GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard in Practice

THE BAHAMAS

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: The Bahamas 2013

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2013
(reflecting the legal and regulatory framework
as at March 2013)

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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 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in The Bahamas as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three year period (1 July 2009 through 30 June 2012).

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 March 2013, The Bahamas has an exchange of information (EOI) network covering 29 jurisdictions; 26 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. In respect of the availability of ownership and identity information, as well as banking information for account holders, there are obligations in place to ensure the availability of this information. These obligations are accompanied by appropriate penalties for non-compliance. The obligations imposed directly on entities and arrangements are complemented by regulatory laws, including AML obligations, imposed on a person conducting certain businesses such as banking, trust services, insurance, investment and company management. Ownership and identity information has generally

been available where this was requested. However, the lack of monitoring and enforcement of penalties by the Registrar and the scope of the supervision by the regulators may not ensure that complete ownership information is being maintained in respect of all legal entities.

5. In respect of the availability of accounting information, all entities are subject to comprehensive obligations to retain accounting records and underlying documentation for a minimum 5 year period. Effective sanctions will also apply to any entity that fails to keep accounting records as required. As these obligations only came into force in 2011, 2012 and 2013, they are largely untested in practice and the implementation of these amendments and compliance with these obligations should be strictly monitored by The Bahamas.

6. In respect of access to information, the competent authority of The Bahamas is invested with broad powers to gather relevant information. These consist of a power to issue a notice to require the production of relevant information and are complemented by powers to search premises and seize information under court supervision as well as obtaining relevant information by way of witness deposition. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Secrecy provisions in The Bahamas are overridden where information is required for EOI purposes, and a domestic tax interest does not exist in The Bahamas.

7. The Bahamas has been exchanging information in accordance with the international standards since 2007. During the review period, The Bahamas received 48 requests from 8 different jurisdictions, with a clear increase in the numbers of requests and EOI partners year on year. Including the time taken by the requesting jurisdiction to respond to clarifications from The Bahamas which occurred in 27% of cases, the requested information was provided within 90 days in 25% of the requests, between 91 and 180 days in 50% of the requests, between 181 days and one year in 10% of the requests with two requests still outstanding from the review period. The Bahamas is considered by its partners as a reliable EOI partner and maintains clear lines of communication with its EOI partners throughout the processing of a request.

8. The Bahamas has been assigned a rating[1] for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of The Bahamas' legal and regulatory framework and the effectiveness of its

1. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

exchange of information in practice. On this basis, The Bahamas has been assigned the following ratings: Compliant for elements A.3, B.1, B.2, C.1, C.2, C.3, C.4 and C.5, and Largely Compliant for elements A.1 and A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for The Bahamas is Largely Compliant.

9. A follow-up report on the steps undertaken by The Bahamas to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of The Bahamas

10. The peer review process of the Commonwealth of The Bahamas (The Bahamas) has been undertaken across two reports; the 2011 Phase 1 report and the 2013 Phase 2 report. The assessment of the legal and regulatory framework of 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.

11. The Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force or effect as at May 2013, The Bahamas' responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by The Bahamas, information supplied by exchange of information partners and explanations provided by The Bahamas during the onsite visit that took place from January 30-1 February 2013 in Nassau, The Bahamas. During the onsite visit, the assessment team met with officials and representatives of the Ministry of Finance, the Financial Secretary and the Legal Unit of the Ministry of Finance, the Registrar General's Department, the Central Bank and the Attorney General's Office. A list of all those interviewed during the onsite visit is attached to this report at Annex 4.

12. The following analysis reflects the integrated 2011 Phase 1 and 2013 Phase 2 assessments of the legal and regulatory framework of The Bahamas in effect as at May 2013 and the practical implementation and effectiveness of this framework in the three-year review period of 1 July 2009 to 30 June 2012.

13. 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 and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding The Bahamas' legal and regulatory framework 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. In addition, to reflect the Phase 2 component, recommendations are made concerning The Bahamas' practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect The Bahamas' overall level of compliance with the standards.

14. The Phase 1 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.

15. The Phase 2 assessment was conducted by an assessment team, which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Mr Thierry Glajean, from the Large Business Audit Branch of the French Tax Administration, Mr Andrew Cousins, Deputy Comptroller of Taxes and Competent Authority for Jersey; and Ms Mary O'Leary and Ms Renata Teixeira from the Global Forum Secretariat. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in The Bahamas.

16. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. The assignment of ratings was also conducted at a different time from those reviews, and the circumstances may have changed in the meantime. Readers should consult Annex 1 for information on changes that have occurred.

Overview of The Bahamas

17. 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.

18. 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.

19. 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 38-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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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 8.1 billion in 2012, of which tourism made up 40% and financial services 20%. Estimates are that over

40% of the Bahamian workforce was employed in the tourism industry.[2] In 2011, the financial services sector accounted for approximately 3-4% of employment.[3]

Overview of The Bahamas' commercial laws and financial sector

25. 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 2012, there are approximately 231 international banks and trust companies registered in The Bahamas which hold BSD 399 billion in assets on their balance sheet. In addition, there are 32 domestic banks and trust companies which hold BSD 9.62 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, whereas trust services may be provided by individuals, and in those instances where trust services are provided by individuals, the individuals are regulated separately under the Financial and Corporate Service Providers Act.

26. 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, 705 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 July 2012, is comprised of 134 insurance companies and licensed agents with BSD 2.1 billion in assets, and is regulated by the Insurance Commission.

27. 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.

2. Data taken from The Bahamas Total Tourism Economic Impact Report 2006.
3. Data taken from The Bahamas' Central Bank Quarterly report to December 2011, and the Labour force survey to December 2009.

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

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

29. 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 March 2013, The Bahamas had signed TIEAs with 29 jurisdictions, of which 26 agreements are currently in force. Twenty-two of these agreements are with OECD members, and 19 of them have been signed since the beginning of 2010. Most recently it has signed agreements with South Africa and Malta.

30. 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

31. On 28 and 30 December 2011 The Bahamas passed the following series of acts: *(i)* The Exempted Limited Partnership (Amendment) Act, 2011; *(ii)* The Foundations (Amendment) Act, 2011; *(iii)* The International Business Companies (Amendment) Act, 2011 *(iv)* The Investment Funds (Amendment) Act, 2011; *(v)* The Purpose Trusts (Amendment) (No. 2) Act, 2011; and *(vi)* The Segregated Accounts Companies (Amendment) Act, 2011. These pieces of legislation (all in force) provide express obligations for the maintenance of accounting records, including underlying documentation, and for the retention of such records for a minimum period of five years, in respect of exempted limited partnerships, foundations, international business companies, investment funds, purpose trusts and segregated account companies.

32. In January 2013 the Bahamas passed a further series of amendments; *(i)* The Companies (Amendment) Act, 2013; *(ii)* The Partnerships (Amendment) Act, 2013; *(iii)* The Business Licence (Amendment) Act, 2013; and *(iv)* the Trustee (Amendment) Act, 2013. Similarly, these acts (all in force) provide express obligations for the maintenance of accounting records, including underlying documentation, and for the retention of such records for a minimum period of five years, in respect of General and foreign companies, general and limited partnerships, and trustees resident in The Bahamas.

33. In December 2011, The Bahamas passed the International Tax Cooperation (Amendment) Act, 2011 and The Bahamas and the United States of America Tax Information Exchange Agreement (Amendment) Act, 2011 which both addressed recommendations made in the Phase 1 report. The amendments (all in force) address fully the recommendations as described in section B.2.1 *Notification requirements rights and safeguards* and section B.1.4 *Compulsory Powers* of this report.

34. The Executive Entities Act 2011 which came into force on 1 February 2012, introduced a new form of legal entity, the "Executive Entity", to the business framework of The Bahamas. An Executive Entity is a legal person that carries out supervisory, fiduciary and office holding functions for private wealth structures that are domiciled or regulated by the laws of The Bahamas or a jurisdiction specified in the Financial Transactions Reporting Act.

35. Since the adoption of The Bahamas Phase 1 review, The Bahamas have signed a further 7 agreements for the exchange of information for tax purposes, bringing the total number of agreements signed to 29. A complete list of the agreements which have been concluded by The Bahamas is set out in Annex 2 to this report, including their dates of signature and entry into force.

36. The Bahamas has recently initialed four further TIEAs. Two of these have been approved for signature and The Bahamas is awaiting confirmation from its partners on their readiness to move forward with the signing the other two agreements. TIEA negotiations with eleven other jurisdictions are in various stages of completion.

Compliance with the Standards

A. Availability of Information

Overview

37. 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 organisational 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.

38. 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. A simplified due diligence procedure, contained in the Financial Transactions Reporting Regulations and the binding Security Commission guidelines, for investment funds to the client identity information requirements of the AML regime makes it unclear whether such information for all funds is required to be kept, regardless of their legal form. 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.

39. In practice, there is a regular system of monitoring and enforcement of penalties carried out by the regulators for licensed entities. Monitoring is mainly performed via desk-top audits and onsite inspections. However, the lack of monitoring and enforcement of penalties by the Registrar and the scope of the supervision by the regulators may not cover all the obligations to maintain complete ownership information in respect of all entities.

40. Comprehensive obligations apply to companies, partnerships, trusts and foundations to retain accounting information and underlying documentation for a minimum 5 year period. There are also penalties in place for non-compliance with these obligations. However, these obligations remain largely untested in practice and the lack of experience in monitoring these obligations may affect the availability of relevant identity and ownership information for the purposes of exchange of information. The Bahamas should monitor the implementation of accounting record obligations and should ensure that its enforcement powers are sufficiently exercised in practice.

41. 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 are available for all account-holders. This element (A.3. of the Terms of Reference) is found to be in place.

42. 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 however, the penalties which may be imposed are significantly lower than in the case of penalties imposed on other persons.

43. Over the three year review period 1 July 2009 – 30 June 2012 (review period), The Bahamas received a total of 48 requests, which related to information concerning companies, partnerships and trusts as well as individuals. The Bahamas received a total of 27 requests for identity and ownership information, as well as 15 requests concerning accounting information and 32 requests relating to banking information. Of the 27 ownership requests, 24 related to company ownership information and 3 related to trust ownership information and The Bahamas was able to provide ownership information in 26 of these cases with the one outstanding case still ongoing.

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 (ToR[4] A.1.1)

44. 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.

General Company

45. A General Company must have at least 60% of its ultimate owners as Bahamian residents to be a Bahamian company. As of January 2013, there were 54 467 GCs registered in The Bahamas.

International Business Company

46. 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. As of June 2013, there were 166 205 IBCs registered in The Bahamas, with 36 903 of these listed as active. Active IBCs are those that have paid their annual fees, complied with all regular filing requirements and have been issued a certificate of standing in order to be permitted to operate as an IBC in The Bahamas.

4. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*.

Segregated Account Company

47. 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. An 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). As of January 2013, there were 99 SACs registered in The Bahamas.

48. 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.

49. An SAC must either 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

50. The Registrar General's Department (Registrar General) maintains registers of all companies registered under the Companies Act, all IBCs and all SACs. The Registrar General does not maintain a register of SAs within an SAC. At the time of incorporation, all Bahamian companies must register and provide their memorandum of association to the Registrar.

51. 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.

52. In the case of an IBC, as well as its memorandum, it must also provide its articles of association to the Registrar General 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

General with an authenticated copy of its Memorandum or Articles within 28 days of any amendment (s18, IBC Act).

53. 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).

54. All company registrations are carried out in person at the offices of the Registrar General (which is an independent statutory body falling under the portfolio of the Attorney General and the Minister of Legal Affairs). IBCs and SAs can only be registered via a registered agent who has a Financial and Corporate Service Providers Licence from the Securities Commission. GCs must supply ownership information at the time of registration and this has to be updated annually by the filing of an annual return listing all shareholders. The filing of this return is monitored by the Registrar General and where this information is not filed on time, the Registrar General will send a letter requesting that the entity comply with this information keeping obligation to the GC. However, as there are no annual filing requirements in respect of ownership information regarding IBCs, in practice, the Registrar General does not monitor any of the ownership and identity information that must be maintained by the IBC and in practice the monitoring of the information keeping obligations by IBCs will be carried out by the regulators under the regulatory laws and the AML regime as applicable to the registered agents (see section *Regulation of entities in practice).* As of 31 January 2013 there were 220, 659 companies on The Bahamas Registry.

Foreign companies

55. 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.

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

57. 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.

58. Registration of foreign companies follows the same process as that of IBCs in that registration will take place via a registered agent. Foreign companies make up a very small proportion of all companies carrying on business in The Bahamas but have increased over the last few years. As of 31 January 2013, there were 1 430 foreign companies registered in The Bahamas.

Company ownership and identity information required to be held by companies

59. 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

60. 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. If there is any unreasonable delay in entering the information in the Share Register by the company, a member of the company, or any person who is aggrieved by the delay may apply to the Court for an order that the Share Register be updated (s30(1)(b), IBC Act).

61. The Registrar General has confirmed that in practice a transfer of shares will not be recognised by the IBC until such time as this transfer, along with all the details of the new shareholder, are entered in the Share Register. In the event that the transferee's name has not yet appeared in the Share Register, this person would not be recognised by the IBC and therefore not be entitled to any of the rights associated with being a shareholder such as the receipt of dividend payments. The obligation to update the share register by IBCs is presided over by the Registrar.

62. All IBCs are also required to have a registered agent subject to the AML regime and that AML Service Provider is required to know and verify the owners of the IBC. Pursuant to the Financial Transactions Reporting Regulations (FTR Regulations) and the Central Bank guidelines, the registered agent of an IBC will only be required to identify any person holding a beneficial interest of 10% or more in the company. However, there is also a direct obligation on the IBC to maintain and update the share register regarding ownership information. Every registered agent will also be subject to the requirements under the Financial and Corporate Service Providers Act (s14, FCSP Act) or the Bank and Trust Companies Regulation Act (s13, BTCR Act) to maintain client ownership information in respect of all beneficial owners of IBCs (see also below sections Regulatory Laws and Trust ownership and identity information required to be held by regulated trust companies) and to monitoring by the regulators in the course off their inspection programs (see section Regulation of entities in practice). However, the means by which "beneficial ownership" is ascertained and the extent to which changes in beneficial ownership are monitored by the regulators is unclear. Whilst, in practice, no issues have arisen with the availability of IBC ownership information for EOI purposes, it is not clear if monitoring as carried out by the regulators will ensure that full ownership information is being maintained in respect of IBCs in all cases.

63. 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.

64. 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.

65. 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

66. 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.

67. 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.

68. The Bahamas has reported that in practice, applications for exchange control approval, are made in writing and will contain ownership and identity information. The Central Bank requires that the written request for exchange control approval disclose the following information:

- the name and address of the principal(s) for whom the nominee is acting or is to act;
- a government issued identification document, for example a passport;
- the curriculum vitae of the principals;
- and where the applicant is a company, copies of the audited financial statements of the company, the certificate of incorporation and certificate of good standing, and evidence of the identity of the shareholders of the applicant.

69. 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.

70. Nominees acting in respect of the beneficial owner of an IBC will be subject to the AML regime and the requirements of the FCSP Act ensuring the availability of information on the clients for whom a nominee acts.

Compliance with these requirements will be monitored in the course of the inspection program as carried on by the Securities Commission *(*see section *Regulation of entities in practice)*. The Bahamas has indicated that in practice there will only be exceptional cases whereby a nominee will not be acting in respect of the beneficial owner of an IBC and as yet they have not come across any circumstance of a nominee acting in any other capacity. In certain cases concerning the transfer of securities to nominees acting for both residents and non-residents the nominee will also be subject to the Exchange Control Regulations. Applications for exchange control approval, pursuant to regulation 14, are made in writing and usually by letter. The Central Bank requires that the written request for exchange control approval will disclose the following information: the name and address of the principal(s) for whom the nominee is acting or is to act, together with a government issued identification document (such as a passport) and the curriculum vitae of the principals. Where the applicant is a company, the Central Bank will require copies of the audited financial statements of the company, the certificate of incorporation and certificate of good standing, and evidence of the identity of all shareholders of the applicant. The Central Bank's further approval must be obtained where ownership of the applicant and or the nominee is to change. Therefore, in the case of a transfer of all shares to a nominee, permission will have to be obtained from the Controller of Exchange, and the Central Bank will be responsible for maintaining information in respect of those clients for whom a nominee will hold a security.

71. No requests involving nominee shareholders have been received so far by The Bahamas, and of the EOI partners that provided peer input, none indicated that there were any issues in relation to nominee ownership.

Business Licences

72. 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 152).

73. 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.

74. 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.

75. Prior to a company obtaining a business licence, it must provide a statement of compliance and good standing with the Registrar General and regulatory bodies, where relevant. All business licences are applied for in person either by a representative of the company or the registered agent at the office of the Business Licence Unit at the Ministry of Finance. All persons and entities carrying on business within The Bahamas are under an obligation to obtain such a licence with the exception of Private Trust Companies.

76. Changes in members and shareholders of companies are notified in the annual company statement which each entity must lodge with the Business Licence Unit. Where a business has a turnover of BSD1million or more there is a requirement for financial results and a statement of the company's annual turnover to be submitted with the annual return.

77. Penalties for non-compliance with the obligations set out under the BL Act, such as carrying on a business without a licence, submitting incorrect information at the time of application or failure to advise of changes in ownership, are imposed by the Business Licence Unit. Under the three year review period, the Business Licence Unit reported that there have been a few incidences each year where licences have been revoked due to incorrect information having been provided. However, apart from these instances, no other fines or enforcement actions have been taken and there is no active monitoring undertaken. Breaches of obligations are usually discovered in the course of other enquiries, such as where a complaint has been made against an entity.

Regulatory laws

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

79. 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[5]	Securities Commission	Investment Funds Act (IF Act)
Insurance Companies and insurance business except national insurance	Insurance Commission	Insurance Act and External Insurance Act
Financial and Corporate Service Providers[6] ("FCSP", includes individual trust service providers and nominees providing services on a commercial basis[7])	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

5. 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. As of March 2013, administrative steps to consolidate the Securities, Insurance and Compliance Commissions have been taken. These 3 regulators are now located in the same building and are currently consolidating their accounting, IT and human resources departments.
6. "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.
7. 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

80. 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.

81. 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.

82. Persons who are regulated pursuant to these laws with the exception of Banks and Trust Companies are referred to herein as Regulated Licensees. In respect of Banks and Trust companies as well as Regulated Licensees, there are applicable identity and ownership obligations in respect of their clients, under both the regulatory laws and the AML regime.

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

84. 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.

85. 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.

86. 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, FSCP 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 licence.

87. Where the regulator is of the view that the Regulated Licensee is failing to meet the obligations imposed by the Act, including verifying or

therefore are not subject to the regulatory obligations.

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).

88. 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

89. With the banking and trust company sector, the investment funds sector is a significant part of The Bahamas' financial services industry. The global economic downturn coupled with the closure of one of the largest fund administrators led to a decrease in assets held by investment funds from BSD 190 billion in December 2009 to BSD 133 billion as of March 2013. A more specific regime for maintaining identity information applies to investment funds, which may take a variety of legal forms including a company, partnership or trust. As at March 2013, there were 705 investment funds in The Bahamas, of which 650 were companies (including IBCs), 8 were trusts, and 47 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 recognised foreign fund (which must be from a prescribed jurisdiction). A different licensing process applies to fund administrators than to the funds themselves.

90. 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[8].

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

91. 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 licence pursuant to section 34(1) of the IF Act. An unrestricted licence-holder may only issue a licence 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).

92. 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 92 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.

93. 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 7 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. 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.

94. The binding guidelines issued by The Bahamas’ Security Commission previously created an exception from the regulations in the AML regime that would otherwise impose client identity obligations to investment funds. Investment funds were exempt from the client identity information requirements of the AML regime (see paragraph 93). The guidelines were amended and updated in August 2011 and seek to simplify, rather than exempt, the customer due diligence verification procedures for investment funds licensed or registered pursuant to the IF Act. Where the simplified due diligence has been applied, this

waives the FTR Act's requirements for documentary evidence in relation to the investment fund to be maintained. These guidelines note that this simplified due diligence process 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 where this exception may be inconsistent with the requirements of the regulations, under which the guidelines are made, as a matter of law, the regulations will override the subordinate guidelines. The Bahamas has reported that where simplified due diligence has been applied, the service provider will have to identify clearly in its internal policies and procedures the applicable circumstances by which the particular requirement for documentary evidence has been waived, and the basis for such a waiver within the context of its risk management procedures.

95. 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 Exempted Limited Partnership under the Exempted Limited Partnership Act. The situation in relation to investment funds in the form of trusts is analysed below.

Investment funds in practice

96. There are currently 705 Investment Funds in The Bahamas which are licensed with the Securities Commission. With the exception of the ten self-administered Bahamian funds, all mutual funds must appoint a fund administrator who will be subject to the client verification requirements of the AML regime. Whilst previously, there was an exception for client information requirements in respect of investment funds, the amended Securities Commission guidelines now provide that in respect of a fund regulated by the Securities Commission or by another approved jurisdiction[9], the fund administrator is able to apply simplified due diligence. The Securities Commission uses membership of the International Organisation of Securities Commissions (IOSCO) as the criterion for recognition as an "approved jurisdiction". As outlined above, this permits the fund administrator to waive the requirements for the documentary evidence stipulated in the FTR Regulations. Clear

9. The simplified due diligence applies to a regulated mutual fund in The Bahamas or as located in a country specified in the First Schedule to the Financial Transactions Reporting Act (FTR Act). These named countries are Australia, Barbados, Belgium, Bermuda, Brazil, Canada, Cayman Islands, Channel Islands, Denmark, Finland, France, Germany, Gibraltar, Greece, Hong Kong(China), Ireland, Isle of Man, Italy, Japan, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, Panama, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom, United States.

reasons for this waiver must be set out in a statement and maintained by the fund administrator. Whilst the fund administrator will have to clearly set out the reasons for applying simplified due diligence, in practice these reasons do not have to be submitted or acquire prior approval from the Securities Commission or any other government agency nor is such a policy monitored on a regular basis. The Bahamas has reported that the Securities Commission is currently drafting guidelines for all licensees on the application of the simplified due diligence procedure and how this is to be applied in practice. These guidelines are due to be finalised shortly.

97. Whilst simplified customer due diligence procedures may apply to the investment funds industry, most of these entities will also have a registered agent or corporate trustee subject to the client identification requirements under the FCSP Act or BTCR Act. Therefore, the investment funds will also be subject to information keeping requirements as monitored by the Securities Commission (see also section A.1.6 *Monitoring of Licensed entities in practice).*

98. The Securities Commission has confirmed that of the 705 investment funds, 650 of these are in the form of companies, 47 are in the form of partnerships and 8 are in the form of trusts. Therefore, the mutual funds will also be subject to the information keeping requirements under the respective entity laws. In respect of trusts, the Securities Commission has reported that these consist of five Bahamian domiciled ordinary trusts and three Cayman-domiciled Exempted trusts. The total asset value held by these trusts is_ BSD3.3 billion (2.47% of all assets under management by investment funds in The Bahamas) representing a significant amount. Therefore, the information keeping obligations under common law as set out below will apply (see section A.1.4 *Trust information*). In addition, the Bahamian AML regime establishes that anyone acting by way of business as a trustee in respect of funds will be subject to the information-keeping obligations as set out under the Financial Transactions Reporting Act (FTR Act).

99. 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; the suspension or revocation of a fund or administrator's licence or registration; the appointment of a person to advise a fund or administrator on the proper conduct of its affairs; or the imposition of "any other sanctions or remedies as the justice of the case may require" (s55, IF Act).

Anti-Money Laundering/Counter Financing of Terrorism Laws.

100. 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 and FCSPs. The Compliance Commission is responsible for overseeing compliance by "financial institutions" providing prescribed services that are not otherwise regulated. Hereinafter, persons subject to The Bahamas' AML regime whether supervised by the Compliance Commission or another regulator, will be referred to as AML Service Providers.

101. 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, a foundation must have either or both a Secretary or Foundation agent that is a Regulated Licensee and an Executive Entity must appoint an executive entity agent (see section *Other entities and arrangements* for an analysis of Executive Entities). 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.

102. 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).

103. 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 instructions[10] 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 of 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

10. 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".

the Central 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).

104. 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)[11], 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.

105. 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 or who control its management (regulation 4(3) and 7A, FTR Regulations)[12]. 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.

106. 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.

107. 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

11. Including where there are reasonable grounds to believe that transactions are being structured to avoid the prescribed limit: s7(1)(b), FTR Act.
12. 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. (See paragraph 77(iv) of the Central Bank Guidelines on the Prevention of Money Laundering and Countering Financing of Terrorism).

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 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).

108. 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 a 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.

Regulation of entities in practice

109. The main regulators for the financial services sector are the Central Bank, the Securities Commission and the Insurance Commission. Each of the regulators has a comprehensive system of monitoring in place for licensed entities. Any discrepancies found during the course of the onsite inspection programs are noted in the file of that particular entity. However, as yet, this information has not been compiled into a complete database and there are no statistics available on the number of discrepancies found as in the course of onsite inspections. The monitoring of regulated licensees as carried out by each of the regulators is set out below.

110. The Central Bank as regulator for banks and trust companies issues licences as well as conducts inspections of licensees to ensure that information as required under their customer due diligence obligations is being maintained. As of March 2013, there were 271 banks and trust companies licensed by the Central Bank. The Central Bank also publishes the Central Bank guidelines which incorporate the mandatory minimum ownership information keeping requirements as set out in the law. Notably, these guidelines have the force of law.

111. There are currently 69 officials out of a total 238 employees within the Central Bank who are involved in the full-time monitoring and ongoing inspection of regulated entities. This is carried out via desk-top audits whereby regulated entities are regularly assessed to determine their risk rating and a systematic six monthly onsite inspection program of pre-selected entities (see also Section A.1.3 *Availability of banking information in practice*). These onsite inspections usually last from one to two weeks depending on the size and complexity of the entity, the number of clients and the compliance obligations they must adhere to. Over the three year period under

review, a total of 104 onsite inspections were conducted by the Central Bank and in 80% of cases these onsite inspections included an assessment of compliance with information-keeping requirements under the AML regime (see also section A.1.6 *Enforcement of penalties in practice).*

112. The Securities Commission is the statutory body responsible for the monitoring of securities and capital market operators, investment funds as well as FCSPs. There are currently 705 investment funds and 67 fund administrators licensed with the Securities Commission. All forms of registration are performed in person at the offices of the Securities Commission, usually via a fund administrator or registered agent who will submit a hard copy of the forms as well as supporting documents (such as details of their investment portfolio and certificate of incorporation).

113. With regard to monitoring, the Securities Commission performs both desk-top inspections (which mainly consist of ongoing market surveillance of all regulated entities) and onsite inspections in the form of external onsite visits to entities. There are currently 63 officials working at the Securities Commission and 24 officials dedicated to the full-time monitoring of entities' compliance with their licensing obligations. Offsite surveillance is performed every 3-5 years for all investment funds. The Securities Commission will usually decide on whom to inspect from performing an assessment brief which entails examining factors such as customer profile, risk profile, the market in which they operate, their compliance with other obligations and the results from other examinations such as external accounting audits. The Securities Commission reported that it usually carries out about 30-40 onsite inspections per year including inspections of fund administrators. As fund administrators are often responsible for many funds, the examinations performed during on onsite inspection can often cover over 100 investment funds.

114. In the course of the onsite inspections carried out by the Securities Commission, officials verify the entity's compliance with the information-keeping requirements as set out under the IF Act and Regulations as well as those obligations under the FTR Act. The Securities Commission verified that in the course of onsite inspections related to the funds industry, the Securities Commission stated that there is generally a high level of compliance with information-keeping obligations (see also section A.1.6 *Enforcement of penalties in practice).*

115. The Insurance Commission is the statutory body responsible for the regulation of all insurance activity in or through The Bahamas and is concerned with the ongoing monitoring and control of insurers, agents, brokers, salespersons, underwriters and external insurers. There are currently 134 licensees, including both insurers and all other intermediaries who sell insurance directly to the policyholders.

116. The monitoring program in place by the Insurance Commission commences by performing an initial due diligence on every entity prior to licensing. From this initial vetting process the Insurance Commission then decides if an entity is to be categorised from high to low risk. The supervision process initially commences with a risk-based supervision approach whereby entities are requested to submit certain documents each year such as audited financial statements, a certificate of good standing. From such documents and review of each of the entities, the Insurance Commission then decides on their onsite inspection program. Onsite inspections are generally performed with a month's prior notice given to the entity and in the course of the visit officials will perform various sample testing to ensure that the entity is in compliance with its information-keeping obligations under the AML regulations, as well as being solvent.

117. Over the three year review period, there were 29 onsite inspections of licensed insurance entities carried out. There are currently 11 officials out of a total 24 employees within the Insurance Commission involved in the ongoing supervision and monitoring unit for regulated entities. The largest operators in the insurance industry are the 23 domestic insurers who usually receive quarterly visits from the Insurance Commission where they inspect the entity's compliance with the obligations as set out under the Insurance Act (see also section A.1.6 *Enforcement of penalties in practice).*

118. The Central Bank, the Securities Commission and the Insurance Commission are also the bodies responsible for monitoring the know-your-customer (KYC) obligations as set out under the AML regime. Whilst there is a 10% threshold for compliance with ownership information keeping requirements for corporate entities (including all companies) under the AML regime, all service providers will also be subject to the ownership information keeping requirements set out under the BTCR Act and the FCSP Act which require that beneficial ownership information is maintained by licensed entities in respect of all corporate entities for whom they act. However, the means by which beneficial ownership is verified and the extent to which changes in beneficial ownership is updated by the licensees and monitored by the regulators is unclear. As there is high reliance on the service providers for ownership information to be maintained, these limitations may impact the extent to which ownership information is being maintained in respect of corporate entities and may therefore impact the effective exchange of information in practice. The Bahamas should closely monitor that full ownership information in being maintained with respect to all corporate entities in all cases.

Conclusion of company ownership information in practice

119. In the three year period under review (1 July 2009 – 30 June 2012), The Bahamas received 24 requests concerning company information. The Bahamas' authorities have reported that in one of these cases, the competent authority was able to retrieve all of the requested information from the Registrar General. In all other cases, once the location of the subject of the request or its registered agent was confirmed by the Registrar, the information was obtained by issuing a notice, either to the registered agent or to an entity connected to the taxpayer such as a business it was transacting with or conducting business through. In most cases this information was provided within 90 to 180 days. Feedback from peers confirms that ownership information on companies was made available in all cases where it was requested and provided in a timely manner.

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

120. 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…"

121. The Bahamas has 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.

122. In addition, s196(3) of the IBC Act, required the recall of all bearer shares issued by IBCs within 6 months of the Act coming into force on 31 December 2000. The section also prescribes that recalled bearer shares were to be replaced with new share certificates which form part of a register maintained by the registered agent. Any bearer share not recalled and replaced within the prescribed six month period would be "null and void with no effect in law" once the six month period expired.

123. The Bahamas authorities have reported that to date there has been no application made to the Controller for permission for bearer shares to be issued. During the three year period under review, of the EOI partners that provided peer input, no issues have been raised in relation to bearer shares by The Bahamas.

Partnerships (ToR A.1.3)

124. 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. As of March 2013 there were 54 953 general partnerships licenced in The Bahamas, with 36 895 active as of April 2013.
- Limited liability partnerships (LLPs). As of March 2013 there were 212 limited partnerships registered in The Bahamas.
- Exempted limited partnerships (ELPs). As of March 2013 there were 296 exempted limited partnerships registered in The Bahamas.

125. 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 70).

126. 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 General. 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.

127. 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 licence 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 General pursuant to section 5 of the ELP Act.

Ownership and identity information required to be provided to government authorities

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

General Partnerships

129. 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 and addresses of the owners of the business (see paragraph 70).

Limited Liability Partnerships

130. An LLP is formed by registration with the Registrar General, and under section 4 of the PLL Act, it must file a memorandum of co-partnership with the Registry, which must contain identity 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.

131. Any change to any of the particulars recorded in the memorandum, will result in the partnership's being deemed not to be a partnership with limited liability under the PLL Act. Therefore, an 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

132. 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).

133. 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 250 per day in default.

Ownership and identity information required to be held by partnerships

General Partnerships

134. 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 70).

Limited Liability Partnerships

135. 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

136. 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) of the ELP Act, failure to maintain such a register shall incur liability on each general partner of BSD 25 per day in default.

137. The partnership must also maintain such information which allows the general partners to meet their obligations under section 12 of the ELP Act 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.

Conclusion and practice of partnership ownership information

138. The Bahamas authorities have advised that in practice almost all general partnerships are formed for domestic purposes with the intention of carrying on business in The Bahamas. All general partnerships will therefore have to obtain a licence pursuant to the Business Licence Act and comply with the ownership information requirements under the Act. In addition, all partnerships that hold a business licence will be subject to obligations to update this information in the case of change of ownership of the partnership. In the case of an EOI request for partnership ownership information, the information will be available at the Business Licence Unit.

139. Ownership information on LLPs and ELPs must be provided to the Registrar at the time of registration. As any change to the partners in a limited partnership will effectively mean the dissolution of that partnership and the formation of a new entity, it is recognised that ownership on LLPs will also be up-to-date.

140. In respect of ELPs, only information on the general partners is available with the Registrar, and identity information on the limited partners must be kept by the general partners at their registered office. However, all ELPs will have to have a registered agent who will be subject to the requirements

of the AML regime. In addition, comprehensive requirements for partnership information to be maintained under the respective partnership laws ensure that ownership information in relation to partnerships is available in practice.

141. In the three year review period under review, the Bahamas did not receive any requests for information relating to the identity of partners in a partnership.

Trusts (ToR A.1.4)

142. 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 recognised, 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 authorised 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.

143. 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 "authorised 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

144. 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

145. 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. However, all trustees are subject to the common law requirements to have knowledge of all documents pertaining to the formation and management of a trust.

146. Officials from the Attorney General's Office of The Bahamas confirmed that English common law relating to trusts and the fiduciary duties of the trustee as applicable to trustees operating in The Bahamas is followed. Pursuant to English common law requirements, trustees must maintain ownership and identity information regarding the trust. Firstly, the trustee is obligated to administer the trust solely in the interests of the beneficiaries and, therefore, the beneficiaries will have to be made clearly identifiable in the trust deed. Secondly, the trustee owes a duty to manage the trust in accordance with the instructions of the settlor, meaning that the settlor will also have to be clearly identifiable in the trust deed. Bahamian cases that amplify the common law principles relating to the duties of trustees include *Corso v Chase Manhattan Corp.* [1994][13], *Belgravia International Bank and Trust Company Limited and others v CIBC Trust Company (Bahamas) Limited* [2010][14], and *Phillips v Hewitt* [1985][15].

147. Pursuant to English common law, trustees have a duty to account to the beneficiaries and must be able to provide a beneficiary with information concerning the operation and transactions of the trust. Such information will extend to maintaining accounting information and other trust documents such as the trust deed and documents relating to transfers of property made by the settlor and all other documents required in order to ensure that the trustee's duty to the beneficiaries is carried out (see also section A.2 *Accounting Records*).

148. In the event of non-compliance with these duties by the trustee, beneficiaries have the right to enforce the trust (*Beswick v Beswick* [1968]

13. BHS J, No. 24, Bahamas Supreme Court, Equity Side, 1992 No. 1261.
14. 3 BHS J. No. 60.
15. BHS J. No. 787, 1975.

AC 58). In the event of non-compliance of their duties, the settlor or beneficiaries can commence legal proceedings against the trustee. Generally, this should ensure that trustees are complying with their ongoing records keeping requirements. In practice The Bahamas has reported that individuals acting in a non-numerated capacity as trustee will occur in a very limited number of ordinary trusts, the majority consisting of probate cases. However, the effectiveness of this enforcement measure in ensuring the availability of information for EOI purposes in practice should be monitored by The Bahamas on an ongoing basis.

149. 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 authorised applicants named in the trust instrument.

150. A trustee of an APT who fails to maintain a copy of the trust deed or 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 under section 7(6)(2) of the PT Act.

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

151. 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 152). 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

152. Corporate trustees, as a result of both the AML regime, and 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 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 recognised 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

153. 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[16].

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

154. As of March 2013, there were 163 licensed trust companies in The Bahamas. As of September 2012, a total of 5 986 trusts were being administered by licensed trust companies. Amongst these licensed entities there are:

- Unrestricted trust companies which permit the holder of the licence to act as trustee for all types of trust business including commercial trusts, institutional trusts, family trusts and purpose trusts. There are currently 16 unrestricted trust companies in The Bahamas.
- Restricted trust companies which entitle a trust company to provide trust services to a limited number of persons who are usually named or referred to by a category such as members of a particular family. There are currently 18 restricted trust companies in The Bahamas.
- Nominee trust companies which entitle the holder of the licence to act solely as the nominee of a trust licensee, being the wholly owned subsidiary of that licensee. (see also section A.1.1 *Nominee ownership information*) There are currently 128 nominee trust companies in The Bahamas. A nominee trust company is a licensee whose activities are restricted to the provision of nominee services only. Such services include the holding of securities and other assets in the licensee's name and the provision of corporate directors and officers on behalf of its parent company's clients. This category of licensee is subject to the same licensing requirements as trust companies and more than 90% of these companies are owned by existing licensees of the Central Bank.

Private Trust Companies

155. 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 Central Bank.

156. 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

agent/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.

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.

157. 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.

158. 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 he knows to be false or does not believe to be true, is liable on summary conviction to a fine of up to BSD 25 000 (regulation 14).

159. 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.

Conclusion and trust information in practice

160. The availability of ownership and identity information in respect of trusts is in place through a combination of common law, AML and other statutory requirements. Whilst, ordinary trusts are not subject to any statutory requirements to maintain information, any professional trustees acting for a common law trust will remain subject to information keeping requirements under the AML law. All ordinary trusts will also remain subject to the common law as applied in The Bahamas.

161. All corporate trust companies, with the exception of PTCs, as licensed entities are subject to the information keeping requirements set down by the Central Bank. As service providers corporate trust companies are also subject to the requirements of the AML regime. The monitoring of these information retention requirements is carried out by the Central Bank (See also section A.1.1 *Regulated entities in practice*).

162. Whilst, PTCs do not have to be licensed by the Central Bank they will nonetheless come within the scope of the AML regime via the PTC regulations which require every PTC to appoint a Registered Representative. Every Registered Representative will have to identify all ownership information for the trusts which it manages and, in the case of non-compliance, there are substantial penalties in place. PTCs acting as trustees also remain subject to common law requirements to maintain information. In practice, The Bahamas has reported that PTCs are not widely used but in cases where they are found to be acting as trustees, it is mainly by high net worth individuals and family trust type situations. As at March 2013, there were 74 PTCs registered in The Bahamas.

163. In one case under the review period, The Bahamas received a request on a particular trust managed by a trustee in the Bahamas. The requesting jurisdiction stated in its request that it was investigating a named individual in relation to inheritance tax who was believed to be involved in a particular trust managed by a trustee in the Bahamas. The requesting jurisdiction also requested information in relation to all other (unnamed) beneficiaries that may be involved in the trust. The competent authority contacted the trustee who informed them that the named individual in the request was neither a settlor, trustee nor beneficiary of the trust in question nor of any trust that the service provider acted for. This information was then relayed by the competent authority to the EOI partner. However, no information was provided on the other suspected (unnamed) beneficiaries of the trust as The Bahamas believed this would reveal confidential information of persons who were not shown to be foreseeably relevant for the purpose of the request. The Bahamas has indicated that at the time that the request was received, it was not clear that this request involved a family trust, nor was the identity of the settlor made clear. More details of this case are provided under section C.1.1 *Foreseeably relevant standard.* It is noted that this was one case during the review period. The Bahamas has since contacted the requesting jurisdiction in order to further process this request and a notice to produce the requested information was recently issued to the trust company.

164. The Bahamas received three requests for information regarding beneficiaries of a trust. In all cases, the competent authority accessed this information directly from a corporate trust company. Feedback from peers confirms that all identity information concerning trusts was generally provided within 180 days. Apart from the above case, no issues have arisen with the retrieval of trust information.

Foundations *(ToR A.1.5)*

165. 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.

166. 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

167. Foundations are required to register with the Registrar General, 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.

168. 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).

169. 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.

170. 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

171. 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

172. There is no obligation for the foundation specifically to 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.

173. 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.

Conclusion of foundation ownership information in practice

174. The registration process for foundations is the same as that for a Bahamian company and the foundation is registered in person by an officer of the foundation or in cases where appointed, by the foundation agent at the Registrar General's Department. As of March 2013, there were 572 foundations registered in The Bahamas. The Bahamian authorities have confirmed that all the foundations registered have a foundation agent who will come under the AML obligations and therefore be subject to KYC requirements ensuring that beneficiary information is being kept. Under the three year review period The Bahamas did not receive any requests for ownership and identity information concerning a foundation.

Other Relevant Entities and Arrangements (ToR A1)

175. The Executive Entity Act (EE Act), 2011 came into force on 1 February 2012 and facilitates the creation of the "executive entity". An executive entity is a distinct legal entity that is used as a vehicle to carry out executive functions in private wealth structures. There is no minimum capital requirement and the executive entity can only hold assets that are required to carry out their executive functions. The executive entity is established via a charter which will be executed by the founder in the presence of a witness, usually being the executive entity agent. The charter provides for the appointment of executive entity officers who will carry out the functions of the executive entity. The charter may also allow for the appointment of an executive entity council or an executive entity agent who will ensure that both the executive entity and the officers comply with the provisions of the charter.

Executive Entity ownership and identity information required to be held by government authorities

176. Executive entities are required to register with the Registrar General, and must provide certain information in a statement signed by the executive entity agent, or an attorney, including (s28, Executive Entity Act):

- the name and address of the executive entity agent (s28); and
- the address of the executive entity's registered office, which must be in The Bahamas and must be the address of the executive entity agent (s16).

177. Any change to the registered office of the executive entity must be notified to the Registrar within 28 days.

178. There is no obligation to advise the Registrar of the identity of the founders, members of the executive entity council or the officers and neither the executive entity's charter nor articles are required to be filed.

179. Each executive entity has to appoint an agent who is either a licensed bank or trust company under the BTCR Act or a Regulated Licensee under the FCSP Act (s13, Executive Entity Act). The executive agent will be subject to the ownership information keeping requirements under the AML regime. Whilst the 10% threshold for maintaining beneficial ownership information as set out under the FTR Regulations for corporate entities will also apply, the executive entity will be under an obligation to maintain updated ownership information on the founders at the registered office. Further, as a licensed bank or trust company or Regulated Licensee under the FCSP Act, the executive agent will be subject to maintain client ownership information pursuant to the regulatory laws. Pursuant to the Central Bank guidelines (section 40(b)), all service providers will be subject to an obligation to update client identity

information as appropriate for the purposes of the AML regime. Therefore, the executive agent will be under an obligation to regularly consult with the executive entity concerning any changes in ownership information. Since the Executive Entity Act came into force in February 2012, 20 executive entities have been established in The Bahamas. As this Act came into force outside of the review period, there is no experience of monitoring related to these entities in The Bahamas. The Bahamas has reported that to date there have been no EOI requests related to executive entity ownership.

Executive entity ownership and identity information held by the Executive entity

180. Every executive entity must maintain the charter at its registered office in The Bahamas (s16, Executive Entity Act). This charter must include:

- the name and address of the founder, and his address for service in The Bahamas (s7(b)(i) and (ii));
- the number and description of the officers (if there are any) (s7(e)); and
- the name and address in The Bahamas of the executive entity agent and the registered address (s7(h)).

181. 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 (s67, Executive Entity Act).

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

182. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions effectively to 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.

183. 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 is subject to other more robust enforcement provisions under the AML regime.

184. 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 250 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.

Enforcement in practice

185. The enforcement of sanctions for non-compliance for each entity is outlined below.

Companies and enforcement of penalties in practice

186. All types of company must register with the Registrar General, who has a staff of 50 officials monitoring that entities supply all the correct information on registration as well as comply with their ongoing information submitting requirements. It should be noted that only GCs are required to provide ownership information on a regular basis to the Registrar General. IBCs are not required to submit this information to the Registrar but they are nonetheless required to maintain a share register under the IBC Act. In the event of non-compliance there is an array of appropriately fixed sanctions that can be enforced by the Registrar. One of the sanctions is the striking off of entities that fail to comply with its information filing obligations. In 2011, 3 077 IBCs were struck from the register in 2011 for non-payment of fees and as of April 2013, 16 591 GCs had been struck from the register.

187. The Registrar has confirmed that it has not enforced any penalties or struck from the register any companies for non-compliance with information keeping requirements. Where there has been a failure to comply with information filing requirements, the companies have been notified of these breaches by the Registrar and given a certain amount of time, usually 30 days, in which they could take corrective action. Therefore, even though there is a vast array of penalties in place for non-compliance with information keeping obligations, there have been few instances where these penalties have been applied in practice.

188. Although active monitoring and enforcement is not carried out by the Registrar with respect to the information keeping obligations for GCs and IBCs (such as the obligation to maintain a share register), in the case of IBCs, which represent the majority of companies registered, these companies must engage a registered agent in The Bahamas, which is subject to supervision by the Securities Commission or Central Bank and therefore, subject to their onsite inspection programme (see also section *Regulation of entities in practice)*. In addition, it is noted that in all 24 requests where ownership information on companies was requested, this information was available.

Partnerships and enforcement of penalties in practice

189. General Partnerships will generally be subject to monitoring of information keeping requirements by the Business Licence Unit and enforcement of penalties where they are not complying with these obligations. The

Business Licence Unit has reported that there have been a few cases over the review period where they have revoked a business licence for non-compliance with information keeping requirements. However, over the review period they have not enforced any other penalties such as fines for non-compliance with information keeping requirements.

190. Both LLPs and ELPs have to register with the Registrar General and in the case of non-compliance that will be the body responsible for enforcing penalties. In the case of filing of false information at the time of registration, LLPs may be deemed not to be an LLP and removed from the register. ELPs that do not comply with their obligations to inform the Registrar of changes to the information filed are liable to fines of up to BSD 250 per day. Officials from the Registrar General have confirmed that there has been no incidence of any penalties being enforced on either LLPs or ELPs under the three year period under review. Furthermore, no partnerships have been struck from the Registrar for failure to comply with information filing requirements. The Bahamas should closely monitor compliance with the obligation to keep a register of partners, and should ensure that in cases of non-compliance fines are being readily applied.

191. Although active monitoring and enforcement is not carried out by the Registrar with respect to the obligation to keep a register of partners by ELPs, these partnerships must engage a registered agent in the Bahamas, which is subject to supervision and enforcement of penalties by the Securities Commission as described below (see also section *Regulation of entities in practice).*

Trusts and enforcement of penalties in practice

192. All APTs in The Bahamas must engage a trust service provider and in such case where there is failure to obtain a licence from the Central Bank or provide the information as required under the regulations, the licensee may be liable to a fine of BSD 100 000 or to imprisonment for up to five years or to both and in case where the offence continues to a fine not exceeding BSD 2 500 per day in default (s. 3(7) BTCR). In respect of non-compliance with AML requirements, the penalties as applied to licensed entities will apply (see section *Regulation of entities in practice*).

193. As of March 2013, there were 163 trust companies, 35 of which only carry on trust business ("pure trust companies") registered with the Central Bank administering almost 6 000 trusts in The Bahamas. Over the three year period, there was an average of 30 onsite inspections undertaken annually by the Central Bank and 13% of these related to pure trust companies. Almost 70% of these onsite inspections included reviews of compliance with KYC obligations set out under the AML regime. The Central Bank has confirmed that during this period, enforcement actions were carried out against two licensees, resulting in them taking steps to wind up their operations in this jurisdiction.

194. Whilst there are no requirements for a PTC to be licensed, pursuant to the PTC regulations, every PTC will have to appoint a registered representative who must maintain ownership information on the settlors, trustees and those who have a vested interest in the trust. In such case where there is failure to appoint a registered representative, there may be a fine imposed of up to BSD 25 000 on the licensee on summary conviction (s. 14 BTCR). The Bank and Trust Companies (PTC) regulations also impose a fine of BSD 5 000 on the registered agent in such cases where they have unreasonably failed to comply with the provisions of the regulations such as the maintenance of ownership information (s. 15 BTCR). The Central Bank has reported that no fines have been imposed on registered representatives of PTCs over the three year period under review.

195. Over the three year review period, there have been three EOI requests concerning identity information in respect of trusts which was obtained from a corporate trust company. EOI partners have confirmed that this information has generally been made available within 180 days to one year.

Regulated entities and enforcement of penalties in practice

196. Regulated entities in The Bahamas will be subject to monitoring of their compliance obligations by the regulator for their specific industry. The main financial sector regulators in The Bahamas are the Central Bank, the Securities Commission and the Insurance Commission. There is an array of fines set out for licensed entities who do not comply with their obligations under the acts and guidelines for their respective industries. The enforcement actions taken out by these entities for breaches of information keeping obligations are set out below:

197. Any person who fails to obtain a licence as required by the regulator commits an offence and is liable for significant penalties. Under section 135-230 of the Securities Industry Act, 2011 for instance, such a person will be liable upon summary conviction to a fine of up to BSD 300 000. In practice, the Securities Commission is responsible for monitoring of this obligation and enforcement of penalties when such obligations are not complied with.

198. In the course of onsite inspections related to the funds industry, the Securities Commission stated that there is generally a high level of compliance with information-keeping obligations. Over the three year review period officials from the Securities Commission reported that there have not been any incidences of persons not complying with the obligation to obtain a licence. Where licensed entities have been found not to be in compliance with their information-keeping obligations, the Securities Commission will initially try to resolve this in a conciliatory manner and give the entity a certain period of time in which to rectify the deficiency. They will also closely

supervise the entity during this time and request regular follow-up reports on the status of the progress being made. The Securities Commission may also impose penalties and over the three year review period 21 enforcement actions were taken against licensees. The Securities Commission has confirmed that 14 of these enforcement actions were related to administrative matters such as non-compliance with CDD requirements. In nine of these cases, fines were imposed and the other five are still awaiting hearing by the Court.

199. In respect of investment funds, 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. During the three year period under review, the Securities Commission has reported that they have conducted several regulatory hearings regarding potential non-compliance with the IF Act. However, these were not directly related to non-compliance with obligations to maintain information. In incidences where an entity was found not to have complied with the IF Act, penalties varied from the imposition of fines to suspension of licence.

200. In regards to the banking and trust company industries, where breaches of compliance obligations are found, there is a range of penalties open to the Central Bank. For example, fines under the FTR Act can be up to BSD 100 000 for corporate entities. During the three year period under review, there were enforcement actions in the form of cancellation of licence taken against two licensees. Whilst fines have been imposed, these were unrelated to compliance with information keeping requirements.

201. In regards to the insurance industry, over the three year review period, there were 29 onsite inspections of licensed insurance entities carried out. Officials have reported that in the course of these inspections, compliance was found to be quite high and as a result they have reported that over the three year period, there have not been any penalties enforced in practice.

202. As executive entities are relatively new entities under Bahamian law, there is no experience of monitoring and enforcement of their information keeping requirements. However, as they are also registered entities, the Registrar General will be the body presiding over their information keeping requirements.

Conclusion

203. There is a combination of measures in place to ensure the availability of information for all type of entity in The Bahamas. As almost all entity types are required to register with the Registrar General, there is a certain amount of information maintained by government authorities. In practice,

as the competent authority does not have its own taxpayer database, this has been a useful source of information for responding to EOI requests. However, there is little monitoring of registered entities' information keeping requirements being carried out in practice by the Registrar. Adequate penalties are in place for non-compliance with information-keeping requirements and whilst there is evidence of enforcement actions being taken, there is little evidence of penalties being applied in practice. Nevertheless, in all 27 cases where it was requested, ownership information on companies and trusts has generally been made available (see also section C.1.1 *Standard of foreseeable relevance*).

204. Those legal entities that are subject to licensing, as well as all service providers that are required by most companies, will also come under the supervision of the financial sector regulators, being the Central Bank, the Securities Commission and the Insurance Commission. The CDD obligations to retain ownership information for corporate entities (covering both companies and partnerships) under the AML regime is limited to identifying those with beneficial owners that hold a controlling interest (meaning an interest of 10% pursuant to the Central Bank guidelines). Whilst all service providers will also come under the client ownership information obligations under the BTCR Act or FCSP Act to maintain beneficial client ownership, the extent to which this is verified or changes in beneficial ownership are monitored is unclear. Therefore, the monitoring as carried on by the regulators in respect of ownership information requirements may not ensure that complete ownership information is being maintained on corporate entities in all cases.

205. Each of the regulators has a comprehensive onsite inspection program in place and also monitors all licensed entities' compliance with their information-keeping obligations under the licensing regulations as well as under the AML regime, on an on-going basis. In practice this will include the licensed service providers as engaged by most companies, partnerships and trusts. Whilst there has been found to be a very high level of compliance with regulatory and AML obligations across these onsite inspections, this does not cover the obligation on unregulated entities to keep full ownership information. In respect of all other entities, as it appears that the Registrar does not actively monitor these obligations nor impose fines, it is recommended that The Bahamas ensures that a regular system of monitoring and enforcement of penalties is in place in respect of all entities to maintain up-to-date ownership information.

206. Given the reliance that many entities and arrangements, particularly IBCs, authorised purpose trusts, foundations and executive entities place on service providers to ensure that relevant ownership information is being maintained, the lack of a clear system of monitoring in respect of all ownership obligations may affect the availability of client ownership and identity information for all legal entities.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Most fund administrators in The Bahamas are subject to CDD requirements under the regulatory and AML regime. However, there may be a limited number of investment funds that are not subject to such requirements. In these cases the simplified due diligence procedure applicable to investment funds may not ensure that full ownership information is available on investment funds in all cases.	The Bahamas should ensure that in cases where the simplified due diligence procedure is applied, full ownership information is maintained in respect of all investment funds.

Phase 2 rating	
Largely Compliant.	
Factors underlying recommendations	**Recommendations**
The Registrar does not have a regular system of monitoring of compliance with ownership and identity information keeping requirements in respect of all registered entities and penalties for non-compliance are unenforced in practice. Whilst most entities are regulated or must engage a service provider that will be subject to monitoring, the verification of beneficial ownership in respect of legal entities may mean that this supervision will not cover the obligation to maintain complete ownership information in all cases.	The Bahamas should ensure that its monitoring and enforcement powers are sufficiently broad and exercised in practice to ensure the availability of ownership and identity information in all cases.

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)*

207. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The obligation to maintain reliable accounting records are found in the laws governing the various types of entities covered by this report. During the period under review, The Bahamas received 15 requests relating to accounting information. Due to previous limited accounting information obligations, in five cases during the review period The Bahamas was not in a position to provide accounting information. In all other cases the accounting information was provided to the EOI partner.

208. Previously there were insufficient obligations in place for all entities to maintain reliable accounting records and underlying documentation for five years. In order to address this deficiency, legislative amendments were introduced from 2011 to 2013 across a series of acts. There are now clear requirements in place in The Bahamas for all entities to maintain comprehensive accounting records as well as underlying documents for a minimum of five years. A discussion of these requirements as applied to each type of entity is set out below.

Accounting records to be kept in respect of companies

209. 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 their accounts be audited annually, and the Registrar may request "at any time" that a public company provide a copy of its annual financial statement. The Companies (Amendment) Act 2013 inserted an express obligation into the Companies Act for all entities to maintain comprehensive accounting records as well as all underlying documentation for a minimum period of five years from the date of the transaction to which such records relate (s117A). There is an exemption for a company whose business turnover does not exceed fifty thousand Bahamian dollars (BSD 50 000.00) to maintain accounts and records (s117A (4)). In practice, BSD 50 000.00 is quite a low threshold and

will mainly concern those local businesses involved in seasonal and tourist services. Therefore, this exemption is not viewed as material.

210. Pursuant to a 2013 amendment to the Business Licence Act, there is an express obligation for all entities subject to the business licensing act to maintain reliable accounting records, including underlying documentation. This came into force on 1 April 2013.

211. An IBC is required to "cause reliable accounting records to be kept in relation to all sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions" (s67, IBC Act). Accounting records are expressly stated to include all underlying documentation including invoices, contracts and receipts (s67(2)(d), IBC Act)) and there is an obligation for all accounting records to be maintained for a minimum period of five years (s67(3), IBC Act). In the event of non-compliance with these obligations, such person will have committed an offence and shall be liable on summary conviction to a fine of BSD 10 000 (s67(4), IBC Act).

212. In addition, 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 him. Pursuant to a 2013 amendment to the IBC Act, as of January 2014 IBCs will have to maintain a declaration stating that reliable accounting records of the company are available through its registered agent. Every registered agent will have to submit this declaration to the Registrar on an annual basis.

213. 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.

214. Pursuant to the 2011 legislative amendments to the SAC Act, accounting records must now correctly explain all transactions, enable the financial position of the company to be determined with reasonable accuracy at any time and allow financial statements to be prepared (s24(2)(d), SAC Act). Accounting records are expressly stated to include all underlying documentation including invoices, contracts and receipts (s24(2)(d), SAC Act) and

there is an obligation for all accounting records to be maintained for a minimum period of five years (s24(3) SAC Act) In the event of non-compliance with these obligations, such person will have committed an offence and shall be liable on summary conviction to a fine of up to BSD 50 000 (s24(4), SAC Act).

215. 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 is liable on summary conviction to a fine of BSD 50 000 or imprisonment or both.

Accounting records to be kept by Business Licensees

216. Companies carrying on business in The Bahamas will also be subject to the obligations under the Business Licence Act (paragraph 51).

217. Section 9(2) of the BL Act requires that every person who carries on a business shall:

(a) maintain accounts and records of the activities of the business;

(b) maintain accounts and records in respect of any transaction relating to the business for a period of not less than five years from the date of the transaction; and

(c) permit the Secretary to enter any licensed or other premises occupied for the purpose of the business and to the extent necessary for the purpose of sections 4, 5 and 10 to inspect and take copies of books, records, accounts or other documents in hard copy or digital form in relation to the business, kept at the said premises

218. Section 9 of the Business Licence Act was amended in 2013 to require that any person who carries on business shall maintain accounting records in relation to:

(a) all sums of money received and expended in relation to the business and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and

(b) the assets and liabilities of the business.

219. Accounting records are also expressly defined to include the underlying documentation, including invoices, contracts and receipts (s9(4)(d), BL Act).

220. Pursuant to a 2010 amendment to the BL Act which came into force in 2011, 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 five years.

Accounting records to be kept under regulatory laws

221. 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.

222. 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).

223. An investment fund (in whichever legal form) shall, under section 23(1) of the IF Act, cause reliable accounting records to be kept in relation to

(a) all sums of money received and expended by the investment fund and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and

(b) the assets and liabilities of the investment fund.

224. 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).

225. For the purposes of section 23(1) of the IF Act, accounting records include underlying documentation such as invoices, contracts and receipts. All accounting records are to be maintained for a minimum period of 5 years from the date to which the transaction relates (s 23(3), IF Act).

Accounting records to be kept by AML Service Providers

226. 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 5 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.

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

> 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.

228. 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. However, all entities that engage a service provider such as IBCs, authorised trust companies, ELPs, foundations and executive entities are now subject to the obligations as set out under their respective Acts which all set out comprehensive requirements for reliable accounting records including underlying documentation to be maintained in respect of each entity for a minimum 5 year period. Therefore, the requirements under these acts will cover all the relevant entities and arrangements.

Accounting records to be kept in respect of partnerships

229. 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. The 2013 amendments to the Partnership Act and 2011 amendments to the ELP Act require that the partners of a general partnership and LLP (s29(3), Partnership Act) and the general partner of an ELP (s12(1), ELP Act) shall cause reliable accounting records to be kept in relation to:

> (a) all sums of money received and expended by the partnership and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and
>
> (b) the assets and liabilities of the partnership.

230. There is now also a clear obligation for accounting records in respect of all types of partnership to include underlying documentation (s29(3), Partnership Act and s12(2), ELP Act)

> (2) For the purposes of subsection (1), accounting records maintained shall –
>
> (a) correctly explain all transactions;
>
> (b) enable the financial position of the company to be determined with reasonable accuracy at any time;
>
> (c) allow financial statements to be prepared; and
>
> (d) include the underlying documentation, including invoices, contracts and receipts necessary to facilitate (a), (b) and (c).

231. All accounting records in respect of partnerships must be maintained for a minimum period of five years and any person who fails to comply with the accounting record obligations shall be liable on summary conviction to a fine not exceeding BSD 25 000 (s29(4) and(5), Partnership Act and s12(3) and (4), ELP Act).

Accounting records to be kept in respect of trusts

232. Pursuant to 2013 amendments to the Trustee Act there are now express obligations in place for all resident trustees in The Bahamas to maintain accounting records. Under section 92A(1) of the Trustee Act, "the trustee of an express trust shall cause to be maintained in connection with the trusteeship reliable accounting records in relation to:

(a) all sums of money received and expended in relation to the trust and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and

(b) the assets and liabilities of the trust.

233. Subsection (3) requires that all accounting records in respect of trusts must be maintained for a minimum period of five years, while subsection (4) imposes that any person who fails to comply with the accounting record obligations shall be liable on summary conviction to a fine not exceeding BSD 2 000. This fine is set at quite a low level. However, trustees acting for APTs will be subject to higher fines under the APT Act and trustees acting for common law trusts may be subject to other enforcement measures under the common law such as fines imposed by a Court, as both set out below.

234. At common law, all trustees resident in the Bahamas are also subject to a fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship. Officials from the office of the Attorney-General confirmed that the common law requirements are those principles as set out under English common law. It is a well established principle of English common law that it is the "duty of a trustee to keep clear and distinct accounts of the property he administers and to be constantly ready with his accounts".[17] Such accounts should be open for inspection at all times by the beneficiary and should trustees default in rendering such accounts, the beneficiary is entitled to have the accounts seized by the court. In such instances trustees would be held liable for paying the costs of such an order and in certain cases may also be removed. Furthermore, where trustees are found guilty of active breaches of trust or wilful default or omission, they may be held personally liable for any loss.[18] Due to their history as a former British Crown colony, The Bahamas' law is strongly rooted in the English law tradition. Therefore, these principles of English common law apply equally to any trustees of a trust governed by The Bahamas and these principles have been readily followed in a number of cases in The Bahamas such as *Philips v Hewitt*[19] and *Belgravia International Bank and Trust Company Limited and others v CIBC Trust Company (Bahamas) Limited*[20] (see section A.1.4 *Trust ownership and identity information required to be held by the trust*).

17. The Trustee must allow a beneficiary to inspect the trust accounts and all documents relating to the trust. See *Halsburys Laws of England* Vol 48 4th Edition para 961 and 962.
18. *Lewin on Trusts* 17th Edition, p. 627, 1198 and 1199.
19. [1985] BHS J. No. 787, 1975.
20. [2010] 3 BHS J. No. 60.

235. 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". The 2011 amendments to the PT Act further clarified the accounting records, to be maintained under section 7A, by the trustees of an authorised purpose trust as those in relation to:

(a) all sums of money received and expended in relation to the trust and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and

(b) the assets and liabilities of the trust.

236. Subsection (2) clarifies that accounting records shall include all underlying documentation including all invoices, contracts and receipts, and subsection (3) requires that all accounting records in respect of APTs must be maintained for a minimum period of five years.

237. 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

238. Under section 42, the Foundations Act requires that a foundation shall cause reliable accounting records to be maintained in relation to:

(a) all sums of money received and expended by the foundation and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and

(b) the assets and liabilities of the foundation.

239. Subsection (2) clarifies that accounting records shall include all underlying documentation including all invoices, contracts and receipts, and subsection (3) requires that all accounting records in respect of APTs must be maintained for a minimum period of five years. Section 71 sets out that a person who contravenes any section of the Foundations Act (including the obligation to maintain reliable accounting records) shall be liable on summary conviction to a fine not exceeding BSD 10 000.

240. Accounting records 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 also apply to require the maintenance of accounting records in respect of the foundation.

241. *Accounting records to be kept by executive entities*

242. Under section 43(1), the Executive Entities Act requires that an Executive Entity shall cause reliable accounting records to be kept in relation to –

(a) all sums of money received and expended by the Executive Entity and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and

(b) the assets and liabilities of the Executive Entity.

243. Subsection (2) clarifies that accounting records shall include all underlying documentation including invoices, contracts and receipts, and subsection (3) requires that all accounting records in respect of APTs must be maintained for a minimum period of five years. Section 66 (b) sets out that a person who contravenes any section of the Executive Entities Act (including the obligation to maintain reliable accounting records) shall be liable on summary conviction to a fine of BSD 10 000 or imprisonment of two years.

244. These accounting records are to be kept at the registered office of the Executive Entity, or such other place as the officers think fit. Executive entities are required to have an executive entity agent who will be either a licensed FCSP or a trust company licensed with the BTCR Act (s13, Executive Entity Act), and therefore the regulatory and AML obligations will also apply to require the maintenance of transaction records in respect of the Executive Entity.

Availability of accounting information in practice

245. The obligations as set out above and in particular those enacted through the 2011 to 2013 sets of legislative amendments ensure that The Bahamas meets the international standard on the availability of accounting information. There are now a comprehensive set of obligations in place for all entities to maintain reliable accounting records including underlying documentation for a minimum period of five years. The penalties that are in

place for non-compliance with accounting record obligations vary depending on the entity but generally they are set at a level dissuasive enough to ensure compliance in most cases.

246. While there is no requirement for registered agents to maintain accounting information for entities for which they act, registered agents must now submit a declaration to the Registrar on behalf of every IBC for which he acts stating that reliable accounting records of the IBC are available through the registered agent. This requirement will be presided over by the Registrar. However, as this amendment came into force on 25 January 2013 and this obligation does not commence until January 2014, this requirement is untested in practice. Over the review period, in the cases where The Bahamas has been able to provide accounting information, these requests were generally fulfilled by obtaining the accounting records from the service providers acting for the entities concerned. Therefore, the new legislative amendment requiring accounting records to be made available through the registered agent confirms a practice that has already been in place and working successfully in The Bahamas.

247. In regards to monitoring of these obligations for all other unregulated entities, the Registrar General has indicated that there is currently no system in place to ensure that accounting records are being maintained and enforcement of these obligations will generally therefore not occur in practice.

248. As outlined above, regulated entities are also subject to obligations to maintain accounting records under regulatory laws and also as set out under the AML regime. The bodies responsible for supervision and monitoring of these obligations will be the regulator for each respective industry. The main regulators (see also section A.1.1 *Regulation of entities in practice*) are the Central Bank, the Insurance Commission and the Securities Commission. Each regulator reported that its current onsite inspection program already included investigations to ensure that certain accounting records are being maintained. For example, the Central Bank guidelines provide for the inspection of accounting records for fiduciary clients where they will review the accounting system of the client as well as a sample of the client relationships to ensure that financial statements are being properly prepared. Authorities from each regulator reported that in practice there has been good compliance with accounting record obligations. However the accounting records as required to be maintained previously for AML were not those as set out under the standard. Furthermore, the assessments as carried out to date by the regulators were mainly in regards to the accounting records as being maintained by the service providers rather than the accounting records being maintained by their clients.

249. Each regulator is currently developing further internal guidelines for the monitoring of the newly legislated accounting obligations which will

be undertaken during the course of their onsite inspections. The Securities Commission has drafted detailed guidelines regarding the minimum mandatory obligations of service providers in ensuring that accounting records of their clients are being managed in accordance with the obligations as set out under the legislative requirements. For example, in regards to an FCSP that act as the registered agent for an IBC, they have proposed that the FCSP conducts an annual test at random on at least one of the IBCs it acts for to ensure that it would be able to deliver on its obligation to make accounting records available at the office of the registered agent However, despite these proposed guidelines by the regulators, the legislative amendments which have brought the requirements for accounting records to be maintained in respect of all entities are relatively recent and therefore remain largely untested in practice.

250. Over the three year period under review, The Bahamas received 15 EOI requests for accounting information. The types of accounting information requested include information on books of account, financial statements as well as certain underlying documentation and mainly concerned accounting records for companies. Generally, this information was provided within 90 days. In cases where it took longer than 90 days this was due to procedural delays, such as seeking further clarification concerning the requested information from the requesting jurisdiction. Over the review period, six of the requests that generated queries sought accounting information. In four of these cases, a summary of the request was required, as it was not included with the request. In the other two cases there were obvious errors in the summary of the request in relation to the name of relevant entity, relevant time period, relevant transactions, and efforts to obtain the information that had to be corrected.

251. During the period under review, there were five cases of accounting information concerning IBCs not being able to be provided to the requesting country. At the tax period of the requests, there were insufficient accounting obligations in place for IBCs to maintain comprehensive accounting records. This deficiency in the legal framework has since been rectified by a 2013 legislative amendment to the IBC Act and similar amendments were made to a series of acts to ensure that accounting record obligations are now in place which are in line with the international standard for all entities carrying on business in The Bahamas. However, these amendments remain largely untested in practice and The Bahamas should continue to closely monitor that reliable accounting information is maintained by all entities.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant.	
Factors underlying recommendations	**Recommendations**
Following the 2011 and 2013 enactment of comprehensive accounting record obligations, The Bahamas is currently developing a system of monitoring. Prior to these legislative amendments, The Bahamas was unable to provide accounting information for EOI purposes in all cases where it was requested. To date, The Bahamas has no enforcement experience to ensure the availability of accounting information.	The Bahamas should monitor the implementation of the accounting record-keeping obligations and should ensure that its enforcement powers are sufficiently exercised in practice.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

252. 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 Regulation 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.

253. 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[21], 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.

21. 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.

254. 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 in 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.

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

256. Considered in conjunction with the client identity obligations imposed on banks found in the Central Bank's Guidelines at paragraphs 108 and 251 in particular (similar to the obligations on trust companies, described in paragraph 152 of this report), The Bahamas requires that banking information is required to be available for all account holders.

Availability of banking information in practice

257. The Bahamas domestic banking sector is made up of eight banks, being retail banks that form part of large international clearing banks and 12 banks which have been attributed "authorised agent" status who deal in Bahamian and foreign securities. The Bahamas banking sector is moderate in size when compared with similar offshore financial sectors. At December 2011, both domestic banks and international banks together held approximately BSD 598 billion in assets. All domestic licensed banks in The Bahamas have physical presence on the islands. In regards to the international banking sector, there are 23 banks incorporated in a limited number of countries[22] as preapproved by the Central Bank and operating within specific management arrangements. In addition, no licence will be granted to a bank

22. Brazil, Canada, USA, Japan, Germany, Portugal, United Kingdom, Spain.

or trust company unless that entity has a principal office in The Bahamas (s4(4), BTCR Act).

258. There is a comprehensive set of legal obligations in place to maintain banking information both pursuant to the licensing requirements under the Central Bank Regulations and Guidelines as well as those obligations imposed under the FTR Act which ensure that banking information is made available when requested. The Central Bank, as the regulator for all banks and trust companies, is the body responsible for the monitoring of licensed entities to ensure that they are complying with these information keeping requirements. As supervisor of banks, the Central Bank is responsible for promoting the soundness of banks through the effective application of international regulatory and supervisory standards. These standards were revamped during 2000 and 2001 in response to global multi-lateral initiatives and to heighten the fight against money laundering and other criminal abuses within the international financial system.

259. The Central Bank publishes the AML/CFT guidelines which amplify those information keeping obligations for AML purposes as already set out under the FTR Act and notably have the force of law in The Bahamas. In regards to information keeping requirements, licensees are under an obligation to obtain certain documents and information when seeking to verify the identification of corporate clients including the identity of natural and legal persons.

260. One of the supervisory mandates of the Central Bank is to ensure that licensees carry out adequate customer due diligence in accordance with the provisions of the FTR Act and FTR Regulations. There are currently 69 people in the Central Bank involved in the ongoing monitoring and inspection of banking entities. Their duties include setting the examination schedule of licensed entities (which is set every six months) and the carrying on of desktop audits and offsite examinations. Over the three year period under review, a total of 104 onsite inspections were conducted by the Central Bank. Initially all entities will be reviewed to assess their impact score, which measures the materiality of the harm that a regulatory risk problem, if crystallised in a licensee, could cause with respect to the regulatory objectives of the Central Bank. This is assessed by closely analysing four specific proxy metrics: the number of Bahamian dollar deposits, employees, expenditures and fiduciary assets held. Pending the outcome of this initial assessment certain entities will then be subject to some form of further risk assessment. The risk assessment process which examines a number of factors of each licensed entity such as the business profile, its compliance with regulatory laws, the customer profile, the business model and the results from external audits. Depending on the examination of each of these factors, entities are then ranked as low, medium or high risk.

261. The onsite monitoring programme takes a cross section of licence entities from high to low risk and each examination schedule will include onsite inspections of each type of entity. Entities are informed of the visit at least six weeks beforehand and of the information to be made available and the format that the visit will take. Onsite examination visits usually last between one and two weeks depending on the size and complexity of the entity and the inspection team will conduct sample testing in order to ensure that the licensed entity is complying with the requirements as set out under the law.

262. On completion of an onsite visit a report is compiled which details the licensed entities' compliance with the obligations as set out by the Central Bank. Authorities from the Central Bank report that generally compliance is quite high and any breaches they have encountered are usually minor in nature. In the event that a breach has been found, it is normal practice for the Central Bank to examine all the particular factors of the case before deciding on what penalty is to be applied. Licensees are first asked to remedy the breach within a certain period of time, usually a period of 21 days. The Central Bank may also issue a letter of "supervisory intervention" to the entity which will set out the breaches that have been identified and the means by which the Central Bank will continue to monitor this situation. Usually, entities will also be asked to report their progress to the Central Bank on a monthly basis until all breaches have been remedied.

263. Where the breach is found to be particularly egregious the entity's licence may be revoked. However, the authorities from the Central Bank reported that this rarely occurs in practice. There have been two cases under the review period where enforcement actions were taken out against two licensed entities as a result of their breach of their customer due diligence obligations. This eventuality resulted in the two entities (one bank and one trust company) winding up their operations in The Bahamas. Otherwise, the Central Bank has not imposed any penalties on banks for non-compliance with CDD over the review period.

264. With regards to EOI requests, there has been a certain amount of contact between the Competent Authority and the Central Bank over the three year period under review generally to enquire as to whether a licensee is still active. The Central Bank publishes a list of licensees on its website, which is made publicly available, where the competent authority can check to view the status of a banking licensee.

265. Over the three year period under review, there were 32 requests made for banking information. The Bahamas has explained that on one or two occasions the banking information requested predated the mandatory retention period of five years as applicable to the information and was no longer available in full as a result. Otherwise, this information was generally made

available within 90 days and in cases where this information took longer than 90 days, status updates on this information were provided to the requesting jurisdiction. In these cases the information requested was made available to the requesting jurisdiction within 180 days. In cases where banking information was delayed, this was mainly due to the information's being stored in one of the other islands within The Bahamian archipelago or due to the information's being in connection with a liquidated entity where the mandatory retention period of five years as applicable to the liquidator had expired (also see section C.5 *Organisational process and resources*).

Conclusion

266. The combination of the obligations as set out under the BTCR Act and the FTR Act as well as those set out under the Central Bank Guidelines and AML regime for licensed banks and other financial institutions ensures that all records pertaining to accounts as well as related financial and transactional information are available. These obligations result in The Bahamas being able to provide banking information to its exchange of information partners when requested. The Bahamas also have a systematic supervision programme in place and undertake a comprehensive programme of onsite inspections every six months. Whilst compliance is generally found to be high, The Bahamas should ensure that penalties are being applied in practice where banking entities are found not to have complied with ownership information keeping obligations.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B. Access to Information

Overview

267. 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.

268. The Bahamas' Minister of Finance (the Minister), or his duly authorised representative, has broad powers to obtain relevant information from any person within the jurisdiction who has relevant information in his possession, custody or under his control. 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.

269. 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. All information that has been accessed by the Minister for EOI purpose must be held for a period of 20 days. In the case that an objection is made within this 20 day period, a

2011 amendment to the ITC Act introduced a discretion for the Minister so that he is no longer obliged to delay exchanging the information. In practice, the discretion to extend the holding period of information in the case of an objection being made has not been found to unduly prevent or delay the exchange of information. To date, there have been no objections to EOI filed in The Bahamas. Both of the elements in this Part are found to be in place.

270. As the competent authority of The Bahamas does not have a taxpayer information database of its own, the Minister has to obtain the information requested by their information exchange partners from other government agencies and third parties. In many instances, requests will commence with sending a memorandum to another government agency such as the Registrar General to access information or determine the location of the entity or its registered agent. In most cases a formal notice to produce this information will then be issued to the holder of the information. Information is generally produced within the 28 day timeframe given by the authorities, although an extension may be requested in cases such as where information must be accessed within the other islands of the Bahamian archipelago. No major delays have been experienced to date and although in a few cases information was held within other islands in The Bahamas archipelago, the information was generally still obtained in time to be provided to the requesting party within 180 days.

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.)*

271. 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) (section 5) and the International Tax Cooperation Act 2010 (ITC Act) (section 5). 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 between The Bahamas and its treaty partners, other than the Bahamas' agreement with the US, which is covered by the US TIEA Act. 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.

272. 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 the type of information to be obtained, whether it is ownership, banking 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)*

273. 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). In practice, no issues have arisen to date.

Compulsory powers *(ToR B.1.4)*

274. In The Bahamas, the powers to access information relevant to an EOI request reside with the Minister or his authorised representative as the competent authority. The competent authority has the 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.

275. 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, however, the Minister may extend this time.

276. 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.

277. 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).

278. 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.

279. The ITC Act (s9) and the US TIEA Act (s8) 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.

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

281. Amendments to sections 4(3)(j) and 5(7) of the US TIEA Act came into effect on 1 February 2012. Section 4(3)(j) previously provided that the information which may be sought by the Minister under the US TIEA Act must be information held in The Bahamas and it was not sufficient that the information was within the control of a person in The Bahamas. This appeared to be inconsistent with Article 2 of the Model TIEA as it established a narrower jurisdictional limit on the information that could be exchanged. The amendment to section 4(3)(j) of the US TIEA Act now provides that information sought can be with any person who has that information in his possession, custody or control and section 5(7) has been amended to clarify that any such information requested under the US TIEA Act that is in the possession, custody or control of that person must be delivered to the Minister.

282. Therefore, pursuant to the ITC Act (s4(3)(vi) and the US TIEA Act (s4(3)(j), it is sufficient that the information sought is within the possession, custody or control of a person within The Bahamas. Therefore there is no jurisdictional limit requiring the information to be located within The Bahamas and 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

283. The US TIEA Act can be distinguished from the ITC Act in that 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 (s4(4)). In practice, such a declaration will be required where the information requested is in respect of a matter which relates to a person who is not resident in the United States or where the matter does not constitute a criminal matter. The Bahamian authorities have reported that all such requests have been accompanied by a declaration, usually made by a senior official in the United States Internal Revenue Service. Peer input has not indicated that this requirement has impeded the exchange of information in practice.

Gathering information in practice

284. Before gathering information the competent authority ensures that the request satisfies the requirements as set out under the relevant TIEA and that the information being sought is foreseeably relevant to the administration and enforcement of the requesting jurisdiction's tax laws with respect to the taxpayer identified (section 4 US ITC Act and section 4 TIEA Act). As all the agreements in The Bahamas take the form of the OECD model TIEA this will entail ensuring that certain information has been provided by the requesting jurisdiction such as the identity of the person under investigation, a description of the information sought, the tax purpose for which the information is sought, the grounds for believing it is in the possession or control of a person within the jurisdiction of the requested party, to the extent known, the name and address of any person believed to be in possession of the requested information, a statement that the request is in conformity with the laws and administrative practices of the applicant party and a statement that the requesting jurisdiction has pursued all possible means in its own territory to obtain the information.

285. Each information exchange request received by the competent authority is assigned to one of three officials within the Legal Unit of the Ministry of Finance who is then responsible for ensuring this information is retrieved and for overall monitoring of the process. To respond to an information exchange request, the officer will first check to see if such information is held by another government agency such as the Registrar General.

286. Where the requested information is held by the Registrar General, or by another government agency, the competent authority will issue a memorandum to this agency which is usually followed up with a phone call to ensure that the request is fully understood. The agency is informed that a request has been received under the relevant act and that specified information is sought. In 4 cases over the period under review, The Bahamas obtained all information for an EOI request directly from another government

agency. In practice, government agencies always comply with requests to produce information as transmitted via written communication between the competent authority and the relevant agencies.

287. In other cases, the requested information has been found to be in the hands of a third party. In these cases, the competent authority issues a notice to produce the information which only mentions very limited information (i.e. the name of the information holders, the legal basis for the notice, and the period in which the information holder has to reply). In compliance with section 5(3) of the ITC Act and section 5(5) of the US TIEA Act, a notice must contain "details of the request". In practice this requirement is complied with by the competent authority attaching a summary to the request to the notice to produce the information which sets out details of the request to be disclosed to the holder of the information (see also section C.3 *Confidentiality)*

288. The Bahamas has reported that in cases where information was sought from a third party, this was undertaken by issuing a notice to produce the information in the name of the information holder. During the review period, notices to produce were often sent to the registered agent of the entity but were at all times issued to the holder of the information who was under the legal obligation to maintain this information.

289. Once The Bahamas has concluded an agreement with a treaty partner, it is standard practice to provide the treaty partner with their template summary request form as an initial negotiation tool between the parties. The format that this will take is then agreed between the parties and will usually form part of the competent authority agreement, where such an agreement is put in place. In cases where The Bahamas does not negotiate a competent authority agreement, the template summary request form will also be sent to the treaty partner as an initial negotiation tool and agreed upon with the treaty partner. The Bahamas has reported that it always reaches agreement with the EOI partner as to the format the summary will take and the details to be disclosed prior to issuing any notices to holders of information. Therefore, the information disclosed is always agreed with the treaty partner first on a case by case basis. Over the review period, in all cases, The Bahamas was able to reach an agreement with all EOI partners on the content of the summary.

290. The summary request template as initially proposed to the treaty partner includes the following details:

- The competent authority who has requested the information and the agreement under which this information is being requested;
- The identity of the person(s) in respect of which information is requested, including name and last known address;

- The tax or other law with respect to which the information is sought;
- To the extent known, the name and address of the person(s) believed to be in possession or control of the requested information;
- The period of time to which the information is requested;
- The nature of the information sought, and the form in which the information is requested.

291. As noted above, The Bahamas has always been able to agree with its EOI partners on the scope of the summary to be sent to the information holder.

292. Once the notice has been issued the holder of the information is given 28 days within which to produce the information. This notice procedure applies whatever the type of information requested and whoever is expected to hold the information. As most entities in The Bahamas are required to have a registered agent or service provider, in most cases the notices will be issued to the registered agent or service provider.

293. The method of delivery for such notices will depend on the geographical location of the third party. All notices to produce information within New Providence, where the competent authority offices are located, are delivered by hand. When notices must be issued to third parties located on other islands, this will take place via the Royal Bahamas Police Force. Where information has had to be accessed from other islands within the Bahamian archipelago, this has led to slight delays in accessing the information. The Bahamas should ensure that its procedures for accessing information located on other islands within the Bahamian archipelago do not negatively impact the exchange of information. Although the procedure has caused slight delays in some occasions, it has not obstructed effective EOI to date.

294. The time given to the person who is served a notice is usually 28 days, and this deadline is strictly monitored via an internal checklist. In certain cases, where just cause is shown, the competent authority may grant extensions to the 28 day period. In making the decision whether or not to grant an extension, the competent authority will consider the reasons for requesting the extension, the urgency of the request and any other factors particular to the case that may be relevant. Depending on the circumstances, The Bahamas may also consult with the requesting competent authority before granting an extension of time, where for example the case is urgent. If an extension is given, the standard extension time is usually one to two weeks. The Bahamas has reported that in three cases an extension was requested under the review period and an extension of two weeks was granted in all three cases. However, this has not delayed the exchange of information in practice.

Access to banking information

295. When an EOI request is received for banking information a notice will be served on the financial institution to produce the information within a timeline of 28 days. As outlined above (see also section A.3.1 *Banking Information*) all banks in The Bahamas must have a physical presence in The Bahamas and this is where any notice will be issued. Whilst slight delays were experienced where the banking information was held within another island of The Bahamian archipelago or was in relation to a liquidated entity, the information was still provided to the requesting jurisdiction within 180 days. There were also one or two occasions in which bank information requested predated the five year mandatory retention period and was therefore no longer available. Otherwise, peer inputs confirm that banking information was made available when it was requested.

Access to accounting information

296. Since the Bahamas does not have a tax authority, requests for accounting information will usually be made via a notice served on the holder of the information, which will usually be a service provider. Prior to the 2011 and 2013 legislative amendments, which brought in comprehensive accounting information keeping obligations in respect of all entities, there were five EOI requests which could not be completed due to the accounting information not having been maintained by the service provider (see section A.2.1 *Accounting Information*). The legislative amendments now ensure that all entities in The Bahamas must maintain comprehensive accounting records for 5 years. Therefore, The Bahamas is now in a position to provide all accounting information for future EOI requests (see section A.2.1 *Accounting Information*). The Bahamas should continue to monitor the effectiveness of these obligations in respect of being able to access accounting information in respect of all entities.

297. To date, in all cases where information has been requested either through communication with another government agency or where a notice to produce information was issued to a third party, these have always been complied with. In one case, a service provider requested a copy of the EOI request before it would supply the requested information. The competent authority immediately sent a follow-up letter clearly setting out the holder's obligations under the ITC Act and the request for information was subsequently complied with by the service provider without sending a copy of the EOI request. The competent authority has never had to impose sanctions or employ search and seizure powers to compel the production of information in relation to an EOI request.

298. Of the EOI partners that provided peer input, none indicated that there were any issues with respect to non-compliance by The Bahamas' taxpayers or third parties. The Bahamas competent authority has indicated that it would be ready to use these compulsory powers in EOI cases, should a taxpayer or third party refuse to provide the requested information.

Secrecy provisions *(ToR B.1.5)*

299. 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. This provision is also expressly set out in the notice to produce documents as issued to third parties or a taxpayer.

300. 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; or that would disclose any trade, business, industrial, commercial or professional secret; or that 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.

301. Attorney-client privilege is set out under statute in section 3(3) of the ITC Act and section 3(4) of the US TIEA Act and sections 135 and 136 of the Evidence Act 2000. Officials from The Bahamas Attorney General's Office have reported that legal professional privilege follows those principles as set out under English common law and in practice can be relied upon in two broad circumstances: legal advice privilege and litigation privilege. This common law precedent on this issue has been recently applied in Bahamian cases; *Regina (Morgan Grenfell and Co. Ltd) v Special Commissioner of Income Tax*[23] and *Minister of Finance v Braswell and Others*[24] and is in line with the international standard.

302. In practice, feedback from EOI partners has indicated and The Bahamas' authorities have confirmed that no cases have occurred in practice where requested information was not supplied due to the application of professional legal privilege or national security provisions. Furthermore, in eight cases under the three year review period, The Bahamas has requested information

23. [2002] 2 WLR 1299.
24. [2007] CA (Bda) 9.

pursuant to an EOI request from a lawyer in their capacity as service provider and no claims of legal professional privilege arose in any of these cases (see also section C.4 *Right and safeguards of taxpayers and third parties*).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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)

303. 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. Previously, the Minister was under an obligation to extend the 20 day holding period where he received an objection to the exchange of the information during this time. However, pursuant to a 2011 amendment to section 7(c) of the ITC Act this 20 day period now "may" 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.

304. The ITC Act is not clear how long the retention of the documents may be extended, however it may be until the objection is resolved. Whilst such an extension could affect the exchange of information, the Minister is not bound to extend the period thereby delaying the exchange of the 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.

305. In respect of rights and safeguards of persons, the OECD Model TIEA in Article 1 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' agreements[25] provide that a requested party "shall use its best endeavours" to ensure that they do not unduly prevent or delay effective EOI. It is unlikely that this variation will materially affect access to information in line with the international standards.

Rights and safeguards in practice

306. Whilst all information when delivered to the offices of the competent authority shall be initially held for a period of 20 days, The Bahamas' authorities have stated that in no cases has there been an objection raised to the exchange of this information during that holding period. In practice, an objection may be raised by either the taxpayer or an "interested person" who has either sought judicial review of the decision of the Minister to exchange the information or has sought some other lawful recourse against the Minister, such as applying to the Court for relief or redress from an alleged breach of constitutional protections. A definition of an "interested person" is not provided for in the law. However, The Bahamas has stated that an interested person could range from the holder of the information to a connected business entity.

307. Whilst previously, in the case of an objection the Minister was under an obligation to extend the 20 day holding period, pursuant to a 2011 amendment to the ITC Act the Minister now has a discretion as to whether or not he will extend the holding period and delay sending the requested information. The decision as to whether or not to extend the holding period shall be taken on a case by case basis after there has been a thorough assessment of the facts of the case and prior consultation with the requesting jurisdiction. Factors that will be examined include the circumstances of the case, the urgency of the matter, the objection as raised by the taxpayer or holder of the information and as to whether or not such an extension could unduly delay or affect the exchange of information in practice.

308. In the event that the Minister extends the holding period, the Bahamas has reported that this extension could be from one month to several in the case that leave is granted for an application for judicial review. In the case of leave for judicial review being granted, as this has not yet occurred in relation to an EOI request, it is not known how long this may take. However, based on other judicial review cases for domestic purposes, The Bahamas has indicated that this could take up to a period of one year, depending on

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

the issues at stake and the schedule of the Court. Even in the case that an objection is made within the holding period and an extension is granted this should not affect The Bahamas' ability to provide a status update to its treaty partner.

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C. Exchanging Information

Overview

309. 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.

310. The Bahamas has been very active in negotiating TIEAs, concluding 29 agreements since September 2009 of which 26 are in force. A list of these signed agreements can be found in Annex 2, covering all of its 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.

311. 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. Other confidentiality measures are also in place such as the use of encrypted email for correspondence, a firewalled computer network and the use of a courier to send information to EOI partners. Hard copies of all documentation regarding exchange of information requests are stored in locked filing cabinets which can only be accessed by two members of the competent authority. Long-term storage of closed files is provided in a secure vault.

312. Pursuant to Bahamian law, the competent authority is required to provide details of the EOI request when issuing a notice, The Bahamas agrees in advance all the details that may be attached to a notice to a third party holder of information with the requesting EOI partner

313. 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.

314. Under the three year review period, The Bahamas received 48 EOI requests from eight partner jurisdictions. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year cumulatively in 25%, 75% and 85% of the time respectively. If the time taken by the requesting jurisdiction is excluded, the requested information was provided within 90 days and 180 days cumulatively in 77% and 85% of the time respectively. Partial information pertaining to the two outstanding requests was supplied within one year and these two requests are still ongoing.

315. In practice, there were occasional delays due to information being held within other islands on the Bahamian archipelago, or being related to a liquidated entity or due to clarifying the information requested with either the service provider or the requesting jurisdiction. Where the provision of information took longer than 90 days, status updates and interim responses were sent. There are comprehensive procedures in place to systematically monitor all requests mainly via an online spreadsheet which records the dates and status of all requests. Feedback from peers demonstrates that, despite a high rate of requests for which clarifications are sought by The Bahamas (27%), cooperative relationships and open lines of communication between competent authorities have meant that generally efficient exchanges of information have taken place in practice.

316. The Bahamas' agreements and domestic law ensure that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

C.1. Exchange-of-information mechanisms

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

317. The responsibility for negotiating international agreements in The Bahamas lies with the Minister of Finance and in practice he will be consulted by the Financial Secretary and the Legal Unit throughout the negotiation process. The Bahamas generally follows the wording of the OECD Model TIEA but may modify certain provisions where agreed upon between the parties. Once the terms of agreement have been agreed upon by both parties, initialling of agreements takes place in person, and sometimes on the margins of the Peer Review Group meetings or Global Forum events. Once initialled, the agreement is then forwarded to the Cabinet of Ministers for approval. To date, there has been no case of Cabinet's not approving an EOI agreement.

318. Once the Cabinet of Ministers has approved the agreement and it has been signed, an ITC Order is drawn up under section 13(2) of the ITC Act, facilitating the agreement to be scheduled as part of the ITC Act in order to become part of domestic law. All official notifications, such as the notifying of the other treaty partner that all internal ratification procedures have been completed internally, are carried out via the Ministry of Foreign Affairs.

319. Upon the signing of a new agreement it is normal practice for The Bahamas to make contact with the competent authority of the EOI partner to negotiate a competent authority agreement. These agreements have either been agreed via email and phone correspondence or in person at meetings held in The Bahamas, the partner jurisdiction, or in the margins of Global Forum events. The Bahamas currently has 17 competent authority agreements in place, especially with those EOI partners with whom it has exchange of information activity in practice.

320. Exchange of information agreement negotiation is a high priority in The Bahamas and this is evidenced by the rapid expansion of its treaty network over the past few years, with 28 of its agreements being concluded since 2009. Of the 29 EOI instruments signed by The Bahamas, all agreements are in the form of a TIEA.

321. To date, The Bahamas has not sent any requests. However, The Bahamas is legally empowered to make requests under 28 of the TIEAs it has signed (with the exception of the TIEA with the United States which only permits EOI requests by the United States). The rate of incoming requests has increased by almost 100% annually over the three year period under review and given the number of new bilateral relationships The Bahamas' authorities anticipate incoming requests will continue to increase in coming years.

322. The terms of The Bahamas' laws and agreements governing the exchange of information are set out below.

Foreseeably relevant standard (ToR C.1.1)

323. 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.

324. 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.

325. Fourteen of the 29 TIEAs signed by The Bahamas[26] 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.

26. With Argentina, Belgium, Germany, Guernsey, Japan, Malta, Mexico, Monaco, New Zealand, San Marino, South Africa, Spain, the UK and the USA.

326. 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.

327. 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.

328. The Bahamas has reported that whilst no express clarifications were sought regarding the foreseeably relevant standard, in cases where the competent authority is of the view that the content of the request or the circumstances that led to a request are not clear, its competent authority seeks clarifying or additional information from the requesting jurisdiction (to date, this has occurred in 6% of the requests received) in order to be able to action the request. The Bahamas has reported that generally the requested information affected by the clarification is gathered only after a response to the clarifications sought is received. However, in certain cases even when no response was provided to a clarification, The Bahamas proceeded to process the request.

329. In one case a significant amount of time elapsed from the date the initial request was received to the date The Bahamas was able to provide a full answer: 444 days, including 259 days taken by the requesting party to provide a response to The Bahamas' requests for clarification. Excluding the time taken by the requesting jurisdiction to revert back to the clarifications and once the final request was received; the time taken by The Bahamas to process this request was 58 days. In this case the parties worked together in order to put a standard summary request template in place that will be going forward. It was recognised by the requesting jurisdiction that the delays were also the result of their consultations with The Bahamas.

330. One EOI partner also questioned the extent of some requests for clarification especially regarding the foreseeable relevance of the request or its efforts to obtain the requested information in its own jurisdiction and the workings of specific provisions of the relevant tax laws. In cases where the foreseeable relevance of the information requested is not clear, it is expected that the requested jurisdiction must be able to make an informed decision about the reasonableness of handling a request and should seek to establish that the standard of foreseeable relevance has been met. In addition, competent authorities will need the standard of foreseeable relevance to be clearly established in order to successfully defend the handling of a request in the event of any legal challenge. Nonetheless, The Bahamas should continue to ensure that any additional consultations to the requesting jurisdiction on the application of relevant laws do not go beyond what is necessary to establish foreseeable relevance and create unnecessary burden on the requesting jurisdiction.

331. In one case, involving a real estate property in The Bahamas, The Bahamas requested the EOI partner to explain *(i)* the application of the relevant foreign tax so that the tax period covered by the EOI request could be ascertained; and *(ii)* the efforts made by the requesting jurisdiction to obtain the requested information in its own jurisdiction. The Bahamas' authorities reported that they did not receive an answer from the requesting jurisdiction and that they had nevertheless proceeded with replying to the request, and had provided information concerning the ownership of the property by a corporate entity as well as the ownership information of that company. They also reported that the requesting jurisdiction has recently sent an additional query in relation the information previously provided. The Bahamas confirmed that it was able to obtain the additional information requested and has recently provided this to the requesting jurisdiction. Therefore, the clarifications made by The Bahamas in this case did not deter the request from being actioned and the requested information being provided.

332. The second case (as mentioned above in regards to the timeline) relates to information concerning a particular trust managed by a trustee in The Bahamas. The requesting jurisdiction stated in its request that it was investigating a named individual in relation to inheritance tax. The request outlined the name of the individual who was believed to be the beneficiary of a named trust managed by a licensed trustee in the Bahamas. The requesting jurisdiction also informed The Bahamas that immediate family relatives of that individual were also believed to be involved in the trust, although those relatives were not specified by name in the request. The requesting jurisdiction asked for information on the trust, including all of its beneficiaries. The Bahamas issued a notice to the trustee for information concerning the involvement of the named individual under investigation in this trust. The Bahamas was informed by the trustee that it did not have any information pertaining to that individual in its possession, custody or control as that named individual was neither a settlor, trustee nor beneficiary of the trust. However, The Bahamas reported that it could not provide further information regarding the unnamed beneficiaries of the trust to the requesting jurisdiction as, in its view, it would reveal confidential information of persons who were not shown to be foreseeably relevant for the purpose of the request.

333. The international standard requires information exchange to the widest possible extent, so long as the information is "foreseeably relevant" to the administration and enforcement of the tax laws of the requesting jurisdiction. Information on the beneficiaries of a trust that appears to be family held and linked to the taxpayer under investigation appear to meet the foreseeably relevant test, provided that the requesting jurisdiction has a reasonable basis to believe that other beneficiaries of the trust are related to the taxpayer and that relationship is relevant for the requesting jurisdiction's tax purposes. The Bahamas now recognises that under these circumstances, they could have

engaged further with the treaty partner in an attempt to clarify the unnamed beneficiaries' connection to the trust in order to provide the requested information. The Bahamas has stated that should similar requests arise in the future they would be fully prepared to process this request and provide such information. Whilst this issue arose in only one case, in these circumstances, The Bahamas should be prepared to obtain and provide such information. It is also noted that The Bahamas recently made further contact with this treaty partner and a notice to produce the requested information has been recently reissued to the trustee service provider. The Bahamas has confirmed that where a treaty partner has asked for information regarding the identity of the beneficiaries of the trust or ownership or identity information about another form of legal entity, and the information requested is foreseeably relevant, then it is not necessary for the treaty partner to provide the names of the persons it considers may be beneficiaries of the trust or may have an ownership interest in another form of legal entity.

334. It is expected that as the relationship between The Bahamas and its peers is built up over time, the number of requests for clarification will be reduced in future and the effectiveness of their cooperation will be further improved.

335. Under the three year period under review, The Bahamas has advised that they have not declined to answer any request for information on the basis that the requested information was not foreseeably relevant, which is confirmed by feedback received from peers. Whilst one peer mentioned that they considered the requirements for establishing foreseeable relevance to go beyond that set out under the standard (as mentioned above), of the other EOI partners that provided peer input, none indicated that there were any other issues in relation to the requirement to set out the reasons for believing the information requested is foreseeably relevant.

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

336. 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.

337. 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. Over the three year review period, The Bahamas has advised that there were a small number of EOI requests which, on further

investigation, were found to concern information that was neither within the possession nor control of persons within its territorial jurisdiction, nor was it required to be held by such persons. In practice, no issues have arisen regarding the jurisdictional scope in relation to an EOI request.

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

338. 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.

339. None of the TIEAs concluded by The Bahamas allow the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person in conformity with Article 5(4) of the Model TIEA. In practice, no difficulties have arisen with respect to this issue and no requests for bank information have been declined by The Bahamas.

Absence of domestic tax interest (ToR C.1.4)

340. 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 as set out under Article 5(2) of the Model TIEA. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

341. 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.

342. In practice, as The Bahamas does not have an income tax system, their access powers are specifically designed for international exchange of information. Therefore, the issue of domestic tax interest has never triggered any issue in The Bahamas.

Absence of dual criminality principles (ToR C.1.5)

343. 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 in conformity with Article 5(1) of the Model TIEA.

344. None of the TIEAs concluded by The Bahamas applies the dual criminality principle to restrict the exchange of information and in practice no issue linked to dual criminality has arisen.

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

345. 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").

346. All of the EOI agreements concluded by The Bahamas provide for the exchange of information in both civil and criminal tax matters in their Article 1.

347. In practice, The Bahamas require that its EOI partners clarify whether the request relates to a criminal or non-criminal tax matter but this information will not be made known to the taxpayer or third party and is for their own purposes only. During the three year review period, 22 requests related to criminal tax matters and 26 requests related to civil tax matters and in practice no difficulties have arisen with respect to this issue.

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

348. 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 in conformity with Article 5(3) of the Model TIEA. 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.

349. 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 8, ITC Act; and section 10, US TIEA Act.

350. In practice, The Bahamas has been asked to provide information in the specific form of affidavits and depositions. In all cases the requested information has been provided in the form specified. The EOI partners that provided peer input have indicated that there were no issues linked to the form of information exchanged.

In force (ToR C.1.8)

351. 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.

352. 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.

353. 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.

354. The Bahamas has signed 29 TIEAs in total. The US-Bahamas TIEA has been in force since 2002, and a further 25 TIEAs have entered into force as at March 2013. With regard to the three remaining signed TIEAs with New Zealand, Belgium and South Korea, The Bahamas has completed all steps for its part that are necessary to bring the TIEAs into force and is waiting for these agreements to be ratified by its treaty partners. The status of the TIEAs which The Bahamas has signed is set out in Annex 2.

355. Once an agreement has been signed an Order scheduling the agreement to the ITC Act is signed by the Minister and then sent to Cabinet Office for Gazetting. Once the Order is gazetted, ratification occurs, and it will then have full legal effect as part of the ITC Act. The effective date of an agreement will depend on the specific provisions contained in that agreement. Once the Order is gazetted, a formal notification is sent to the partner

jurisdiction via the Ministry of Foreign Affairs. The Bahamas has reported that in practice this scheduling process is quite short and agreements are usually ratified expeditiously. The whole process of ratification takes on average between one to six months.

In effect (ToR C.1.9)

356. 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.

357. All exchange of information agreements have been given their proper effect through domestic law in the manner as described above. In the three year period under review there have been no cases where information could not be made available due to any inconsistency or lack of domestic legislation being in force in The Bahamas.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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

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

358. 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.

359. As at March 2013, The Bahamas had signed agreements with 29 jurisdictions, of which 17 are OECD members, with 26 of the agreements

currently in force. The Bahamas has taken all steps necessary to bring the remaining three agreements into force. 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, both of which are also in force. In addition, The Bahamas Government's declared policy is to negotiate EOI agreements with any jurisdiction that requests such an agreement and of the 29 agreements signed to date, 22 are with G20 or OECD countries.

360. 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.

361. 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.

362. In summary, The Bahamas' network of information exchange agreements covers all relevant partners.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	The Bahamas should continue to develop its EOI network with all relevant partners.

Phase 2 rating
Compliant.

C.3. Confidentiality

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

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

363. 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.

364. 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 cases[27] the confidentiality article also provides that where information is provided for a criminal tax purpose but is subsequently to be used for a non-criminal tax purpose, and vice versa, then 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 The 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.

365. Treaty obligations are complimented by domestic law. Under The 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

27. The Bahamas' agreements with Argentina, Belgium, Mexico, Monaco, New Zealand, San Marino, South Korea, the United Kingdom and the US.

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 , upon a summary conviction, to a fine of up to BSD 2 000 (s29(1)(a)), and in the case of a conviction on information, a fine of up to BSD 100 000 (s29(1)(b)). In addition, all officers within the competent authority must also act in accordance with an internal confidentiality policy of the Ministry of Finance that addresses permissible disclosures of tax information as well as potential breaches of confidentiality.

366. The Bahamas is required to include details of the request 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) (see also section below *details of a request as contained in a notice*). It is acknowledged that The Bahamas' competent authority, in all cases in practice, comes to an understanding with its counterparts on which details of a request may be released when issuing a notice to access information. (This understanding does not need to be a signed agreement but in many cases will take this form through the competent authority agreements which The Bahamas has in place with 17 of its EOI partners).

Ensuring confidentiality in practice

Details of a request as contained in a notice

367. In practice, The Bahamas always agrees prior with its EOI partners the format of the summary request template as disclosed, to third parties (see also section B.1.4 *Compulsory powers*). In so doing, the requesting jurisdiction is fully aware of the details of the request which will be submitted to a third party in the Bahamas. The full details of an EOI request are strictly for the use of The Bahamas competent authority only and the summary of the request is attached to the notice to produce information as issued to the holder of the information. The summary request template as initially proposed to the treaty partner includes the following details:

- The competent authority who has requested the information and the agreement under which this information is being requested;
- The identity of the person(s) in respect of which information is requested, including name and last known address;
- The tax or other law with respect to which the information is sought;
- To the extent known, the name and address of the person(s) believed to be in possession or control of the requested information;

- The period of time to which the information is requested;
- The nature of the information sought, and the form in which the information is requested;

368. Once The Bahamas has concluded an agreement with a treaty partner, it is standard practice to provide the treaty partner with its template summary request form as an initial negotiation tool between the parties. The format that this will take is then agreed between the parties and will usually form part of the competent authority agreement, where such an agreement is put in place. In cases where The Bahamas does not negotiate a competent authority agreement, the template summary request form will also be sent to the treaty partner as an initial negotiation tool and agreed upon with the treaty partner. The Bahamas has reported that it always reaches agreement with the EOI partner as to the format the summary will take and the details to be disclosed prior to issuing any notices to holders of information. Over the review period, in all cases, The Bahamas was able to reach an agreement with all EOI partners on the content of the summary.

369. It is generally accepted that a requested jurisdiction needs to disclose information contained in an EOI request to the holder of the information as necessary for the requested jurisdiction to gather and provide the requested information to the requesting jurisdiction. However, the template summary request form as proposed by The Bahamas' may, depending on the facts and the circumstances of the case, disclose more information than is necessary for the notified person to locate the information sought. For example, the mention of the requesting competent authority or the tax or other law with respect to which the information is sought may not be necessary to locate the requested information. The information contained in an EOI request and the relevance (and therefore acceptability) of disclosure in the summary request provided to the information holder depends on the circumstances of each case, including, for example, the type or form of information requested or from whom the information is sought.

370. The Bahamas currently has competent authority agreements in place with 17 jurisdictions whereby they agree upfront on the details that will be included in the summary as sent to the holder of the information for all future EOI requests. In the event that a competent authority agreement is not in place, The Bahamas will still always reach prior agreement concerning the details of the information to be disclosed to third parties.

371. There was one occasion during the period under review where The Bahamas and a partner jurisdiction did not initially agree on the details of the request to be contained in the summary request form as a competent authority agreement had not yet been concluded. The Bahamas conducted email and phone discussions with the EOI partner to ensure that they came to a clear

agreement regarding the details to be included. Whilst these discussions led to a delay in the processing of the request, the EOI partner conceded that these delays were occasioned by their actions also. Once agreement had been reached, the notice and the summary request form were issued to the third party by the competent authority. There have been no incidences in practice or any form of disagreement concerning the information to be detailed in the summary request form. Nonetheless, The Bahamas should ensure that they do not disclose to third parties more information that is not needed to obtain the information requested.

372. Finally, The Bahamas authorities have reported that they are to amend shortly section 5(3)(a) of the ITC Act, requiring instead that “details of the information requested” be disclosed, as opposed to “details of the request”. This amendment would narrow the scope of information that could be included in the summary request attached to the notice to produce information.

Handling and storage of EOI requests and related information

373. The Legal Unit of the Ministry of Finance is the body responsible for the day-to-day processing of EOI requests and is based in a separate office within the Ministry of Finance building. Only the 7 officials of the Legal Unit have keys to these offices (see also section below outlining confidentiality obligations concerning Personnel).

374. When a request for information is received at the Ministry of Finance it will be sent directly to the Financial Secretary as the duly authorised representative of the Minister of Finance who is the competent authority of The Bahamas. It will be date stamped and reviewed by the Financial Secretary who will then proceed to forward the request to the Legal Unit who carries out the day-to-day operations in relation to EOI matters under the management of the legal advisor. In the vast majority of cases, EOI requests tend to be received via registered mail or courier. There have been incidences of requests being received via regular mail and in such cases for reasons of security The Bahamas has requested that future requests be sent via registered mail or courier. There have also been a few requests received via encrypted mail. During the processing of an EOI request, where email is used for communication with other competent authorities, this is generally carried out via encrypted mail. In some cases, The Bahamas may use non-encrypted email, for example where it is requesting a call with the requesting jurisdiction to discuss the EOI request. In such cases, the email correspondence will not contain any details of the request.

375. Once the request has been received in the Legal Unit, all details of the request are filled into an office spreadsheet (details such as jurisdiction, information requested, when received, where forwarded to, date of when forwarded to third party) which is accessible by one Legal Unit official only (the

legal officer) throughout its processing. A hard copy correspondence file is created which is stored in secure filing cabinets of the office of the legal advisor. The computer network is firewalled and access-controlled by personal password and the secure online space as assigned to the Legal Unit can only be accessed by Legal Unit officials.

Provision of requested information to EOI partners

376. When the requested information is received by the competent authority this information is copied and every page is marked with their confidentiality stamp which reads that the information is strictly confidential and is only to be disclosed as provided under the mentioned agreement. The Legal Unit maintains copies of the information produced as well as an inventory of all information produced and copies of the requests which are initially stored in the hard files in the Legal Advisor's office and then eventually are archived in a secure vault of the Ministry of Finance which is securely locked with limited access. When the information is provided to EOI partners, all information produced and an accompanying letter of production are sent via courier to the named contact in the requesting competent authority, mostly the contact point identified in the competent authority agreement (if in place).

Personnel

377. The office of the Legal Unit is staffed with seven full-time staff (including both legal and administrative officials) who have an obligation, under the Official Secrets Act, to hold work-related information in strict confidence, as part of their terms of employment. The Data Protection Act also_specifies that personal data must be secured against unauthorised or accidental access, alteration, disclosure or destruction. In addition, all officers of the Legal Unit must, at all times, act in accordance with an internal confidentiality policy that addresses permissible disclosures of tax information, the movement of sensitive material, security and file handling, and the handling of potential breaches of confidentiality. All officers of the Legal Unit have previously worked in the prosecution service or other Government departments and are professionally fully aware of their obligations of confidentiality. The Bahamas also adheres to the joint Global Forum / OECD publication *Keeping it safe: Guide On The Protection Of Confidentiality Of Information Exchanged For Tax Purposes* and, where relevant, it indicated that it will use it as a guide for best practices related to confidentiality.

Conclusion

378. The Bahamas has a comprehensive system of measures in place to assure confidentiality when processing EOI requests. There are clear

handling and storage security measures and all personnel are bound by strict confidentiality rules against any disclosure of information concerning EOI requests. The Bahamas systematically discloses certain details of the request in the summary document that is attached to each notice to produce as issued to the holder of the information. In all cases this is undertaken with the prior consent of the requesting jurisdiction who has agreed to the details to be included in the summary document. However, the disclosure to third parties of details that are not always necessary for gathering the requested information should be considered on a case by case basis. It is recommended that The Bahamas monitor whether they are not disclosing to third parties information that is not needed to obtain the information requested.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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

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

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

379. 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.

380. 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.

381. 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.

382. In practice, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice and from the EOI partners that provided peer input, no issues have been raised in this regard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1.)

383. 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.

384. Rather than a specific time frame, a number of The Bahamas' TIEAs[28] 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 the one with the US contains provisions concerning the time within which a

28. With Argentina, Belgium, Canada, Germany, Mexico, Monaco, the Netherlands, New Zealand, San Marino, South Africa, South Korea and the UK.

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.

Practice

385. In the three year period under review, The Bahamas has received 48 requests for information from eight different jurisdictions. Most of the EOI agreements which The Bahamas has entered into are relatively new (most have been brought into force in the last three years), and the number of requests have more than doubled each year under the three year period under review.

386. The response time for replying to a request starts running from the date that the EOI request is received by The Bahamas, and only stops once a final reply has been sent. The Bahamas does not include the time taken by the requesting jurisdiction to revert back to further clarifications as made by the Bahamas competent authority in the course of processing the request. In cases where a supplementary request is made which sought new information arising out of information previously provided on a fully satisfied matter, the supplementary request is counted as a separate request and the timelines for this request would start on the date of its receipt. During the period under review, the Bahamas has received three supplementary requests for information based on information it had already exchanged.

387. From a total of 48 requests, including the time taken by the requesting jurisdiction to provide additional information when clarifications were sought, The Bahamas was in a position to provide a final response within 90 days in 12 cases (25% % of the total received requests) with another 24 cases (50% of the total received requests) processed within 180 days, 5 cases within one year (10% of cases) and with no requests taking longer than a year (except in relation to the two requests that are still ongoing and discussed further below). If the time taken by the requesting jurisdiction is excluded, The Bahamas was in a position to provide a final response to the EOI partner within 90 days in 37 cases (77% % of the total received requests) with another 4 cases (8% of the total received requests) processed within 180 days. Partial information pertaining to the two remaining requests was supplied within one year and these two requests are still ongoing.

388. Over the three year review period, there were five occasions where The Bahamas was not in a position to provide the information as the law in place for the period in question did not require that information to be

maintained (this legal deficiency has since been addressed, see section A.1.2 *Accounting information*). There were two occasions where banking information could not be produced as it predated the statutory holding period applicable to the information and was no longer available. There was one case under which The Bahamas could not provide the information requested as it did not relate to information within the possession or control of a person within the jurisdiction of The Bahamas. The requesting jurisdiction has since provided additional information and this case is still ongoing. Finally, a second case (see section *C.1.1 Foreseeably relevant standard*) is also still ongoing and the Bahamas has recently reissued a notice to produce the information. However, in all cases The Bahamas reverted back to the requesting jurisdiction in a timely manner to inform them of the outcome of the request and where applicable informing them of the statutory holding periods. The following table shows the time needed to respond to all EOI requests (including the time taken by the requesting jurisdiction to provide clarifications):

Response times for requests received during 3 year review period

	Jul-Dec 2009		2010		2011		Jan-Jun 2012		Total	Average
	nr.	%	nr.	%	nr.	%	nr.	%	nr.	%
Total number of requests received* (a+b+c+d+e)	4	100%	10	100%	19	100%	15	100%	48	100%
Full response**: ≤ 90 days	1	25%	2	20%	5	26%	4	27%	12	25%
≤ 180 days (cumulative)	4	100%	7	70%	13	69%	12	80%	36	75%
≤ 1 year (cumulative) (a)	4	100%	10	100%	15	78%	12	80%	41	85%
1 year+ (b)	0	0%	0	0%	0	0%	0	0%	0	0%
Declined for valid reasons (c)	0	0%	0	0%	0	0%	0	0%	0	0%
Failure to obtain and provide all information requested*** (d)	0	0%	0	0%	2	11%	3	20%	5	11%
Requests still pending at the end of the review period (e)	0	0%	0	0%	2	11%	0	0%	2	4%

* The Bahamas counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

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

*** In five cases The Bahamas was unable to provide accounting information. Each of these requests related to more than one type of information. All of the other information requested was provided by The Bahamas.

389. Once an EOI request has been received in The Bahamas, a letter of confirmation of receipt is prepared and dispatched to the competent authority of the requesting party within 10 days of the official date of receipt, or as soon as possible thereafter. The Legal Unit will then perform an initial analysis of the request including checking for validity (see also section C.5.2 *Organisational process and resources*). If necessary, The Bahamas may revert back to an EOI partner for further clarification. Over the review period, the competent authority has reverted back to the requesting party in 13 cases (27% of the total received requests).

Clarification issues

390. The Bahamas has sought clarifications from its EOI partners in 13 out of 48 EOI requests received in the period under review: (some requests involve more than one issue for clarification)

- in 10 cases, the requesting jurisdiction did not include the summary request to be included in the notice to produce information – these requests for clarification were mainly required early in the EOI relationships and the number of such cases should diminish over time;
- in 5 cases, The Bahamas reverted back due to an error in the information that had been supplied by the requesting jurisdiction in the summary request form; and
- in 5 cases, the requesting party was asked to clarify some details of the request (such as relevant time period, relevant entity, relevant legislation). These requests for clarification should reduce because of improved communication between the competent authorities concerned (see *Foreseeably relevant standard).*

391. In all these cases, a letter was sent to the requesting party within 35 days seeking clarification or consultation on the deficiency of the request. As discussed above, under Bahamian law details of the request must be provided in the notice as issued to the holder of the information. In order to comply with this requirement, The Bahamas requires that a summary request outlining the details of the request to be disclosed to the holder of the information is provided by the EOI partner for each request (see section C.3 *Ensuring confidentiality in practice*). Those partners who regularly exchange information or who have already entered into a competent authority agreement with The Bahamas will be familiar with this practice and generally attach a summary request to an EOI request. Otherwise The Bahamas will have to revert back to the EOI partner requiring that this summary request is provided or that the requesting party is in agreement as to the details to be disclosed to third parties.

392. Generally, the requesting parties were asked to reply by way of providing a summary request outlining the details of the request to be disclosed to the holder of the information or by providing more information such as the relevant tax laws in the requesting jurisdiction. As a result, the summary requests were revised and/or provided in 12 cases. In no case was the request withdrawn. Of these 12 cases, The Bahamas was able to provide a final response within 90 days in 2 cases, within 180 days in 6 cases and within a year in 4 cases. There were two incidences of the information taking over 1 year and these two cases are still ongoing.

393. Generally, the requested information affected by the clarification is gathered only after a response to the clarifications sought is received (i.e. the rest of the information covered by the request is gathered in the meantime). Two treaty partners reported the increased complexity for them to obtain information from The Bahamas (as from some other TIEA partners) because the level of details required in the request is significantly different compared with other EOI partners. The Bahamas has made some significant efforts to clarify the format of EOI requests to its EOI partners, and create good working relationships. However, it remains that requests for clarification may, in some cases, delay the response. The situation should continue to be monitored and The Bahamas should ensure that the details of the request to be included in a notice to produce information are agreed upon expeditiously with EOI partners and that the need for further clarifications is reduced so that this does not cause unnecessary delays in its response times for exchanging information.

394. The Bahamas has an internal guideline under which they must issue a notice within 35 days of receipt of a proper request or as soon as possible thereafter. The Bahamas has reported that generally notices are issued in 10 days to 2 weeks from the receipt of the request, and that issuance of a notice in 35 days will usually only occur in circumstances where they have had to revert back to the requesting jurisdiction for clarification. On one occasion over the review period, a peer has indicated that the time taken to issue a notice to the holder of the information took almost two months due to the notice having to be served to an entity on another island of the Bahamian archipelago.

395. When an entity is served with a notice to produce information, the standard response time given is 28 days. As a result, in most cases information is provided to the requesting party within 90 days. Incidences where delays arose were where the information was kept on another island within The Bahamian archipelago or where the information related to a liquidated entity. Some delayed responses also related to trust and company information where the registered agents requested clarifications concerning the notice. In cases where such difficulties are encountered, parties may request an

extension to the time in which to furnish this information. The Bahamas has reported that a request for an extension has occurred in three cases over the three year review period and was granted in all cases. The standard extension time given was two weeks.

396. The Bahamas keep their EOI partners well informed of any potential delays in retrieving the requested information and in cases where the information cannot be provided within 90 days, it is the procedure that a status update is provided in all cases.

397. The input from The Bahamas' exchange of information partners confirms that in the majority of cases a final response or status update was provided within 90 days. Moreover, peers have also confirmed that where delays were incurred The Bahamas engaged in active dialogue either via email or phone in order to update them on the status of the EOI request.

Organisational process and resources (ToR C.5.2)

398. The Legal Unit is the body responsible for the day-to-day operations of the competent authority in relation to exchange of information matters. The procedure for handling requests is set out in the internal TIEA Request Processing Procedures. These procedures outline the steps to be followed in processing a request as well as the timelines to be adhered to and other matters such as confidentiality. The Legal Unit has also developed a number of standard forms and templates such as confirmation of receipt of a request, request for assistance from another government agency, notice to produce documents, notice of documents produced and examination order.

399. On receipt of an EOI request it is firstly submitted for data entry into an excel spreadsheet which is maintained by one member of the Legal Unit, a hard copy file is created and a letter of receipt is prepared. After the request has been logged, it is allocated by the legal advisor to one of three Legal Unit officials (either the legal officer or one of the two unit analysts). The request is then reviewed as to whether it is correctly constituted and has met the standard of foreseeable relevance. As discussed above, The Bahamas has agreed with many of its EOI partners on the summary request form that is attached to each notice which gives certain details of the request to the person from whom the information is requested. Therefore, in practice, the majority of partners will transmit this form along with their request to the Legal Unit which attaches it to the notice to be sent to the third party. In the instance that the request is not in the proper form, lacks clarity or may be missing certain information, it is practice to revert back to the competent authority of the requesting party in order to clarify and, where required, modify the request (see also section C.5.1 *Responses within 90 days).* Generally, these ambiguities have been resolved quickly through close and regular contact with their

partner competent authorities and The Bahamas has not had to refuse any request on the grounds of its not being in the proper form or not reaching the standard of foreseeable relevance.

400. Once it is established that the request is valid, the Legal Unit then decides where best to access the information. As there is no income tax system in The Bahamas, and therefore no obligation to file tax returns, information relevant to the exchange of information is generally not held directly in the hands of the competent authority. Therefore usually the first step is to contact the holder of the information. In practice, this has mainly been by issuing a notice to produce to a third party (see also section B.1 *Gathering information in practice).* In other cases the information sought was found to be held by a government agency and contact was done via a memorandum between the Legal Unit and the government agency. The Legal Unit has a close working relationship with all government agencies and in cases where it sends a memorandum it is normal practice to follow this up with a phone call to ensure that all parties fully understand the request.

401. On delivery of a notice, the holder of the information is asked to sign a receipt which specifies the name of the person who received the notice and the date when the notice was received, a copy of which is placed on the paper file for the request back in the Legal Unit. During the time that the notice is with the third party, the official from the Legal Unit who is responsible for this request will continue to monitor the progress of the request to ensure that the timelines are being adhered to. Once the information is delivered, usually by messenger if the holder of the information is on the island of New Providence and via courier if the holder resides on another island in The Bahamas' archipelago, to the offices of the competent authority, it is first reviewed by the Legal Unit to ensure that the information received is that which has been requested. Where the information is insufficient to meet the requirements of the request, the holder of the information will receive a follow up letter setting out what additional information is needed. Once the information has been verified to be correct it is sent to the Financial Secretary who signs off on the information and then returns it to the Legal Unit for the information to be forwarded to the EOI partner.

402. All information received must be held by the competent authority for a period of 20 days from the date of receipt (s7(a) ITC Act and s7(1)(a) US TIEA Act). In the case where the taxpayer or another party makes an objection to the Minister's transmitting such information, this period may be extended. However there is no obligation for the Minister to extend this period and in practice all the factors of the case will be carefully considered before the holding period is extended (see also section B.2.1 *Rights and safeguards in practice*). The Bahamian authorities has reported that to date there

have been no objections to providing information to a requesting jurisdiction nor have there been any cases of the holding period's being extended.

403. After the 20 day holding period has elapsed, the Bahamian competent authority will send the original of the requested information along with a cover letter via courier to the EOI partner. A confidentiality stamp is scanned on to each page of the requested information. Copies of the information are stored on the hard file and archived in the vault inside the competent authority offices. Once the information has been sent to an EOI partner, The Bahamas has instituted a procedure to send a follow-up letter in order to ensure that the information sent to the EOI partner satisfied the request.

Resources

404. The Legal Unit is currently comprised of seven full-time personnel; the legal advisor, one legal officer, two analysts and three administrative staff. The legal advisor is the person who oversees the running of the unit and in practice requests will be dealt with by either the legal advisor, the legal officer or the two analysts. Both the legal advisor and legal officer are senior attorneys with many years' experience in prosecution, other government departments and financial services. The unit analysts have considerable experience in providing policy advice for financial services regulation. The Bahamas has indicated that current staff levels are set at an appropriate level and are sufficient to meet the increasing number of EOI requests being received.

405. All members of the Legal Unit are very familiar with the EOI process as a result of both in-house and external training. In addition, the Legal Unit has well established processes, guidelines and procedures in place in ensuring that all staff members involved in dealing with information exchange requests are familiar with the EOI process. Finally, all staff members have previous experience working in other governmental agencies and are familiar with evidence handling and the sensitive nature of EOI requests. In an international context, the legal advisor has attended OECD and Global Forum training seminars covering exchange of information for tax purposes and is well informed of the exchange of information process.

Conclusion

406. The processing of EOI requests within the Bahamas is carried out by a well organised and adequately resourced Legal Unit who adheres to well developed internal processes as set out in the internal TIEA process request procedures. They have also developed templates specifically for the EOI process and these are regularly used. The Bahamas agrees in advance the summary request form (as included with the notice to produce

information) with jurisdictions to expedite further the processing of requests. The Bahamas has been able to compromise with their EOI partners as to the details to be included in the summary and has made a good effort to ensure that agreement is reached in a timely manner.

407. With regard to the response times, despite clarifications being sought in almost 30% of cases, 85% of the requests were fully responded to within 180 days (including the time taken by the requesting jurisdiction to revert back to The Bahamas) demonstrating that generally the processing of requests occurs in an efficient manner and there is strong adherence to timelines. Feedback from peers also indicated that generally The Bahamas responded to EOI requests in an efficient manner and provided regular status updates where required.

408. The Bahamas endeavours to facilitate a relationship of close cooperation with all its EOI network. This is evidenced by the 17 competent authority agreements already in place with its EOI partners as well as regular and close contact via email and phone communication with requesting jurisdictions throughout the processing of a request. A few peers also complimented the highly efficient manner in which EOI requests were dealt with by the competent authority of The Bahamas.

Unreasonable, disproportionate or unduly restrictive conditions for exchange of information (ToR C.5.3)

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

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

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating
Compliant.

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. *(ToR A.1.)*		
Phase 1 determination: The element is in place.	Most fund administrators in The Bahamas are subject to CDD requirements under the regulatory and AML regime. However, there may be a limited number of investment funds that are not subject to such requirements. In these cases the simplified due diligence procedure applicable to investment funds may not ensure that full ownership information is available on investment funds in all cases.	The Bahamas should ensure that in cases where the simplified due diligence procedure is applied, full ownership information is maintained in respect of all investment funds.
Phase 2 rating: Largely Compliant.	The Registrar does not have a regular system of monitoring of compliance with ownership and identity information keeping requirements in respect of all registered entities and penalties for non-compliance are unenforced in practice. Whilst most entities are regulated or must engage a service provider that will be subject to monitoring, the verification of beneficial ownership in respect of legal entities may mean that this supervision will not cover the obligation to maintain complete ownership information in all cases.	The Bahamas should ensure that its monitoring and enforcement powers are sufficiently exercised in practice to ensure the availability of ownership and identity information in all cases.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant.	Following the 2011 and 2013 enactment of comprehensive accounting record obligations, The Bahamas is currently developing a system of monitoring. Prior to these legislative amendments, The Bahamas was unable to provide accounting information for EOI purposes in all cases where it was requested. To date, The Bahamas has no enforcement experience to ensure the availability of accounting information.	The Bahamas should monitor the implementation of the accounting record obligations and should ensure that its enforcement powers are sufficiently exercised in practice.
Banking information should be available for all account-holders. *(ToR A.3.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
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). *(Tor B.1.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2.)*		
Phase 1 determination: The element is in place.		The Bahamas should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant.		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5.)*		
Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Compliant.		

Annex 1: Jurisdiction's Response to the Review Report[29]

The Bahamas wishes to thank the assessment team for its hard work and for the productive and constructive engagement during the course of the review. We also thank the peer review group members for the useful observations made.

The Bahamas acknowledges the findings of the report, which confirms the effective practical implementation of the standards for transparency and exchange of information.

The Bahamas notes its continuing commitment to the peer review process and to implementing the accepted international standards for financial services regulation and cross-border cooperation.

The Bahamas wishes to advise that since the date of the report the proposed amendment to section 5(3)(a) of the ITC Act, has been approved by the Cabinet and will shortly be tabled in Parliament.

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

Annex 2: List of All Exchange of Information Mechanisms in Effect

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Argentina	TIEA	3 December 2009	27 July 2012
2	Aruba	TIEA	8 August 2011	1 September 2012
3	Australia	TIEA	30 March 2010	11 January 2011
4	Belgium	TIEA	7 December 2009	Not Yet in Force
5	Canada	TIEA	17 June 2010	16 November 2011
6	China	TIEA	1 December 2009	28 August 2010
7	Denmark	TIEA	10 March 2010	9 September 2010
8	Finland	TIEA	10 March 2010	9 September 2010
9	France	TIEA	7 December 2009	13 September 2010
10	Germany	TIEA	9 April 2010	12 December 2011
11	Greenland	TIEA	10 March 2010	21 June 2012
12	Guernsey	TIEA	8 August 2011	28 March 2012
13	Iceland	TIEA	10 March 2010	15 October 2012
14	India	TIEA	11 February 2011	1 March 2011
15	Japan	TIEA	27 January 2011	25 August 2011
16	Malta	TIEA	18 January 2012	30 October 2012
17	Mexico	TIEA	23 February 2010	(30 December 2010)
18	Monaco	TIEA	18 September 2009	18 February 2011
19	Netherlands	TIEA	3 December 2009	(1 December)
20	New Zealand	TIEA	18 November 2009	Not Yet in Force
21	Norway	TIEA	10 March 2010	9 September 2010
22	San Marino	TIEA	24 September 2009	10 November 2011
23	South Africa	TIEA	14 September 2011	25 May 2012

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
24	South Korea	TIEA	4 August 2011	Not Yet in Force
25	Spain	TIEA	11 March 2010	17 August 2011
26	Sweden	TIEA	10 March 2010	(24 December 2010)
27	The Faroe Islands	TIEA	10 March 2010	24 October 2010
28	United Kingdom	TIEA	29 October 2009	7 January 2011
29	United States	TIEA	25 January 2002	31 December 2003

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)

Business Licence (Amendment) Act, 2013

Companies Act

Companies (Amendment) Act, 2013

Exchange Control Regulations Act

Executive Entities Act, 2011

Exempted Limited Partnerships Act (ELP Act)

Exempted Limited Partnership (Amendment) Act, 2011

Exempted Limited Partnerships Regulations

External Insurance Act(EI Act)

Financial and Corporate Service Provider Act (FCSP Act)

Foundations Act

Foundations (Amendment) Act, 2011

Fraudulent Dispositions Act (FD Act)

Insurance Act

International Business Companies Act (IBC Act)

International Business Companies (Amendment) Act, 2011

Investment Funds Act (IF Act)

Investment Funds (Amendment) Act, 2011

Investment Funds Regulations (IF Regulations)

Partnership Act

Partnership Limited Liability Act (PLL Act)

Partnerships (Amendment) Act, 2013

Purpose Trust Act (PT Act)

Purpose Trusts (Amendment) (No. 2) Act

Segregated Accounts Companies Act (SAC Act)

Segregated Accounts Companies (Amendment) Act, 2011

Securities Industry Act

Securities Industry Regulations (SI Regulations)

Trustee Act

Trustee (Amendment) Act, 2013

Exchange of Information Laws and Regulations

International Tax Cooperation Act (ITC Act)

International Tax Cooperation (Amendment) Act, 2011

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 (Amendment) Act, 2011

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

Annex 4: Persons Interviewed During the Onsite Visit

Officials from the Office of the Attorney General of The Bahamas

Officials from The Bahamas Ministry of Finance

Officials from the Securities Commission of The Bahamas

Officials from the Insurance Commission of The Bahamas

Officials from the Central Bank of The Bahamas

Officials from The Bahamas Registrar General

Officials from the Business Licence Unit

Corporate Service Provider carrying on business in The Bahamas

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: THE BAHAMAS

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

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 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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