully alters, destroys, damages or conceals any information requested under a notice.

159. Such offences are liable on summary conviction for fines of up to BSD 25 000 or imprisonment for a term not exceeding 12 months.

160. The US TIEA Act can be distinguished from the ITC Act in two regards. The information which may be sought by the Minister under the US TIEA Act, must be information held in The Bahamas. Unlike under the ITC Act, it is not sufficient that the information is within the control of a person in The Bahamas if the information itself is outside of the jurisdiction. This requirement is established by two provisions of the US TIEA Act: first, that a valid request from the US must specify that the information sought is in The Bahamas (s4(3)(j), although it is unclear how this provision in domestic legislation would be binding on the US, and it is not replicated in the US-Bahamas TIEA); and second, the notice requiring production issued under section 5(1), requires the recipient referred to in section 4(3)(j) to deliver the information to the Minister. Therefore this appears to create a narrower jurisdictional limit than the requirement to obtain information held, or in the possession or control of a person within The Bahamas, as established under Article 2 of the OECD Model TIEA or Article 26 of the OECD Model Tax Convention. The Bahamas has advised that no issue has arisen in this regard when applying the US TIEA Act to access information to respond to an EOI request.

161. Secondly, the Minister must, for certain requests made under the US-Bahamas TIEA, receive a certificate from a senior official designated by the US Secretary of Treasury which states that the information sought is foreseeably relevant or material to the determination of a federal tax liability of a US taxpayer, or a criminal tax liability under US federal tax laws.

162. The effect of these provisions means that The Bahamas has the power to obtain and provide relevant information under the possession or control of persons within its territorial jurisdiction in response to EOI requests from all its EOI partners. In the case of the US, The Bahamas would not have the power to obtain and provide such information if it was held outside of The Bahamas although The Bahamas has advised that to date this has not impeded access to information sought when applying the US TIEA Act.

Secrecy provisions (ToR B.1.5)

163. In addition to common law obligations on fiduciaries, there are also statutory obligations of confidentiality imposed under The Bahamas' law, however, pursuant to the ITC Act and US TIEA Act (s5(6) and s5(9) respectively), a person who provides information to the Minister pursuant to a notice requiring him to do so, has an absolute defence to any claim brought against him as a result of producing that information.

164. The limits on information which must be exchanged that are provided for in the OECD Model TIEA and Article 26 of the OECD Model Tax

Convention, apply in The Bahamas. That is, The Bahamas is not required to exchange information which is subject to attorney-client privilege; would disclose any trade, business, industrial, commercial or professional secret; or would be contrary to public policy. In addition to the public policy exception, both Acts create a specific exception for matters that would be contrary to national security.

Determination and factors underlying recommendations

Determination	
The element is in place	
Factors underlying recommendations	Recommendations
In the case of the US TIEA Act, The Bahamas does not have the power to obtain and provide information held outside of The Bahamas, even if such information is in the control of a person within its territorial jurisdiction.	The Bahamas should ensure that it has the power to access information sought under its TIEA with the US which is controlled by persons in The Bahamas, even if it is located extra-territorially.

B.2. Notification requirements and rights and safeguards

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

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

165. There is no requirement in The Bahamas’ domestic legislation that the taxpayer under investigation or examination must be notified of a request. Once the Minister receives information pursuant to a notice or search warrant, he must retain that information for 20 days prior to providing a copy of it to the requesting jurisdiction. Notably in addition, under section 7(c) of the ITC Act, this 20 day period “shall” be extended by the Minister:

in the event a taxpayer or interested person has objected to the Minister providing the assistance requested and has sought judicial review of an act of the Minister or other lawful recourse against an act of the Minister pursuant to the provisions of section 10.

166. The ITC Act is not clear how long the retention of the documents must be extended, however it may be until the objection is resolved. It is noted that the US TIEA Act only provides that the Minister “may” extend the

period, under section 7(2). Thus, whilst such an extension could equally affect the exchange, the Minister is not bound to extend the period thereby delaying the exchange of the information. Therefore, section 7(c) of the ITC Act may impact the legal framework for effective access to information. There is however no notification requirement under The Bahamas’ legislation, and further, The Bahamas has advised that to date there have been no legal challenges to the Minister’s powers under the ITC Act or the US TIEA Act, or to an exchange of information pursuant to an EOI agreement. Whether this obligation on the Minister to retain information is compatible with effective access in practice will be considered in the Phase 2 review of The Bahamas.

167. In respect of rights and safeguards of persons, the OECD Model TIEA provides that they remain applicable “to the extent that they do not unduly prevent or delay effective exchange of information”. In contrast, a number of The Bahamas’ agreements¹³ provide that a requested party “shall use its best endeavours” to ensure that they do not so unduly prevent or delay effective EOI. It is unlikely that this variation will materially affect access to information in line with the international standards.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
In the case of information exchange with all EOI partners except the US, the competent authority is required to retain information provided to him where a taxpayer or interested person has sought judicial review or other legal recourse. Under the domestic law concerning information exchange with the US, the Minister has discretion whether to withhold the exchange of information which he has accessed.	The Bahamas should ensure that its domestic law provisions are compatible with the timely access and exchange of information with all of its EOI partners.

13. With Australia, Belgium, Monaco, New Zealand, San Marino and the UK.

C. Exchanging Information

Overview

168. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In The Bahamas, the legal authority to exchange information derives from tax information exchange agreements (TIEAs), once these become part of The Bahamas' domestic law. This section of the report examines whether The Bahamas has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

169. The Bahamas has been very active in negotiating TIEAs, concluding 21 agreements since September 2009. A list of these signed agreements can be found in Annex 2, and cover a significant number of relevant partners. All the TIEAs which have been signed by The Bahamas generally follow the terms of the OECD Model TIEA, with the exception of its agreement with the US. Its TIEAs are incorporated into domestic law by: (i) The Bahamas and the United States of America Tax Information Exchange Agreement Act of 2003 (US TIEA Act), and (ii) the International Tax Cooperation Act, 2010 (ITC Act). The Minister of Finance has the power to incorporate TIEAs into The Bahamas' domestic law by order amending the ITC Act Schedule, pursuant to section 13(2) of the ITC Act.

170. The confidentiality of information exchanged with The Bahamas is protected by obligations imposed under the TIEAs, as well as in its domestic legislation (oath of secrecy required by all public officials, and personal data protection legislation), and is supported by sanctions for non-compliance. However, the competent authority is required to provide details of the EOI request when issuing a notice and it is unclear what would happen in the event that The Bahamas could not reach an understanding with its EOI partner on these details and this will be considered in its Phase 2 review. The restrictions on the exchange of certain types of information is in accordance with the international standards, such as business or professional secrets, information the subject of attorney-client privilege, or where the disclosure of the

information requested would be contrary to public policy. These exceptions are reflected in The Bahamas’ domestic law as well as in its EOI agreements. In respect of confidentiality the report finds that the element is in place, but certain aspects of its legal implementation need improvement. The other elements in this Part are found to be in place.

C.1. Exchange-of-information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

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

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

172. Under section 4(3) of both the US TIEA Act and the ITC Act, the requesting party must specify:

... the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement with respect to the person identified in paragraph (c) of this subsection.

173. Ten of the 22 TIEAs signed by The Bahamas¹⁴ contain a similar provision under Article 5(5). This provision creates a requirement for establishing a valid request which is in addition to those set out in Article 5(5) of the OECD Model TIEA. However the variation appears to be in line with the purpose of the requirements in Article 5(5) of the OECD Model TIEA, which is to demonstrate the foreseeable relevance of the information sought.

174. It is noted that in the case of the China-Bahamas TIEA, a requested party is under no obligation to provide information which relates to a period more than 6 years prior to the tax period under consideration.

175. In all other regards, The Bahamas' TIEAs meet the “foreseeably relevant” standard as described in Article 1 of the OECD Model TIEA, and its accompanying commentary.

In respect of all persons (ToR C.1.2)

176. For exchange of information to be effective it is necessary that a jurisdiction's obligations to provide information are not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

177. In all instances, the TIEAs signed by The Bahamas contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA.

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

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

179. None of the TIEAs concluded by The Bahamas allow the requested jurisdiction to decline to supply information solely because it is held by a

14. With Argentina, Belgium, Germany, Mexico, Monaco, New Zealand, San Marino, Spain, the UK and the USA.

financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

Absence of domestic tax interest (ToR C.1.4)

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

181. All of the TIEAs concluded by The Bahamas allow information to be exchanged notwithstanding it is not required for any Bahamas domestic tax purpose. Moreover, it is noted that The Bahamas does not impose any taxes on income.

Absence of dual criminality principles (ToR C.1.5)

182. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

183. None of the TIEAs concluded by The Bahamas applies the dual criminality principle to restrict the exchange of information.

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

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

185. All of the EOI agreements concluded by The Bahamas provide for the exchange of information in both civil and criminal tax matters.

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

186. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

187. All of the TIEAs concluded by The Bahamas allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws. Domestic law accommodates this requirement by requiring information to be produced, where requested, in a specific form, notably witness depositions, and authenticated copies: section 7, ITC Act; and section 10, US TIEA Act.

In force (ToR C.1.8)

188. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. Where EOI arrangements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

189. In the case of The Bahamas, this requires the agreement to be incorporated into domestic law by the making of an Order by the Minister to amend the Schedule to the ITC Act to include reference to the TIEA: section 13(2) of the ITC Act.

190. Even where, The Bahamas has taken all steps required by it, the TIEA will not enter into force until such time as its EOI partner has also concluded such steps, and the two partners have provided written notification of this fact. Following written notification, a short grace period is normally provided for in the agreement, such that the agreement enters into force a number of days (often 30 days) thereafter.

191. The Bahamas has signed 22 TIEAs in total. The US-Bahamas TIEA has been in force since 2002, and a further six TIEAs had recently entered into force as at November 2010: with China, Denmark, the Faroe Islands, Finland, France, and Norway. With the exception of the Canada-Bahamas TIEA (which was signed on 17 June 2010), The Bahamas has completed all steps which for its part, that are necessary to bring the remaining 14 signed TIEAs into force. The status of the TIEAs which The Bahamas has signed is set out in Annex 2.

In effect (ToR C.1.9)

192. For information exchange to be effective the parties to an exchange of information arrangements need to enact any legislation necessary to comply with the terms of the arrangement. The Bahamas has enacted domestic legislation, principally the US TIEA Act and the ITC Act, to give effect to its arrangements for the exchange of information for tax purposes. A few potential issues with this domestic legislation which may inhibit the agreements from being given their full intent are identified in Part B (see paragraphs 160, 161 and 166) of this Report.

Determination and factors underlying recommendations

Determination
The element is in place.

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

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

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

194. As at November 2010, The Bahamas had signed agreements with 22 jurisdictions, of which 16 are OECD members, although only seven agreements are currently in force. For its part, The Bahamas has taken all steps necessary to bring the remaining 15 agreements into force, with the exception of its agreement with Canada. The Bahamas' major trading partners are the United States and Canada, which together make up more than 85% of foreign trade and it has signed EOI agreements with both of these jurisdictions. In addition, The Bahamas Government's declared policy is to negotiate EOI agreements with any jurisdiction that requests such an agreement and of the 24 agreements signed to date, 22 are with G20 or OECD countries.

195. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no

jurisdiction advised the assessment team that The Bahamas had refused to negotiate or conclude a TIEA with it.

196. The Bahamas has indicated that it has approached a number of other jurisdictions and indicated its willingness to negotiate a TIEA which would meet the international standards however some of the jurisdictions approached had declined to negotiate or indicated that they would only negotiate DTAs, or had not responded to The Bahamas' invitation.

Determination and factors underlying recommendations

Determination	
The element is in place	
Factors underlying recommendations	Recommendations
	The Bahamas should continue to develop its EOI network with all relevant partners.

C.3. Confidentiality

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

Information received: disclosure, use, and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)

197. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

198. The TIEAs concluded by The Bahamas generally meet the standards for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected

in Article 8 of the OECD Model TIEA. In some cases¹⁵ the confidentiality article also provides that where information is provided for a criminal tax purpose is subsequently to be used for a non-criminal tax purpose, and vice versa, than the requested jurisdiction “shall be notified of this change in use, if not before, then within a reasonable time of the change in use occurring”. These confidentiality obligations form part of Bahamas’ domestic law by the incorporation of its TIEAs by the US TIEA Act and the ITC Act, rather than by a separate specific provision.

199. Under Bahamas’ domestic law, competent authorities exchanging information are bound by the Official Secrets Act, pursuant to which all public servants are required to take an oath of secrecy upon employment. The Act makes it an offence for public officers to communicate, retain or fail to take reasonable care of information received by them during their service, either during that service or afterwards. In addition, the Data Protection (Privacy of Personal Information) Act, 2003 imposes the privacy principles endorsed by the OECD and the UN with respect to the collection, use, handling and disclosure of personal information. A person guilty of an offence under the Official Secrets Act shall be liable, to imprisonment with or without hard labour for a maximum term of two years or a fine of BSD 500 or to both. A person guilty of an offence under the Data Protection Act shall be liable to, upon a summary conviction, a fine of up to BSD 2 000, and in the case of a conviction on information, a fine of up to BSD 100 000.

200. The Bahamas are required to include certain details when issuing a notice to obtain information, under section 5(3), ITC Act and section 5(5) US TIEA Act (see section B.1. of this report). Whilst it is acknowledged that for EOI requests in all contexts some details of the request must be disclosed to the holder of information in order to execute a request, it is not known how broad the details are which The Bahamas’ domestic law requires to be released to the holder of information. It is also acknowledged that The Bahamas’ competent authority, in all cases, seeks to come to an understanding with its counterparts on which details of a request may be released when issuing a notice to access information (which understanding does not need to be a signed agreement). As noted in paragraph 154, The Bahamas has advised that no details would be released by them until there is an understanding reached about these details with its EOI partner. It is unclear what would happen in the event that The Bahamas could not reach an understanding with its EOI partner. Whether this affects the exchange of information in practice will be considered as part of the Phase 2 review of The Bahamas.

15. The Bahamas’ agreements with Argentina, Belgium, Mexico, Monaco, New Zealand, San Marino, the United Kingdom and the US.

Determination and factors underlying recommendations

Determination
The element is in place.

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

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

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

201. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

202. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney – client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

203. The limits on information which must be exchanged under The Bahamas' TIEAs mirror those provided for in the OECD Model TIEA and Article 26 of the OECD Model Tax Convention. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged. This is incorporated into The Bahamas' domestic law by virtue of section 3(3) and section 3(4) of the US TIEA Act and section 3(3) of the ITC Act.

Determination and factors underlying recommendations

Determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1.)

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

205. Rather than a specific time frame, a number of The Bahamas' TIEAs¹⁶ vary from Article 5(6) of the OECD Model TIEA as they do not specify the time frame for acknowledging or responding to an EOI request. Rather, they provide that the requested party shall use its “best endeavours” to provide the information “within a reasonable time”. In addition, neither its TIEA with Australia nor with the US contains provisions concerning the time within which a status update, or response to an EOI request is to be provided. The Bahamas has advised that where a specific timeframe does not appear in its TIEAs, the timeframes are instead included in the confidential Memorandums of Understanding which are concluded pursuant to the TIEA. As such there appear to be no legal restrictions on the ability of The Bahamas' competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

Organisational process and resources (ToR C.5.2)

206. A review of the practical ability of Bahamas' tax authorities to respond to requests in a timely manner will be conducted in the course of its Phase 2 review. This Phase 1 assessment is intended to review whether there are aspects of Bahamas' domestic law or regulatory framework that appear to prevent the delivery of information in a timely manner.

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

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

16. With Argentina, Belgium, Canada, Germany, Mexico, Monaco, the Netherlands, New Zealand, San Marino and the UK.

208. There are no laws or regulations in The Bahamas that impose restrictive conditions on exchange of information that would be incompatible with the international standard.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>		
The element is in place.	It is unclear whether an exemption for investment funds in the Security Commission's Guidelines is subordinate to the more general requirement in AML regulations for ownership and identity information. Whether an exemption does exist is particularly relevant for determining ownership and identity information requirements for self-administered private funds.	The Bahamas should ensure that any exemption in respect of investment funds is consistent with the AML regulations to ensure that all such funds are subject to appropriate ownership and identity requirements.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>		
The element is not in place.	All relevant entities and arrangements including international business companies, registered private and foreign-incorporated companies, authorised purpose trusts and foundations are not subject to express obligations to maintain reliable accounting records for a minimum five year period.	The Bahamas should ensure that reliable accounting records, including underlying documentation, are required to be kept in respect of all relevant entities and arrangements for a minimum five year period.

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>		
The element is in place.		
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>		
The element is in place.	In the case of the US TIEA Act, The Bahamas does not have the power to obtain and provide information held outside of The Bahamas, even if such information is in the control of a person within its territorial jurisdiction.	The Bahamas should ensure that it has the power to access information sought under its TIEA with the US which is controlled by persons in The Bahamas, even if it is located extra-territorially.
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 element is in place.	In the case of information exchange with all EOI partners except the US, the competent authority is required to retain information provided to him where a taxpayer or interested person has sought judicial review or other legal recourse. Under the domestic law concerning information exchange with the US, the Minister has discretion whether to withhold the exchange of information which he has accessed.	The Bahamas should ensure that its domestic law provisions are compatible with the timely access and exchange of information with all of its EOI partners.
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2.)</i>		
The element is in place.		The Bahamas should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3.)</i>		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4.)</i>		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5.)</i>		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

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

1. The Bahamas would like to thank the assessment team and the peer review group members for the productive and constructive engagement during the course of the review and the useful observations made. The Bahamas acknowledges the findings of the report and notes its continuing commitment to the review process.

The Bahamas wishes to record the following comments with regard to the findings of the report:

2. The Bahamas wishes to clarify that its legislation has been purpose built over a period of time as necessary, for reasons that have not included direct taxation. In this regard The Bahamas wishes to express particular appreciation to the assessors for the time and effort taken to review the various pieces of legislation as an entire body.
3. Whilst the assessment has determined that the element is not in place for accounting records due to the absence of express provisions in the law regarding each enumerated aspect of element A.2, The Bahamas wishes to re-emphasise that the general requirements of element A.2 have partially been met by the existence of various positive obligations to maintain accounting records. This has been recognised throughout the report in respect of several entities. Nevertheless, The Bahamas intends to introduce relevant adjustments to the legislative framework to ensure that the requirements of element A.2 are met in full.
4. The Bahamas wishes to advise that since the date of the report a new Business Licence Act which came into force on 1st January 2011, now requires retention of accounting records to the standard of 5 years.

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

In relation to exchange of information mechanisms, The Bahamas wishes to bring the following update:

5. The Bahamas completed its internal procedures on 17th December 2010 for bringing its TIEA with Canada into force.
6. Since November 2010 The Bahamas has signed two new TIEAs with Japan (on 27 January 2011) and India (on 11th February 2011), bringing its total number of TIEAs signed to date to 24. The Bahamas continues to await notification from three jurisdictions following the completion of negotiations, for a date to sign the respective TIEAs.
7. Additionally since the date of the report, TIEAs with the following seven (7) jurisdictions have come into force due to the completion of the necessary internal procedures by the respective treaty partners of The Bahamas: the Netherlands (1st December 2010), Sweden (24th December 2010), Mexico (30th December 2010), United Kingdom (7th January 2011), Australia (11th January 2011), Monaco (18th February 2011) and India (1st March 2011). The number of TIEAs fully in force for The Bahamas is now 14.
8. Finally, since November 2010:
 - negotiations with one other jurisdiction have been completed;
 - new negotiations with two other jurisdictions have commenced; and
 - negotiations with twelve other jurisdictions are in various stages of completion.

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

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
1	United States	TIEA	25 January 2002	31 December 2003
2	Monaco	TIEA	18 September 2009	
3	San Marino	TIEA	24 September 2009	
4	United Kingdom	TIEA	29 October 2009	
5	New Zealand	TIEA	18 November 2009	
6	China	TIEA	1 December 2009	28 August 2010
7	Argentina	TIEA	3 December 2009	
8	Netherlands	TIEA	3 December 2009	(1 December)
9	Belgium	TIEA	7 December 2009	
10	France	TIEA	7 December 2009	13 September 2010
11	Mexico	TIEA	23 February 2010	(30 December 2010)
12	Denmark	TIEA	10 March 2010	9 September 2010
13	The Faroe Islands	TIEA	10 March 2010	24 October 2010
14	Finland	TIEA	10 March 2010	9 September 2010
15	Greenland	TIEA	10 March 2010	
16	Iceland	TIEA	10 March 2010	
17	Norway	TIEA	10 March 2010	9 September 2010
18	Sweden	TIEA	10 March 2010	(24 December 2010)
19	Spain	TIEA	11 March 2010	
20	Australia	TIEA	30 March 2010	
21	Germany	TIEA	9 April 2010	
22	Canada	TIEA	17 June 2010	

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

Anti Money Laundering (AML) Law and Regulations

Financial Intelligence Unit Act (FIU Act)

Financial Transaction Reporting Act (FTR Act)

Financial Transaction Reporting Regulations (FTR Regulations)

Financial Intelligence (Transaction Reporting) Regulations FI(TR)R

Proceeds of Crime Act

Guidelines for Licensees on the Prevention of Money Laundering and
Countering the Financing of Terrorism (Central Bank's Guidelines)

Guidelines for Licensees/Registrants on the prevention of Money Laundering
and Countering the Financing of Terrorism (Securities Commissions' Guidelines)

Commercial and Financial Services Laws and Regulations

Banks and Trust Companies Regulation Act (BTCR Act)

Banks and Trust Companies (Private Trust Companies) Regulations
(PTC Regulations)

Business Licence Act (BL Act)

Companies Act

Exchange Control Regulations Act

Exempted Limited Partnerships Act (ELP Act)

Exempted Limited Partnerships Regulations

External Insurance Act (EI Act)

Financial and Corporate Service Provider Act (FCSP Act)

Foundations Act
Fraudulent Dispositions Act (FD Act)
Insurance Act
International Business Companies Act (IBC Act)
Investment Funds Act (IF Act)
Investment Funds Regulations (IF Regulations)
Partnership Act
Partnership Limited Liability Act (PLL Act)
Purpose Trust Act (PT Act)
Segregated Accounts Companies Act (SAC Act)
Securities Industry Act
Securities Industry Regulations (SI Regulations)
Trustee Act

Exchange of Information Laws and Regulations

International Tax Cooperation Act (ITC Act)
International Tax Cooperation Regulations
The Bahamas and the United States of America Tax Information Exchange Agreement Act (US TIEA Act)
The Bahamas and the United States of America Tax Information Exchange Agreement Regulations

General laws and regulations

The Constitution of The Bahamas
Data Protection (Privacy of Personal Information) Act

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: THE BAHAMAS

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

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

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

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

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