



# Mutual Evaluation

Anti-Money Laundering and Combating the  
Financing of Terrorism

# State of Kuwait

5 May 2011

The State of Kuwait is a member of the Middle East & North Africa Financial Action Task Force (MENAFATF). It is also a member of the Gulf Co-operation Council, which is a member of the Financial Action Task Force (FATF). The Mutual Evaluation of the State of Kuwait was conducted by the International Monetary Fund for MENAFATF and the FATF. The Mutual Evaluation Report was considered and adopted by the MENAFATF at its plenary meeting in Kuwait City, Kuwait on 5 May 2011, and then by the FATF at its plenary in Mexico City, Mexico on 24 June 2011, which introduced limited changes to it.

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## ACRONYMS

|         |   |
|---------|---|
| AML/CFT | Anti-Money Laundering and Combating the Financing of Terrorism      |
| BL      | Banking Law   |
| BCP     | Basel Core Principles   |
| CBK     | Central Bank of Kuwait  |
| CC      | Criminal Code   |
| CCL     | Commercial Company Law  |
| CCR     | Central Commercial Register   |
| CDD     | Customer Due Diligence  |
| CMA     | Capital Market Authority  |
| CPC     | Criminal Procedure Code   |
| CSP     | Company Service Provider  |
| CT      | Combating Terrorism   |
| DNFBP   | Designated Non-Financial Businesses and Professions                 |
| FATF    | Financial Action Task Force   |
| FCD     | Financial Crimes Department   |
| FCT     | Foreign Currency Transaction Report                                 |
| FI      | Financial institution   |
| FSAP    | Financial Sector Assessment Program                                 |
| FSRB    | FATF-Style Regional Body  |
| FT      | Financing of terrorism  |
| GCC     | Gulf Cooperation Council  |
| GDC     | General Directorate for Customs                                     |
| IAIS    | International Association of Insurance Supervisors                  |
| ICSFT   | International Convention for the Suppression of Terrorist Financing |
| KBF     | Kuwait Bank Federation  |
| KCC     | Kuwait Clearing Company   |
| KFH     | Kuwait Finance House  |
| KFIU    | Kuwait Financial Intelligence Unit                                  |
| KLA     | Kuwait Lawyers' Association   |
| KSE     | Kuwait Stock Exchange   |
| KD      | Kuwaiti Dinar   |
| KYC     | Know your customer/client   |
| LCT     | Large Cash Transaction Report                                       |

|          |   |
|----------|---|
| LEG      | Legal Department of the IMF   |
| MOCI     | Ministry of Commerce and Industry   |
| MENAFATF | Middle East and North Africa Financial Action Task Force                  |
| MFA      | Ministry of Foreign Affairs   |
| MOF      | Ministry of Finance   |
| MOJ      | Ministry of Justice   |
| MOI      | Ministry of Interior  |
| MOSAL    | Ministry of Social Affairs and Labor                                      |
| MOU      | Memorandum of Understanding   |
| ML       | Money laundering  |
| MLA      | Mutual legal assistance   |
| NCCMLTF  | National Committee for Combating Money Laundering and Terrorism Financing |
| NPO      | Nonprofit organization  |
| OEM      | Other Enforceable Means   |
| PEP      | Politically-exposed person  |
| PPO      | Public Prosecutor's Office  |
| PFPCA    | Public Funds Prosecution and Commercial Affairs                           |
| ROSC     | Report on Observance of Standards and Codes                               |
| SRO      | Self-regulatory organization  |
| STR      | Suspicious Transaction Report   |
| SSB      | State Security Bureau   |
| UN       | United Nations Organization   |
| UNSCR    | United Nations Security Council Resolution                                |

## PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Kuwait is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorism Financing of 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004. The assessment team considered all the materials supplied by the authorities, the information obtained on site from October 17 through November 1, 2010, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF). The assessment team consisted of Nadim Kyriakos-Saad (LEG, team leader), Carolina Claver, Gianluca Esposito, Chady El Khoury (all LEG); Erin Schenck (U.S. Treasury), and Robert Pasley (LEG Consultant). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (TF) through financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs). The assessors also examined the capacity, implementation, and effectiveness of the AML/CFT regime.

This report provides a summary of the AML/CFT measures in place in Kuwait at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Kuwait's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the IMF as part of the Financial Sector Assessment Program (FSAP) of Kuwait and the assessment processes of the MENAFATF and the FATF. It will be presented to the MENAFATF and FATF for adoption by these organizations at their respective plenary meetings in May 2011 and June 2011, respectively.

The assessors would like to express their gratitude to the authorities of Kuwait for their assistance and hospitality throughout the assessment mission, noting, in particular, the assistance provided by the deputy Governor of the Central Bank of Kuwait, Dr. Mohammed Y. Al-Hashel, the Deputy Manager for the Onsite Supervision Department, Mr. Talal Al Sayegh, and the members of their staff.



## EXECUTIVE SUMMARY

1. **The anti-money laundering law (the AML Law), containing the core elements of the AML regime, was introduced in 2002.** It imposes customer due diligence (CDD) obligations on a range of financial institutions (FIs), and requires these FIs to submit suspicious transaction reports (STRs) to the Public Prosecutor's Office (PPO). However, the AML Law did not criminalize the financing of terrorism (FT) and did not put in place a mechanism to implement the United Nations Security Council Resolutions (UNSCRs). Kuwait has initiated a relatively small number of prosecutions for money laundering (ML) and of orders to confiscate assets. The AML Law was never amended; however, a new draft law was sent before the National Assembly in 2007.

2. **Several indicators suggest that ML and FT operations do not pose a serious threat to the Kuwaiti economy.** Although there is currently no evidence of significant ML in the country, Kuwait's financial sector is growing rapidly in terms of banking sector assets. This development has the potential of creating a suitable environment for money launderers and terrorist financiers to exploit. No major terrorist activity has been recorded in the country. Less serious terrorist activity has been noted.

3. **The AML/CFT framework has many shortcomings.** The main deficiencies of the regime are:

- The ML criminalization does not cover all serious predicate offenses, and TF is not criminalized;
- The preventive measures for FIs and designated non-financial businesses and professions (DNFBPs) are not comprehensive;
- The Kuwait financial intelligence unit (KFIU) is not established as an independent national centre responsible for the receipt, analysis, and dissemination of STRs and other information regarding potential ML or FT.
- Some supervisors are not provided with adequate powers to monitor and ensure AML/CFT compliance by FIs and DNFBPs, and do not have sufficient sanctioning powers;
- The licensing requirements for FIs are not comprehensive. In addition, there are no laws or regulations that impose controls on the ownership structure of FIs. Supervisors only apply fit and proper requirements on directors and senior management of banks; there are no such requirements on other FIs;
- Statistics are not collected and guidance and feedback are not adequately provided to FIs and DNFBPs.

### Legal Systems and Related Institutional Measures

4. **ML is criminalized under the AML Law.** This law was complemented by Resolution 9 of 2005 which contains detailed regulations relating to its implementation. The ML offense is in line with the material elements of the Vienna and Palermo Conventions.

5. **The offense of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.** Kuwaiti criminal legislation does not require that a person be convicted of a predicate offense to establish the illicit origin of proceeds. However, the authorities acknowledged that, in practice, a prior conviction for the predicate crime is used as a basis for bringing charges for ML. In the absence of a conviction for the predicate offense, prosecutors would sometimes be hesitant to bring charges for a stand-alone ML offense.
6. **The list of predicate offenses for ML covers most of the designated categories of offenses listed in the FATF Glossary to the 40 Recommendations.** However, the smuggling of migrants and terrorism financing are not covered.
7. **Self-laundering is criminalized in Kuwait.** Article 2 of the AML Law is indeed broad enough to allow for the prosecution of both the predicate offense and the subsequent laundering of the proceeds of the predicate offense.
8. **The AML Law explicitly provides for the possibility of both personal and corporate ML liability.** However, the notion of “company” contained in Article 12 of the AML Law does not include, for instance, public stockholding companies or non-profit organizations (NPOs) as required by the FATF standard, but only companies licensed by the Ministry of Commerce and Industry (MOCI). As a result, the PPO could not, for instance, charge an NPO for ML, but only the individual persons acting as managers or administrators of that NPO. This limits the scope of application of this provision.
9. **TF is not criminalized in Kuwait.** Kuwait is, however, a party to all the conventions listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism (TF Convention). All the offenses contained in the Annex to this convention are, therefore, criminalized under Kuwaiti criminal law.
10. **Kuwait has a comprehensive confiscation, freezing and seizing framework.** It applies to all offenses under Kuwaiti criminal legislation, including felonies and misdemeanours, and covers all predicate offenses for ML, as well as the ML offenses (as defined in the AML Law). However, there is no provision in Kuwaiti law allowing for the confiscation of property of corresponding value.
11. **There is no law in Kuwait that provides for the freezing of terrorist assets in the context of UNSCRs 1267 and 1373, and their respective successor Resolutions.** There is a process in place, which is not formally articulated in any legal text, to implement freezing orders under UNSCRs 1267 and 1373. The Ministry of Foreign Affairs (MFA) is entrusted with the task of receiving notifications under UNSCRs 1267 and 1373, and of transmitting those to the relevant agencies within Kuwait. There is no legal provision, however, specifically entrusting the MFA with this role.
12. **The KFIU does not have the legal and operational independence to carry out its functions effectively.** According to the AML Law, the PPO is the sole body authorized to receive STRs. In 2003, a Ministerial Decree gave the Governor of the Central Bank of Kuwait (CBK) the authority to establish the KFIU in the CBK. The powers of the KFIU to collect information and analyze STRs are derived solely from the powers extended to it from the PPO via “report-by-report” memoranda. The onsite supervision department of the CBK has assumed the duties of the KFIU Secretariat and, thus, provides day-to-day support for the KFIU. The KFIU is not efficient in its operation due to the central role of the PPO in receiving the STRs directly from the FIs and in granting the KFIU specific powers to review each STR.
13. **Criminal financial investigations are directed and authorized by the PPO and are carried out by a specialized division at the Ministry of Interior (MOI), the general Directorate for Criminal Investigations (CID) for ML cases and the State Security Bureau (SSB) for FT cases.** It appears that the CID concentrates its investigations solely on the predicate crime and does not follow the proceeds and examine potential ML activity. Furthermore, all the AML investigations conducted by the CID were

initiated based upon the request of the PPO upon receiving STRs from the KFIU. Even though the SSB is investigating TF cases as crimes against the State, in the absence of an autonomous FT offense, there have been no convictions. Finally, law enforcement and prosecution personnel would benefit from more frequent and in-depth training.

14. **Kuwait introduced a cross-border cash control regime in Article 4 of the AML Law** that requires travellers coming into Kuwait, through any port of entry, to report all currency and precious materials above the value of KD 3 000 (around USD 10,900). Implementation of the reporting requirement began in February 2007. However, the AML Law covers only inbound movements of currency and monetary instruments, severely limiting the usefulness of this provision.

#### Preventive Measures – Financial Institutions

15. **All financial activities conducted by FIs as set out in the FATF Standards take place in Kuwait.** The AML Law is the primary AML legislation and Resolution 9 of 2005 (Resolution 9/2005) is secondary legislation or implementing regulation. However, some requirements that are currently present in other enforceable means (OEM) should be included in primary or secondary legislation.

16. **The AML Law, as well as Ministerial Resolution 9/2005, impose CDD and record-keeping requirements on banks, investment companies, exchange companies, insurance companies, exchange organizations and brokerage companies, as well as on some DNFBPs.** The AML Law and its implementing resolution impose very little by way of CDD obligations on FIs. Additional CDD and record-keeping provisions have been laid out in the sector-specific instructions and guidance and these vary markedly in depth and quality across sectors, resulting in a significant number of areas in which the requirements do not comply with the FATF standard.

17. **The preventive measures for banks, investment companies and exchange companies are more detailed and cover more aspects of the FATF Recommendations, but are weaker for insurance companies, exchange organizations and brokerage companies.** Nevertheless, there are still a number of deficiencies in the legal and regulatory framework that apply to all sectors. These include inadequate provisions related to:

- the timing for undertaking CDD measures;
- the identification and verification of some legal persons;
- the verification of persons purporting to act on behalf of certain type of legal persons;
- the identification and verification of beneficial owners;
- the conduct of ongoing due diligence on the business relationship;
- the review of existing records collected under the CDD process, particularly for higher-risk categories of customers or business relationships; and
- the application of enhanced measures for high-risk customers and the requirement to apply CDD measures on existing customers of exchange organizations, insurance companies and brokerage companies on the basis of materiality and risk.

Moreover, not all FIs operating in Kuwait are required to obtain information on the purpose and intended nature of the business relationship.

18. **There are no measures in place addressing politically-exposed persons (PEPs) for most FIs.** The existing requirements for banks and investment companies do not conform to the FATF standard.

19. **The provisions to prevent the abuse of cross border correspondent relationships and the misuse of new technologies, and to address the risks inherent to non face-to-face business relationships and transactions, are insufficient.** The requirements to gather sufficient information about the respondent FI and to document the respective AML/CFT responsibilities of each institution are not in line with the FAFT standard. There are no requirements in place for FIs to address any specific risks associated with non face-to-face business relationships and transactions and most FIs are not required to have policies in place to prevent the misuse of new technologies.

20. **There is no legal and regulatory framework explicitly addressing the issue of FIs relying on intermediaries or other third parties to perform elements of the CDD process.** Whilst in practice a number of FIs do rely on third parties to perform some CDD measures, there is no requirement to regulate the conditions of such reliance.

21. **The implementing regulation for the AML Law includes requirements for training and internal controls.** Resolution 9/2005 requires FIs to train personnel and officers with regard to developments in the field of AML/CFT and with regard to the requirements of AML/CFT law and ministerial resolutions. There are additional requirements on internal controls and training of personnel that vary by sector. As a result, not all FIs are required to have AML programs with adequate internal controls, including a compliance officer, and an annual audit.

22. **Guidance to FIs on the purpose of transaction monitoring should be provided.** There is a lack of understanding among FIs (primarily non-bank FIs) regarding the distinction between requirements to monitor transactions and those to report transactions that are identified as suspicious. In addition, there are no requirements for various types of FIs to pay special attention to complex and unusual transactions. There appears to be a significant reliance on automated detection of unusual or complex transactions.

23. **Authorities could provide greater clarity on the need to pay special attention to transactions from countries which do not or insufficiently apply the FATF Recommendations.** In addition, the authorities should ensure that there are effective measures to advise FIs of concerns and weaknesses with regard to the AML/CFT systems of other countries. Also, the authorities do not implement appropriate counter-measures against countries which do not or insufficiently apply the FATF Recommendations.

24. **Guidance for ensuring that foreign branches and subsidiaries of FIs observe AML/CFT measures consistent with home country requirements and FATF Recommendations should also be provided.** In addition, the authorities should ensure that FIs notify competent authorities when the AML/CFT requirements of host and home countries differ and when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

25. **The authorities should provide appropriate guidance and feedback to FIs and DNFBPs in order for them to comply with AML/CFT obligations.** The KFIU should also provide appropriate feedback on the manner of reporting.

26. **STR reporting is established broadly in both law and regulation, but fails to meet the FATF standard in several ways.** The STR regime is severely hindered by the lack of a requirement to file reports with the KFIU and the lack of criminalization of TF. The STR regime in relation to ML has been in place for several years, but there is lack of clarity among FIs as to the exact basis on which to file a report. Banks, investment companies and exchange companies appear to be very risk averse and, upon discovering suspicious behaviour, have stopped or rejected a transaction or customer based on risk. Finally, brokerage companies, insurance companies and exchange organizations do not appear to understand the STR requirements or to whom they should be reporting.

27. **The secrecy provisions of Kuwaiti law inhibit the free and direct international sharing of information outside consolidated supervision.** While the secrecy provisions do not directly inhibit access and sharing of information on the domestic level, there is a need to go through the PPO to share information with foreign counterparts outside of the context of consolidated supervision.
28. **The regime in place with regard to shell banks fails to meet the FATF standards.** The measures in place to prevent the establishment of shell banks are not sufficient and fall short of requiring the physical presence of a FI in a way that would encompass the concept of “mind and management” of the institution. Also, there are no measures to prevent exchange companies to enter into or continue a correspondent relationship with shell banks.
29. **Implementation and effectiveness of preventive measures vary widely across financial sectors.** There are more stringent AML requirements for entities supervised by the CBK and less stringent requirements for those entities supervised by the MOCI and the MC/Kuwait Stock Exchange (KSE). In addition, where the requirements are the same, the requirements are more effectively implemented by banks, investment companies and to some extent by exchange companies. There is considerable concern regarding the implementation levels with respect to the AML requirements of brokerage companies, insurance companies and exchange organizations.
30. **The supervisory framework and powers of the supervisors are different across sectors.** There are three supervisory authorities in the financial sector; the CBK for banks, investment companies and exchange companies, the MOCI for the insurance sector and the exchange organizations, and the MC/KSE for the brokerage companies.
31. **The supervisory framework for the CBK over banks, investment companies and exchange companies is generally adequate, but is not for the MOCI and the MC/KSE.** The MOCI and the MC/KSE lack adequate authority and powers to supervise FIs and ensure compliance with existing AML/CFT laws and regulations. The inspection and surveillance powers of the MOCI and the MC/KSE are not adequate and lack a clear process. Moreover, the MOCI, and the MC/KSE lack resources to effectively conduct their AML/CFT tasks.
32. **The adequacy and effectiveness of supervision to ensure compliance with the AML/CFT requirements are different across sectors.** In particular, there is a lack of AML/CFT supervision by the KSE of brokerage companies and inadequate AML/CFT supervision by the MOCI of insurance companies and exchange organizations. In comparison, the supervision by the CBK is thorough and based on an off-site review, previous examinations and a review of the STRs the institution has filed. There is good communication between the CBK and the institutions it regulates. The CBK has acknowledged there is room for improvement and is moving toward a risk-based approach to supervision, which they plan to have in place by the end of 2011.
33. **The powers of enforcement and sanction against FIs are not appropriate. The data on the sanctions applied by some regulators for AML/CFT deficiencies clearly indicate that the framework does not provide for effective, dissuasive or proportionate measures.** There is a limited range of formal sanctions available to the MOCI and the KSE, and no monetary sanctions are available. Neither of these two supervisors have adequate powers to supervise or sanction FIs for non-compliance with their AML/CFT obligations. No sanction has yet been applied by the KSE for non-compliance with AML/CFT matters, and the sanctions applied by the MOCI are not effective. Further, the application of sanctions does not extend to all members of supervisory boards and senior management of FIs under the supervision of the MOCI and the MC/KSE. Lastly, the involvement of the MOF, over certain specific actions of the CBK, in particular over its decision to delete a bank from the CBK’s register, undercuts the effectiveness of its sanction regime.

34. **There are also general concerns about the adequacy of the licensing process of FIs.** There is no legal framework to regulate the control over the ownership structure of FIs. In addition, there are no provisions with regard to the application of fit and proper requirements to directors and senior management of investment companies, exchange companies, exchange organizations, insurance companies and brokerage companies.

### Preventive Measures – Designated Non-Financial Businesses and Professions

35. **The DNFBPs operating in Kuwait include real estate agents, dealers in precious metals and stones, and lawyers.** Authorities report that, currently, no trust or company service providers (TCSP) exist in Kuwait. The remaining three categories of DNFBPs, as defined by the FATF, do not operate in Kuwait: casinos are prohibited; notaries are civil servants who do not participate in any financial transactions or have any dealings with clients; and accountants/auditors are prohibited from engaging in any activity outside of the accounting/auditing function.

36. **Among the DNFBPs there is a general lack of awareness of ML risks and AML requirements.** DNFBPs are subject to the requirements of the AML Law and Resolution 9/2005. As a result, DNFBPs are subject to the same requirements for CDD record-keeping and suspicious transaction reporting as FIs. However, among the DNFBPs there is a general lack of awareness of AML requirements and ML risks. Some of the DNFBPs met during the mission were unaware that they are subject to the provisions of Resolution 9/2005.

37. **There is a lack of effective supervision of DNFBPs.** As with the supervision of insurance companies and exchange organizations, supervision by the MOCI of real estate agents and dealers in precious metals and stones is inadequate relative to both the number of entities supervised and the scope of supervision. While the legal profession is covered by Resolution 9/2005, no supervision of lawyers is being carried out with respect to AML, as the self-regulating organization responsible for lawyers appears unaware that lawyers are subject to any provisions regarding AML/CFT.

### Legal Persons and Arrangements & Non-Profit Organizations

38. **Changes in ownership and control of legal persons have not been kept up-to-date.** While the department of corporations at MOCI obtains accurate information about the beneficial ownership and control of a corporation when it is registered, this information is not updated. Kuwait's legislations do not allow the use of bearer shares and do not provide for creation of trusts or other similar legal arrangements.

39. **Measures have been adopted in the domestic sector to prevent the abuse of charities and foundations; however associations are treated differently and are not supervised and monitored effectively.** The department of charities and foundations at the Ministry of Social Affairs and Labor (MOSAL) appears to ensure effective implementation of the requirements in place. It effectively licenses, supervises and monitors a significant portion of the financial resources of charities. Within the MOSAL, however, the department of associations does not implement effectively the requirements toward the sector or monitor effectively the associations that are allowed to receive donations.

### National and International Co-operation

40. **Two mechanisms were put in place to ensure cooperation among the relevant authorities in the fight against ML and TF, namely, the National AML/CFT Committee and the Committee on Combating Terrorism (CCT).** However, the Committees have not developed effective mechanisms to enable the policy makers, law enforcement and supervisors, and other competent authorities to coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF.

41. **Kuwait has ratified and implemented most of the provisions of Vienna and Palermo Conventions. However, it has neither ratified nor implemented the TF Convention.**

42. **The type and extent of international cooperation that Kuwait may provide is mainly regulated by Law No. 5/2006 approving the Palermo Convention, the other international conventions to which Kuwait is party, and by a number of regional and bilateral agreements.** Moreover, Articles 17 and 18 of the AML Law contain provisions relating to international cooperation. These texts constitute a sound legal basis for the provision of comprehensive international cooperation. However, while the legal framework in place for Mutual Legal Assistance (MLA) is, formally, largely in line with the standard, the authorities have not provided, in most cases, rapid responses to foreign requests for assistance. Moreover, due to the limited number of cases of MLA relating to FT, it is not possible for the assessment team to assess the effectiveness of the system, nor can it be established to the assessors' satisfaction that Kuwait is able to provide MLA in FT cases in a timely and effective manner.

43. **ML is an extraditable offence.** Dual criminality is a requirement for the execution of extradition. However, the authorities informed the assessment team that, when deciding whether or not dual criminality exists, they look at the underlying conduct which led to the offense rather than the title or denomination of the offense. Extradition of Kuwaiti nationals is not possible but, in line with the principle of *aut dedere, aut iudicare*, in lieu of the extradition of its nationals, the judicial authorities can pursue legal action without delay against a Kuwaiti national subject to an extradition request. The lack of a specific provision criminalizing TF may, however, be an obstacle in extradition cases, where dual criminality is strictly applied.

44. **Non-judicial international cooperation is insufficient.** International cooperation with the CBK is limited to matters relating to consolidated supervision. The need to go through the PPO in certain situations is cumbersome and restrictive. There is an absence of clear gateways for information sharing on the part of the MOCI and the KSE. In addition, there is a lack of evidence of information sharing from supervisors with their foreign counterparts. The KFIU cannot share information with its foreign counterparts, since it can only act under instruction from the PPO. Finally, although law enforcement agencies put in place clear and effective gateways that enable them to provide international cooperation to their foreign counterparts, they do not have sufficient controls and safeguards to ensure that information they receive is used only in an authorized manner.

### Other Issues

45. The capacity of authorities and statistics still need to be substantially improved in Kuwait. Overall, the allocation of resources to AML/CFT appears to be uneven, particularly in view of the development and diversification of the economy. The human resources allocated to AML/CFT supervision for the non-banking financial sectors are inadequate. The professional standards, including those related to confidentiality, are not fully developed. There is a lack of specialist skills in law enforcement personnel, including prosecution agencies, KFIU, supervisors and other competent authorities involved in combating ML/FT. Finally, the competent authorities have yet to develop comprehensive statistics.

## 1. GENERAL

### 1.1 General Information on Kuwait

46. The State of Kuwait is a sovereign Arab state with an area of 17,818 km<sup>2</sup>. It has land borders with Iraq and the Kingdom of Saudi Arabia and sea borders with Iran. It is one of the Gulf Cooperation Council (GCC) states and it is subject to the constitution issued in 1962. Kuwait is divided administratively into six governorates: (i) the capital, Kuwait City; (ii) Hawally; (iii) Mubarak Al Kabeer; (iv) Al Jahraa ; (v) Al Farwaniyah; and (vi) Al Ahmadi.

47. The population of Kuwait is about 3 442 000 statistics provided by the Ministry of Planning in 2008 including 1 088 000 Kuwaitis who represent 31.6 percent of the total population and 20 percent of the labor market. A large portion of foreign workers are employed as domestic [household] workers.

48. Kuwait achieved its independence in 1961. On August 2, 1990, Kuwait was invaded by Iraq over a period of seven months and finally liberated by a U.S.-led coalition that restored its sovereignty on February 26, 1991, which is celebrated as Liberation Day.

49. The history of Kuwait's economy can be traced back to the 17th century when Kuwait was established as a commercial port on the coast of the Arabian Gulf. This location helped transform Kuwait into a commercial city that played a pivotal role in regional trade. Kuwait had many famous souks that were crowded with traders and customers, including Al-Gharaballi souk, Al-Tojar souk, Al-Manakh souk, Wajef souk, Al-Hareem souk, and many other specialized souks that were established at the beginning of the twentieth century, such as Al-Sarareef souk, Al-Kharareez souk, and specialized markets for birds, flour, watches, and dates.

50. Kuwait's economy is one of the most important economies in the Middle East, as it is one of the biggest oil exporters in the world. There are several significant factors that have contributed to creating its important and influential economy on the regional and international levels. The major industries in Kuwait include oil, petrochemicals, cement, ship building and repairing, sea water desalination, foodstuffs, and building materials.

51. The public sector dominates most of the Kuwaiti economy. Oil sector revenues from crude oil, natural gas, and oil products represent around 62.7 percent of GDP; around 94.4 percent of goods and services exports, and 94.4 percent of total government revenues. Crude oil reserves in Kuwait are about 104 billion barrels, which represents around 10 percent of world oil reserves.

52. The Kuwaiti Government has carried out several reforms in the country's economy as it managed to raise GDP in previous years on a constant basis, in spite of many economic crises, the most significant of which were the Al-Manakh crisis in 1986, the Iraqi occupation in 1990, and finally the world financial crisis in September 2008. Kuwait's economy witnessed high growth rates due to rising oil prices during the years from 2003 to 2008, which was accompanied by inflation rates that reached a peak of 10.6 percent in 2008. The Central Bank of Kuwait (CBK) has taken various measures to counter inflationary pressures as it ended the pegging of the Kuwaiti Dinar (KD) to the U.S. Dollar in 2007 and pegged the Kuwaiti Dinar to a weighted basket of currencies of the countries that have important financial and commercial relations with Kuwait. In addition, the government took certain precautionary measures to consolidate conditions in the local banking and financial sector and to maintain monetary stability.



**Economy in Kuwait:**

53. Kuwait's economy can be divided into several influential sectors including:

**Banking and Financial Sector:**

54. The banking sector is considered as one of the pillars of Kuwait's economy. It includes Kuwaiti banks and a number of non-Kuwaiti banks, all of which are subject to the control and supervision of the CBK. The British Bank of the Middle East was the first foreign bank established in Kuwait by British investors; however, its operations were suspended when a law was passed prohibiting the operations of foreign banks in Kuwait in 1971, and it was transformed into the Bank of Kuwait and the Middle East (BKME) which is a 100 percent local bank. The National Bank of Kuwait (NBK) was the first local bank, established in 1952 as the first Kuwait and Gulf bank during the reign of Sheikh Abdullah Al-Salem Al-Sabah, who supported this idea. At the beginning, the bank carried out simple banking operations such as commercial credits, currency exchange, simple bank transfers, deposits, and withdrawals.

55. Kuwait as well as Dubai took the leading role in establishing the Kuwait Finance House (KFH), which is the second Islamic bank in the Gulf region that operates in accordance with Islamic Shari'a. The first bank of its type in Kuwait, KFH was established in 1977. Al-Mezzeni Exchange Co., established in 1942 as the first company in Kuwait carrying out exchange operations, is considered one of its most successful enterprises, all of which were established and managed by Kuwaiti nationals.

**Investment Sector and Kuwait Stock Exchange (KSE):**

56. The KSE is one of the oldest financial markets in Kuwait and the second largest market in terms of capital value in the Gulf region. The market capital value of the companies listed in the KSE is estimated to be KD 31.9 billion at end-May 2010. KSE includes 51 investment companies listed in the market from a total of 100 Kuwaiti investment companies, all of which are subject to the control of the CBK.

**Oil and Power Sector:**

57. Crude oil reserves in Kuwait are estimated at 104 billion barrels equivalent to 10 percent of the oil reserves in the world. The State of Kuwait has given due attention to this source since the discovery of oil in 1983 and the issuance of the first oil shipment in 1946.

58. The government controls this sector, which includes several specialized public agencies that work in continuous coordination, in accordance with the relevant laws and regulations.

**Industry Sector:**

59. The industry sector is one of the major sectors in Kuwait's economy. It receives a great deal of support from the Kuwaiti government, which has taken many measures to enhance its progress. For example, it established the Kuwait Industrial Bank in 1973 to provide financial and credit support for industrial projects. Moreover, in its efforts to develop and support the industrial sector in Kuwait, the Public Authority for Industry designated the locations of industrial lands and undertook the construction of its necessary infrastructure, including all requirements of industrial services. In spite of the great importance of the manufacturing sector non-oil industries, its contribution to GDP is marginal, as it was only 2.2 percent in 2008 and 6 percent of non-oil GDP. Chemical industries account for 33.2 percent of total manufacturing industries, followed by metal industries with 23 percent. GDP of the manufacturing industry is estimated to be KD 877.2 million in 2008.

### **Services Sector:**

60. The services sector includes 59 companies listed on the KSE. All those companies work in various fields including education, telecommunication services, air, and land transportation. The capital market value of this sector is estimated at KD 9.5 billion at end-May 2010. The insurance sector has no significant value as it includes only seven companies listed on the KSE. Moreover, the transactions of those companies are exclusively obligatory insurance on vehicles and properties, while life insurance does not represent any significant value. Total insurance premiums amounted to about KD 181 million in 2008, which represents around 0.6 percent of the national GDP.

### **Government System in Kuwait:**

61. Kuwait is a hereditary emirate ruled by the descendants of Mubarak Al Sabah. All rules of succession to the throne are subject to a special law that has a status similar to the constitution, and can be modified only through the same procedure prescribed for modifying the Kuwaiti constitution. The crown prince is appointed by royal decree based on the recommendation of the Emir and approved by the People's Assembly, in a special session with the agreement of the majority of the members of the Assembly.

62. If an appointee is not made in the above-described manner, the Emir shall recommend at least three of his descendants to be selected for the position of crown prince by the Assembly.

63. The system of government in Kuwait is democratic and the people have sovereignty, in accordance with the Kuwaiti Constitution. No law is issued unless it is approved by the People's Assembly and ratified by the Emir.

64. The system of government in Kuwait is based on separation of powers, while maintaining cooperation, in accordance with the constitution. No authority may delegate all or part of its powers and responsibilities set forth in the Kuwaiti Constitution. The government in Kuwait is divided into three separate branches. The legislative authority is held by the Emir and the People's Assembly. No law in Kuwait is issued without the approval of the People's Assembly and the Emir, the second branch is the executive authority headed by the Emir and the Cabinet, in accordance with the constitution, and the third branch is the judicial authority, carried out by the courts in the name of the Emir.

### **The Judicial System:**

65. The Kuwaiti Constitution established the judicial authority, carried out by the courts in the name of the Emir in accordance with the Constitution, which stipulates its independence. There is no authority that oversees judges in the performance of their duties. The judicial system in Kuwait operates in accordance with Emiri Decree 19 of 1959. Courts are classified by categories and arranged in a hierarchical order with three levels: District Courts [summary courts or courts of first instance], Courts of Appeals, and the Court of Cassation, where litigation takes place on two levels. District Courts lie at the base of this hierarchal arrangement, as they are the competent courts for suits not exceeding KD 5 000. The judgments of such courts shall be irrevocable in suits whose value is not less than KD 1 000; in other cases, judgments shall be subject to appeal in the plenary court [al mahkama al-kulliyya].

66. Plenary courts undertake civil and commercial lawsuits as well as personal and criminal cases. Moreover, they are the competent courts which consider all other disputes whose value exceeds KD 5 000 or are of indefinite value, that are not considered by the District Courts. All the sentences issued by plenary courts are submitted for appeal to the Supreme Court of Appeals. Additionally, all commercial and civil judgments issued by them including those that exceed KD 5 000 are considered irrevocable.

67. Lawsuits are classified into civil, commercial, and criminal cases. The Criminal Code stipulates the general provisions applicable to crimes, punishments, and prohibited acts. The Corporate Code and the Commercial Code are applicable to commercial disputes that are interpreted in accordance with the Civil and Commercial Procedures Law, the Evidence Law, and the Criminal Procedures Law.

68. Courts of appeal, which have three judges, act as intermediate and final courts of appeal. The Supreme Court [of Cassation], which joined the Kuwaiti judicial system in 1990, is at the top of this hierarchy and serves as the final court of appeal.

69. The Constitutional Court was established in accordance with Law No. 14 of 1973 and has exclusive authority to interpret the legitimacy of laws. Moreover, it is authorized to assess the procedures of elections. It consists of five members who are chosen by the Judicial Council through private election. One of the members is appointed by decree. The main judicial guideline in presenting opinions on legislation are the explanatory notes which indicate the legislative purposes of the legislation and which generally accompany all laws.

70. The State Security Court was established in accordance with Law No. 26 of 1969 to address the issues that affect both the internal and external security of the state. The court consists of three members who are appointed by recommendation from the Minister of Justice. These members are approved by a formal decree and the judgments issued by such courts are irrevocable.

71. Law No. 42 of 1964 regulates the judiciary, as judges are appointed in accordance with an Emiri Decree and they may not practice any other profession after being appointed. The court also carries out the procedures for filing suits and accusations against judges who are subject to disciplinary procedures by the Judicial Disciplinary Council.

## 1.2 General Situation of Money Laundering and Financing of Terrorism

### Predicate Offenses

72. According to UN data,<sup>1</sup> the crime rate in Kuwait is relatively low.<sup>2</sup> The investigation and convictions of ML did not show the presence of predicate offenses that generate major proceeds,<sup>3</sup> or complex or sophisticated ML schemes.

73. The rate of drug offenses compared to the population decreased from 2005 to 2009 (see table 1 and its related chart). Drugs are mostly trafficked for personal use in Kuwait (with a prevalence of cannabis table 2) and do not appear to constitute a major source of proceeds to be laundered. There was no specific mention of Kuwait in the 2009 UN International Narcotic Control Board and UN World Drug 2010 reports. Kuwait was listed as a “medium” human trafficking destination country by the UN in the 2006 report on human trafficking.<sup>4</sup>

74. However, the recently published 2010 Transparency International (TI) Corruption Perception Index (CPI)<sup>5</sup> ranks Kuwait 54th out of 180 countries, last amongst the GCC countries.<sup>6</sup> While this result

<sup>1</sup> Eleventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (Eleventh UN-CTS, 2007-2008). According to the 2004 UN International Homicide Statistics (HIS), intentional homicide rate per 100 000 in Kuwait is rather low (1,1-1,4) in absolute terms compared to countries around the world and falls within the average of the region (Bahrain (1.0–1.1), Qatar (0.8), UAE (0.5–0.7), Oman (0.9–2,1), KSA (1.2–3.1)).

<sup>2</sup> With the exception of a high kidnapping rate.

<sup>3</sup> Predicate crimes included such crimes as fraud, counterfeiting, falsification of banking documents, embezzlement, selling of calling cards without authorization.

<sup>4</sup> [www.unodc.org/pdf/traffickinginpersons\\_report\\_2006ver2.pdf](http://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf)

<sup>5</sup> [www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results).

constitutes an improvement compared to 2009, it is the first improvement since the regression trend shown from 2003 when it ranked 35th (see table 3 below). A 2009 report<sup>7</sup> by the Kuwaiti Transparency Society noted the increased administrative and financial corruption in the country. The Chairman of the Kuwaiti Transparency Society raised questions about the role of the Parliament in monitoring corruption in the public sector. The negative effect of the financial crisis, which had a significant impact on Kuwait,<sup>8</sup> further underscores the importance of strengthening governance in the country and of addressing this vulnerability.

### Money Laundering

75. At the moment, there is no evidence of significant ML in the country. It should be noted, however, that Kuwait's economy is expected to rebound in 2010, and to grow steadily over the medium term as the global recovery boosts the demand for oil and the government implements its four-year development plan, starting with an expansionary budget in 2010/11.<sup>9</sup> The creation of an international financial center is also being considered.

76. These developments have the potential of creating a suitable environment for money launderers seeking to exploit the Kuwaiti financial sector to exercise their illegitimate activities. In particular, the AML/CFT institutional framework<sup>10</sup> and supervisory mechanisms<sup>11</sup> present shortcomings which, if not addressed, may constitute important vulnerabilities of the Kuwaiti AML/CFT regime in such a dynamic economic environment.

77. The KFIU and law enforcement agencies (LEAs) informed the assessment team that the main laundering-generated proceeds from analyzed and investigated cases have been identified. They were mainly related to cases of fraud, smuggling (especially to/from Iraq), and corruption. Other proceeds-generating crimes mentioned by the authorities are credit card fraud, piracy of goods, insider trading, and market manipulation. The authorities are unaware of the presence of serious organized or transnational crime in the country.

### Terrorist Financing and Terrorist Activities

78. No widespread terrorist activity has been recorded in the country.<sup>12</sup> Eight Kuwaitis (allegedly linked to Al-Qaeda) were accused of plotting to bomb the U.S. Army Camp Arifjan in Kuwait, but were acquitted by a Kuwaiti criminal court. The authorities informed the mission that there were four convictions for TF-related crimes, but the assessment team was not provided with a copy of these judgments.

79. As this report will develop further in the relevant sections, though, the absence of specific legislation criminalizing terrorism and its financing constitutes both a threat and vulnerability for the country. It may hamper Kuwait's ability to successfully convict terrorists and terrorist financiers, as well as to seize and confiscate their assets and engage in international cooperation in the fight against terrorism.<sup>13</sup> The lack of a legal framework for the effective implementation of UNSCRs 1267 and 1373 raises

<sup>6</sup> Qatar (ranked 19th), United Arab Emirates (ranked 28th), Oman (ranked 41st), Bahrain (ranked 48th), Saudi Arabia (ranked 50th), and Kuwait (ranked 54th).

<sup>7</sup> Kuwait Transparency Society, Administrative Report 2009, page 27.

<sup>8</sup> IMF 2010 Article IV Consultation.

<sup>9</sup> Ibid.

<sup>10</sup> Notably, the role and functions of the FIU.

<sup>11</sup> Notably, the supervision of nonbank FIs and of those FIs under the supervision of the KSE and of the MOCI.

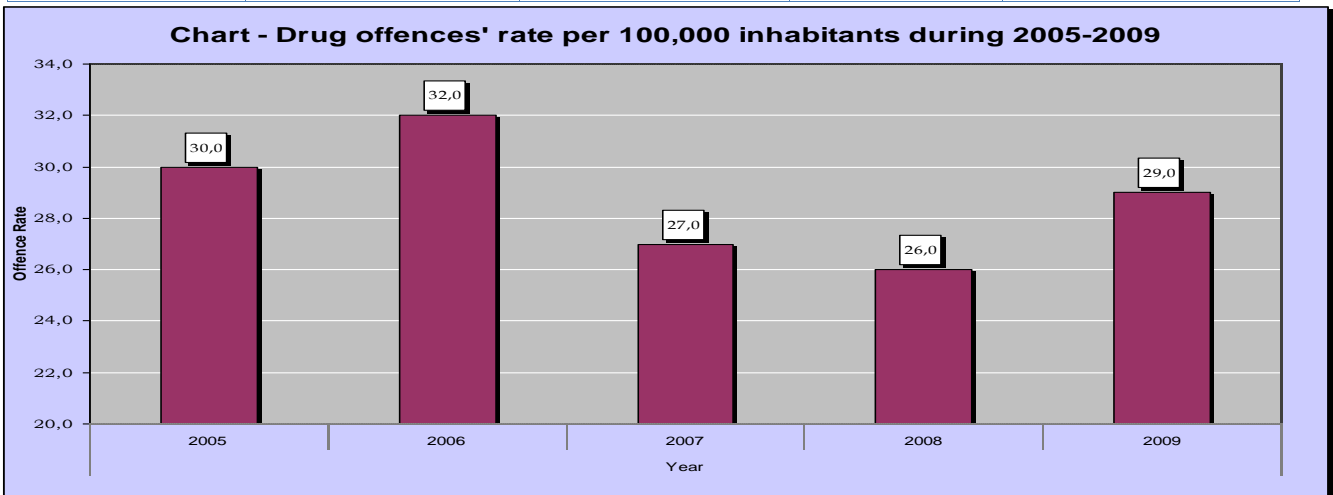
<sup>12</sup> News reports indicate that the U.S. military in Kuwait has occasionally been the target of Al-Qaeda-inspired attacks, including a raid that killed one U.S. marine and wounded another in October 2002.

<sup>13</sup> See Sections 2.2 and 6. A draft AML/CFT Law and a draft Law against terrorism are pending Parliamentary approval.

concerns, as do shortcomings in the oversight of non-profit organizations (NPOs) and the absence of control of cash moving out of Kuwait.

**Table 1 - Drug offences' rate per 100 000 inhabitants**

| Year | Population | Drug offences | Offences rate | Change in offense rate |
|------|------------|---------------|---------------|------------------------|
| 2005 | 2 866 888  | 854           | 30            |                        |
| 2006 | 3 051 845  | 986           | 32            | 2                      |
| 2007 | 3 328 136  | 901           | 27            | -5                     |
| 2008 | 3 420 725  | 895           | 26            | -1                     |
| 2009 | 3 442 945  | 1001          | 29            | 3                      |



Source: MOI of Kuwait, Annual Statistics 2009.

**Table 2 - Annual Prevalence of Use as a percentage of the population aged 15-64**

| Opiates | Cocaine | Cannabis |
|---------|---------|----------|
| 0.17    | <0.1    | 3.1      |

Source: World Drug Report, 2010.

**Table 3 - Transparency International Corruption Perception Index- Kuwait rankings (2003-2010)**

|      |    |
|------|----|
| 2003 | 35 |
| 2004 | 44 |
| 2005 | 45 |
| 2006 | 46 |
| 2007 | 60 |
| 2008 | 65 |
| 2009 | 66 |
| 2010 | 54 |

### 1.3 Overview of the Financial Sector

80. Kuwait's economy is relatively open. However, it does not attract a significant amount of foreign investment. The economy is heavily dependent on hydrocarbons, with oil earnings accounting for the bulk of the government's export revenue. The major industries in Kuwait include oil, petrochemicals, cement, ship building and repairing, sea water desalination, foodstuffs, and building materials. The public sector dominates the economy, employing over 75 percent of all professionally active Kuwaitis. Most financial sector customers are Kuwaiti-based—either citizens or expatriates.

**Table 4 - Structure of Financial Sector, December 2009**

|   | Number of Institutions | Total Assets (USD billion) <sup>1</sup> | Authorized/ Registered & Supervised by: |
|---|------------------------|---|---|
| Commercial banks                            | 21                     | 138.6                                   | Central Bank of Kuwait                  |
| Conventional banks                          | 15                     | 100.7                                   | Central Bank of Kuwait                  |
| Islamic banks                               | 6                      | 37.6                                    | Central Bank of Kuwait                  |
| Specialized banks <sup>2</sup>              | 1                      | 2.3                                     | Central Bank of Kuwait                  |
| Foreign banks (both conventional & Islamic) | 10                     | N/A                                     | Central Bank of Kuwait                  |
| Investment companies                        | 100                    | 52.7                                    | Central Bank of Kuwait                  |
| Conventional                                | 46                     | 27.6                                    | Central Bank of Kuwait                  |
| Islamic                                     | 54                     | 25.1                                    | Central Bank of Kuwait                  |
| Exchange companies/houses                   | 38                     | 0.4                                     | Central Bank of Kuwait                  |
| Exchange organizations                      | 159                    | N/A                                     | Ministry of Commerce & Industry         |
| Insurance companies <sup>3</sup>            | 32                     | 2.6                                     | Ministry of Commerce & Industry         |
| Brokerage Companies                         | 14                     | N/A                                     | Kuwait Stock Exchange                   |

**Table notes:**

1. Data for banks, investment companies, and exchange companies was provided by the Central Bank of Kuwait.
2. According to Article 76 of the CBK Law, specialized banks are meant to be those banks the main function of which is to finance certain economic sectors, such as the real estate, industrial or agricultural sectors, and which do not basically receive demand deposits. Due to their nature, specialized banks are not included in the total number of conventional banks or total assets of commercial banks.
3. For insurance companies, the data is as of December 2008, from Financial Report 2009, Institute of Banking Studies. The total assets of exchange organizations and brokerage companies were not available.

81. The total value, in assets, of the financial sector, as of December 2009, was approximately USD200 billion. All of the financial activities defined by the FATF are practiced in Kuwait and are conducted by: 1) banks; 2) investment companies; 3) exchange companies; 4) exchange organizations; 5) insurance companies; and 6) brokerage companies. All of the FIs in Kuwait are reporting institutions under the Law 35 of 2002 (AML Law) and/or Resolution 9 of 2005, the implementing regulations.

82. The financial system itself can be divided into two major categories: conventional FIs and Islamic FIs. Conventional FIs comprise the majority of financial and banking activities in Kuwait. Islamic FIs operate in accordance with the provisions of Islamic Shari'a,<sup>14</sup> and consist mainly of banks and Islamic investment companies. In Kuwait, for AML purposes, both conventional and Islamic FIs are subject to the same AML/CFT requirements and supervision.

**Table 5 - Financial Institutions: Licensing and Supervisory Authority**

| Type of FIs              | Legal basis for the license and activity practice   | Supervision and control authority |
|--------------------------|---|-----------------------------------|
| Banks                    | <ul style="list-style-type: none"> <li>• Approval of the Ministry of Finance</li> <li>• Obtain a commercial registration with the Ministry of Commerce and Industry (MOCI)</li> <li>• Obtain a bank license from the CBK</li> </ul> | Central Bank of Kuwait            |
| Investment Companies     | <ul style="list-style-type: none"> <li>• Obtain a commercial registration with the MCI</li> <li>• Register as an investment company with the CBK</li> </ul>   | Central Bank of Kuwait            |
| Exchange Companies       | <ul style="list-style-type: none"> <li>• Obtain a commercial registration with the MOCI</li> <li>• Register as an exchange company with the CBK</li> </ul>  | Central Bank of Kuwait            |
| Exchange Organizations   | <ul style="list-style-type: none"> <li>• Obtain a commercial registration with the MOCI</li> </ul>  | Ministry of Commerce and Industry |
| Life Insurance Companies | Obtain a commercial registration with the MOCI  | Ministry of Commerce and Industry |
| Brokerage Companies      | <ul style="list-style-type: none"> <li>• Obtain a commercial registration with the MOCI</li> <li>• Register with the Kuwait Stock Exchange</li> </ul>   | Kuwait Stock Exchange             |

<sup>14</sup> Islamic Shari'a prohibits the payment or acceptance of interest charges for the lending and accepting of money. It also prohibits investment in goods or services considered contrary to the principles of Shari'a.

83. There are three supervisory authorities for the financial sector in Kuwait: the Central Bank of Kuwait (CBK); the Kuwait Stock Exchange (KSE); and the Ministry of Commerce and Industry (MOCI). All commercial institutions, including all FIs, in Kuwait must receive a commercial license from the MOCI. The MOCI is responsible for ensuring that all commercial institutions maintain a valid commercial license. Banks, exchange companies, and investment companies must also receive a license from the CBK, which is their primary supervisory authority. The CBK is responsible for both prudential and AML/CFT supervision of banks, exchange companies, and investment companies. In addition to the commercial license, brokerage companies also require authorization from the KSE.

#### Banking Sector:

84. Banks comprise approximately 75 percent of the financial sector in Kuwait by assets. The banking sector in Kuwait is composed both of domestic banks and branches of international banks, all of which are subject to the control and supervision of the CBK for both prudential and AML/CFT supervision. Most of the banks are privately owned and usually controlled by a related group of shareholders. The banking market is concentrated, with the two largest banks accounting for about half of local banks' total assets.

85. Currently, there are 21 banks operating in Kuwait: 15 conventional banks (9 are branches of foreign banks); and 5 Islamic banks (1 is a branch of a foreign Islamic bank). This is an increase from 2004, when 9 banks operated in Kuwait. Banking sector assets totaled USD138.6 billion at the end of 2009.<sup>15</sup>

**Table 6 - Financial Institutions: Number & Type**

|                                   | Number of domestic FIs in Kuwait | Number of Branches in Kuwait | Number of branches abroad | Number of branches of foreign FIs in Kuwait |            |
|-----------------------------------|----------------------------------|------------------------------|---------------------------|---|------------|
|                                   |                                  |                              |                           | Number                                      | Supervisor |
| Conventional Banks                | 6                                | 232                          | 16                        | 9   | CBK        |
| Islamic Banks                     | 5                                | 113                          | 0                         | 1   | CBK        |
| Conventional Investment Companies | 46                               | 19                           | 0                         | NA  | CBK        |
| Islamic Investment Companies      | 54                               | 11                           | 0                         | NA  | CBK        |
| Exchange Companies                | 38                               | 231                          | 0                         | NA  | CBK        |
| Life insurance Companies          | 32                               | 74                           | 0                         | NA  | MOCI       |

NA=information was not available

#### Investment Companies:

86. Investment companies comprise almost 14 percent of the financial sector in Kuwait. As of October 2010, there were 100 investment companies operating in Kuwait, up from 39 in 2004, including both conventional and Islamic investment companies. Investment companies are permitted to engage in lending, financial leasing, financial guarantees and commitments, securities activities, portfolio management, the management of investment funds, and securities subscription management. Investment companies are subject to the control and supervision of the CBK. The only instance in which investment

<sup>15</sup> IMF Article IV, July 2010.



companies may accept cash is for fees, and the sum must be below KD 3 000 (USD 10,600). All payments into the account of the client must be made directly from the client's bank account.

### Exchange Companies:

87. Exchange companies participate principally in two activities: the transfer of money abroad and the exchange of currency. There are 38 exchange companies operating in Kuwait, which are supervised by the CBK. Exchange companies are not permitted to open or hold accounts, but will register customers for repeated transactions. Exchange companies are also prohibited from accepting cash above KD 3 000 (USD10 600).<sup>16</sup> Transactions above KD 3 000 must be done via a bank transfer, a check, or an ATM card.

### Securities:

88. The KSE is the second largest market, by capital value, in the Gulf region. At the end of May 2010, the market capital value of the companies listed in the KSE was estimated to be KD 31.9 billion (USD112.5 billion). There are 212 companies listed in the KSE including, but not limited to 9 banks, 50 investment companies, 7 insurance companies, and 39 real estate companies. The KSE was created with the objective of protecting investors in securities and organizing and developing the securities market.

**Table 7 - Financial Institutions: Financial Activities**

| Type of financial activity<br>(See glossary of the 40 Recommendations)  | Type of FI that performs this activity | AML/CFT regulator & supervisor |
|---|--|--------------------------------|
| 1. Acceptance of deposits and other repayable funds from the public (including private banking)   | 1. Banks                               | 1. CBK                         |
| 2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))   | 1. Banks<br>2. Investment companies    | 1. CBK<br>2. CBK               |
| 3. Financial leasing (other than financial leasing arrangements in relation to consumer products)   | 1. Banks<br>2. Investment companies    | 1. CBK<br>2. CBK               |
| 4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g., alternative remittance activity), but not including any natural or legal person that provides FIs solely with message or other support systems for transmitting funds) | 1. Banks<br>2. Exchange companies      | 1. CBK<br>2. CBK               |
| 5. Issuing and managing means of payment (e.g., credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)   | 1. Banks                               | 1. CBK                         |
| 6. Financial guarantees and commitments   | 1. Banks                               | 1. CBK                         |

<sup>16</sup> Section 3 of Instruction 2/ES/95/2003 for exchange companies prohibits exchange companies from accepting, during a single day, cash exceeding KD 3 000 or the equivalent thereof in any foreign currency from any client in exchange for any service. All cash exceeding that sum shall be paid from the client's bank accounts using bank checks, points of sale, and other noncash instruments whose use for transactions in Kuwait is permitted by the CBK.

| Type of financial activity<br>(See glossary of the 40 Recommendations)  | Type of FI that performs this activity  | AML/CFT regulator & supervisor                  |
|---|---|---|
| 7. Trading in: <sup>1</sup><br>(a) money market instruments (cheques, bills, CDs, derivatives etc.);<br>(b) foreign exchange;<br>(c) exchange, interest rate and index instruments;<br>(d) transferable securities;<br>(e) commodity futures trading. | 1. Banks<br>2. Investment companies<br>3. Exchange companies<br>4. Exchange institution<br>5. Brokerage companies | 1. CBK<br>2. CBK<br>3. CBK<br>4. MOCI<br>5. KSE |
| 8. Participation in securities issues and the provision of financial services related to such issues  | 1. Banks<br>2. Investment companies<br>3. Brokerage companies   | 1. CBK<br>2. CBK<br>3. KSE                      |
| 9. Individual and collective portfolio management   | 1. Banks<br>2. Investment companies   | 1. CBK<br>2. CBK                                |
| 10. Safekeeping and administration of cash or liquid securities on behalf of other persons  | 1. Banks<br>2. Investment companies<br>(3. Kuwait Clearing Company) <sup>2</sup>                                  | 1. CBK<br>2. CBK<br>3. CBK                      |
| 11. Otherwise investing, administering or managing funds or money on behalf of other persons  | 1. Banks<br>2. Investment companies   | 1. CBK<br>2. CBK                                |
| 12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))   | 1. Insurance companies  | 1. MOCI   |
| 13. Money and currency changing   | 1. Banks<br>2. Exchange companies<br>3. Exchange organization   | 1. CBK<br>2. CBK<br>3. MOCI                     |

**Table notes:**

- Not all of the institutions listed in the second column are engaged in all of these activities. See the description of the individual sectors to determine which FIs engage in which activity.
- The KCC is the entity responsible for safekeeping and administering liquid securities and settlement authority for all securities trading. The KCC is also an investment company, and therefore is under the regulatory and supervisory authority of the CBK.

89. The KSE established the Kuwait Clearing Company (KCC) to act as the settlement house for all trades conducted on the KSE in order to avoid the risk of a broker default. All customers who trade on the KSE open an account with the KCC. Each customer may have only one account, which is tied to at least one Kuwaiti-based bank account. While the customer may use his KCC account with any brokerage company, all payments for trades are done through the KCC. Foreign traders may open an account through a custodian bank in Kuwait. The KCC is not permitted to accept or pay cash for transactions. All transfers to a customer's account at the KCC must come from a Kuwait-based bank account previously registered at the KCC as one of the customer's accounts. All payments are issued in the form of a check or an electronic transfer to an account registered at the KCC on behalf of the customer.

90. Brokerage companies act as agents for account holders, and take full responsibility for the trading of their clients on the KSE. While the brokerage companies engage in trading on the KSE, and are

supervised by the KSE, they are not responsible for the opening of brokerage accounts.<sup>17</sup> Brokerage companies are permitted only to execute the securities orders requested by their clients. Brokerage companies do not handle money and do not hold the securities for their clients.

91. Brokerage companies are an integral part of the financial transactions that take place on the KSE. According to Article 4 of the Emiri Decree of August 14, 1983 organizing the KSE, the transactions of securities listed in the KSE shall be made at the Stock Exchange floor through any stock-broker/middleman who is registered at the KSE. In addition, Article 20 (repeated)<sup>18</sup> of Ministerial Resolution No. 113 of 1992, issuing Decree Law No. 31 concerning regulation of Stocks Trading and Establishing Investment Funds, financial brokerage companies are permitted to engage in a limited number of activities, which include brokerage transactions in terms of buying and selling stocks and securities. A customer may use his KCC-issued account number with any or as many of the brokerage companies as he chooses. After establishing a relationship with one or more brokerage firms, the customer can only engage in trading on the KSE through a brokerage firm, which conducts the transactions of buying and selling of stocks and securities for the customer.

92. The KCC is an investment company. Therefore, the KCC is supervised by the KSE for securities-related issues and by the CBK for prudential and AML/CFT matters.

93. In February 2010, the Parliament passed a Capital Market Authority Law, which establishes the Capital Market Authority (CMA). The CMA will become the supervisory authority of the KSE and will supervise public and private subscriptions. The CMA will also regulate and supervise acquisitions and mergers. The CMA Law also grants the CMA broad regulatory and supervisory authority over investment companies. The authorities are currently in discussions to determine how this will affect the supervision of investment companies when the CMA becomes fully operational, which is expected to occur in late 2011. It is likely that the CBK will continue to be responsible for both prudential and AML/CFT supervision of investment companies, and the CMA will be responsible for supervising the activities of investment companies with respect to the KSE.

#### ***Other Financial Institutions:***

94. The insurance sector is small in Kuwait, concentrating in the issuance of obligatory policies for vehicles and property. Information provided by the authorities shows that life insurance accounts for less than 1 percent of the insurance policies issued in 2009. There are 32 insurance companies operating in Kuwait. Of the 32 insurance companies, approximately 10 are branches of foreign insurance companies. However, there has been a recent increase in the number of insurance companies operating in Kuwait (there were only 17 in 2004), with approximately 10 insurance companies entering the market in the last three years.

95. Exchange organizations engage solely in money and currency exchange. There are 159 licensed to operate in Kuwait, and they are under the supervision of the MOCI.

96. It should be noted that, while the MOCI is engaging in licensing and both prudential and AML supervision, the lack of a clear legal authority for the MOCI to supervise insurance companies and exchange organizations has a negative impact on all FATF Special Recommendations. This gap is only repeated in the rating boxes for each FATF Special Recommendation (where applicable), not in the description of each sector.

<sup>17</sup> As mentioned in the previous paragraph, the opening of brokerage accounts for trading on the KSE is the responsibility of the KCC.

<sup>18</sup> In a number of instances and article number will be followed by “(repeated).” In a number of instance, Kuwait has amended or modified a law, and the change is reflected in a subsection of the modified article, reflects as “(repeated).”

## 1.4 Overview of the DNFBP Sector

97. Of the six categories of designated non-financial businesses and professions (DNFBPs), only three can operate in Kuwait under the FATF definition of DNFBP: real estate agents, dealers in precious metal and stones, and lawyers. Casinos are prohibited in Kuwait; notaries and, accountants/auditors do not perform activities within the scope of the FATF definition of a DNFBP; and trust and company service providers (TCSPs) do not exist in Kuwait.

### Casinos

98. Article 205 of the Penal Code prohibits gambling or the management of a shop for gambling. Gambling is defined as any game in which profit and loss depends on luck only, not on predefined factors. Therefore, casinos and internet casinos are prohibited in Kuwait.

### Notaries

99. While notaries exist in Kuwait, they are always employees of the Ministry of Justice (MOJ). Article 1 of Law No. 4 of 1961, Issuing Authentication Law, establishes an authentication office, which is concerned with authenticating official documents and attesting signature and dates in non-official documents, by public notaries and authenticators. As professionals who work for government agencies, notaries in Kuwait do not fall within by the FATF definition of a DNFBP.

### Accountants and Auditors

100. In Kuwait, there are both accountants and auditors. Accountants are individuals employed by a company, in a position called “accountant.” The only requirement to become an accountant is a university degree with a major in accounting. There is no exam that has to be passed to become an accountant. Accountancy in Kuwait is not viewed as a separate profession and is not licensed by the MOCI, as accountants are not independent, and are internal employees of other types of businesses. There are approximately 92 accountants registered with the Kuwait Association of Accountants and Auditors.

101. Auditors are sole practitioners or employed professionals within a professional firm, individually licensed by the MOCI. However, auditors are permitted to engage in only certain activities.

102. Article 17 of Decree No. 5 of 1981, Practicing Profession of Auditing, prohibits auditors from taking up any job incompatible to his auditing job, specifically noting that this prohibits auditors from participating in consultation and practice other than accounting and promotion works for incorporating companies. According to Article 12, an auditor registered in the registry of the auditing profession shall audit accounts of persons and companies and entities according to technical rules of accountancy and rules of integrity applicable in the practicing of this profession which is issued from a resolution from the MOCI upon recommendation from a permanent technical committee to set the accountancy rules formed for this object. Based on the prohibition in Article 20 and the definition of the auditing profession in Article 12, auditors in Kuwait are prohibited from engaging in transactions for a client in relation to the activities that would qualify it as a DNFBP.

103. Therefore, neither accountants nor auditors in Kuwait fall within the FATF definition of a DNFBP.

### Real estate agents

104. Over 3 500 real estate agents are licensed in Kuwait. Real estate agents do not handle money or assets for the buyers or sellers of real estate, either directly or through escrow accounts. In addition, they do not establish any accounts for the buyers or sellers.

105. Real estate agents operate as an intermediary between the buyer and seller. In Kuwait, after the buyer and seller reach an agreement on the terms of sale, the real estate agent draws up the primary contract and witnesses the signature of both parties. At that time, the buyer provides 10–50 percent of the sale price directly to the seller as a down payment. The real estate agent is responsible for handling the inspection of the property and preparing the filing of the initial documents with the Real Estate Registration and Authentication Department at the MOJ. Three to four days after the filing of the initial documents, the buyer, seller, and real estate agent go to the MOJ, where the buyer and seller sign the final contract before a notary public. At this time, the buyer pays the outstanding balance by certified check given directly to the seller.

106. As with all commercial businesses in Kuwait, real estate agents are licensed to practice their profession by the MOCI. The assessors could find no statute giving the MOCI authority to regulate and supervise real estate agents. It should be noted that while the MOCI is engaged in both regular and AML supervision, the lack of clear legal authority for the MOCI to supervise the real estate sector has a negative impact on all FATF Recommendations. Those gaps are only repeated in the rating boxes for each FATF Special Recommendation (where applicable), not in the description of each sector.

### **Dealers in precious metals and stones**

107. Individual companies and institutions that work as dealers in precious metals and stones must be licensed by the MOCI to practice this activity. Approximately 873 dealers in precious metals and stones are licensed in Kuwait.

108. Dealers in precious metals and stones are licensed to practice their profession by the MOCI. Article 2 of Law 23 of 1980, regarding the supervision and monitoring precious metals and stones states that the MOCI is responsible for the supervision and control on the trade, industry, and import of precious metals and jewelry, including the testing analysis of precious and non-precious metals and alloys, and the examination and control of precious stones. The assessors could find no other statute giving the MOCI authority to regulate and supervise the dealers of precious metals and stones. It should be noted that while the MOCI is engaged in both regular and AML supervision, the lack of clear legal authority for the MOCI to supervise dealers in precious metals and stones has a negative impact on all FATF Recommendations.

### **Lawyers**

109. Practicing lawyers are recorded in a special registry at the MOJ and register with the Kuwait Lawyers Association (KLA). It is estimated that there are 2 800–3 000 attorneys in Kuwait. Lawyers are not required to pass an examination to register with the MOJ or to become part of the KLA.

110. Law No. 42 of 1964 regulates the legal profession and defines the jurisdiction of lawyers, but it does not address lawyers' potential representation of their clients in connection with financial, banking, or other commercial activity. Article 10 of Law 42 of 1964 indicates that a lawyer who ceases to practice law or works in an area that does not conform to the practice of law shall be placed on inactive status. However, the term "conform to the practice of law" is not defined and it does not preclude financial representation as set forth above. Article 12 of the law indicates that the practice of law cannot be combined with "being employed at any government entity, societies, authorities, banks, companies or persons." However, this restriction does not limit the activities in which a lawyer can engage in his professional capacity or what services he can provide to his clients.

111. Following discussion with the private sector, it was determined that lawyers in Kuwait can be hired in their professional capacity to buy and sell real estate, manage client money, securities or other accounts, organize contributions for the creation, operation or management of companies and create, operate or manage legal persons or arrangements and buying and selling of business entities.

112. The profession of lawyers is regulated by the KLA, a self-regulatory organization. The KLA is a body that represents the profession of lawyers and has the role of regulating persons who are qualified to practice in the profession. According to the authorities, professional supervision is conducted by the KLA, who receives complaints or concerns. When a matter of professional misconduct is discovered by the KLA, it is referred to the disciplinary council to decide on the matter. The KLA does not take on the role of ongoing monitoring of registered lawyers for AML/CFT.

### **Trust and company service providers**

113. TCSPs do not exist in Kuwait and, therefore, AML/CFT obligations as required by the FATF Recommendations are not applicable.

## **1.5 Overview of commercial laws and mechanisms governing legal persons and arrangements**

114. Kuwait Commercial Code, Law 68 of 1980, and its amendments, as well as the Kuwait Commercial Companies Law, Law 15 of 1960, and its amendments, regulate the basic principles for practicing business activity and establishing different kinds of legal companies.

115. Article 1 of Commercial Companies law stipulates that all commercial companies are subject to commercial laws and commercial practice. Different kind of companies could be established under the Kuwait Laws: joint-liability company, partnership corporation that are further divided into (a) limited partnership corporations; and (b) partnerships limited by shares; joint-venture company; joint-stock company that are two types: those that offer their stock for public subscription and those that do not; limited-liability company; and holding companies.

116. Articles 5 and 68 of the Commercial Companies Law stipulate that at least 51 percent of a company's stock must be owned by one or more Kuwaiti citizens, and that, for insurance companies and banks, the percentage interest of Kuwaiti partners shall not be less than 60 percent.

117. NPOs sector is well developed in Kuwait. Currently, there are 10 charities approved by the Ministry of Social Affairs and Labor (MOSAL). Five are authorized to operate abroad and, therefore, transfer funds outside Kuwait. There are also: (i) 70 registered foundations which are all supervised by the Department of Charities and Foundations at MOSAL; and (ii) 72 associations that are still registered and supervised by the Department of NPOs at the ministry.

## **1.6 Overview of strategy to prevent money laundering and terrorist financing**

### **AML/CFT Strategies and Priorities**

118. Domestic cooperation on AML/CFT issues is facilitated by the AML/CFT Committee. Nevertheless, there is currently no overall government policy on AML/CFT matters; the AML/CFT Committee limited its work to the draft of a new AML/CFT legislation and implemented the recommendations of the old assessment that was conducted by the IMF in 2004.

119. The National AML/CFT Committee membership includes the Central Bank of Kuwait, the Ministry of the Interior, the Ministry of Foreign Affairs, the Public Prosecution Office, the Ministry of Commerce and Industry, the Ministry of Finance, the Ministry of Social Affairs and Labor, the Kuwait Stock Exchange, the General Administration of Customs, and the Union of Kuwaiti Banks.

### **The Institutional Framework for Combating ML and TF**

#### **The Ministry of Finance (MOF):**

120. The AML Law 35 of 2002 assigned the MOF the task of issuing the implementing regulations of the law which was issued under No. 5/2005. The MOF issued regulation 5/2005 and a decree authorizing the Governor of the CBK to head both the AML/CFT National Committee and the Kuwait FIU, and to determine the tasks assigned to them. The MOF also established a special Money Laundering Department responsible for following the new developments in the field of ML/TF. The ML department also represents the State in all local, regional, and international meetings and conferences that focus on the subjects of combating ML and TF. The MOF is also the competent ministry with the authority to submit local legislation related to ML and TF through the appropriate channels for approval.

**Ministry of Justice (MOJ):**

121. The Ministry of Justice (MOJ) is the competent authority that controls the judicial system in the State of Kuwait. The AML Law assigned the responsibility of receiving all reports on suspicions cases to the PPO and transfers them to the KFIU. The PPO has the power to initiate the investigation and prosecution of ML and TF cases.

**Ministry of the Interior (MOI):**

122. The MOI is responsible for maintaining the internal security of the state as well as the security of Kuwaiti nationals and citizens. In its continuous efforts to combat financial crimes, the MOI established the Criminal Investigation Department (CID) responsible for the investigation of ML cases.

123. In accordance with the Kuwait Criminal Procedure Code, the officials charged with combating financial crimes are legally authorized to conduct investigations in cases of suspected money laundering. They also draft investigation reports related to ML cases and implement the PPO decisions for arresting persons. They may also request and obtain permission from the PPO to investigate bank accounts, financial and property records, and all other suspicious documents.

**Ministry of Foreign Affairs (MFA):**

124. The MFA receives through its permanent mission at the United Nations all the lists related to the UNSCR 1267 and 1273 and disseminates them to the relevant authorities at the national level.

125. It also channels Mutual Legal Assistance (MLA) and outgoing and incoming extradition requests to and from concerned authorities in Kuwait.

**Ministry of Commerce and Industry (MOCI):**

126. The MOCI issues all ministerial decrees that must be adopted by FIs that are not subject to the control of the CBK (*i.e.*, insurance companies) and DNFBPs in the area of AML/CFT. MOSAL has established an office for combating ML to control and supervise all these institutions.

**Ministry of Social Affairs and Labor (MOSAL):**

127. This Ministry is responsible for licensing and registering Non-Profit Organizations (NPOs) in the state of Kuwait. It is authorized by law to review the registers and records of these associations and institutions and to carry out regular investigations including all relevant administrative, technical, organizational, and accounting aspects. It is also responsible for verifying their compliance with the laws and decrees regulating charitable activities.

**Kuwait Stock Exchange (KSE):**

128. The KSE is an independent legal entity having legal authority to organize and monitor the stock market for the state of Kuwait and all activities related to the trading of securities.

### **Central Bank of Kuwait (CBK):**

129. All public banks operating in Kuwait, as well as investment companies and exchange companies registered with the CBK, are subject to its direct control. The CBK is also responsible for verifying the compliance of these institutions, either by requesting the necessary information or by inspecting them.

### **General Administration of Customs (GAC):**

130. This agency is responsible for customs affairs and executes all tax procedures in land, sea, air, and postal customs sites. It is responsible for controlling the movement of goods that enter and exit the territory of Kuwait, including import, export, temporary entry, transit, and re-export. It is also responsible for controlling all customs ports subject to Law No. 10 of 2003, with respect to both goods and persons.

### **Kuwait Banks Association:**

131. The Kuwait Banks Association was established on May 16, 2001 for the purpose of fostering cooperation and coordination among the member banks to enable them to keep pace with the latest developments in banking systems and to enhance the capacities of bank employees.

### **Approach Concerning Risk**

132. The AML Law and its implementing resolution impose obligations on FIs with respect to preventing ML. However, the authorities have not yet conducted a systemic review or assessment of potential ML and TF risks affecting FIs that could serve as the basis for applying enhanced and/or reduced measures in the financial system.

133. The existing AML legal and supervisory framework has been developed without considering ML/TF risk levels.

### **Progress since the last IMF Assessment**

134. The International Monetary Fund (IMF) conducted in 2003 an assessment of the State of Kuwait's compliance with the FATF recommendations (1996 version).

135. The on-site visit took place during the period of October 6-16, 2003. The FATF Standards have significantly changed and the current 2003 FATF 40 Recommendations and 9 Special Recommendations (as applicable at the time of the on-site visit) have set new thresholds for compliance in many areas. Furthermore, previous assessments did not yet take effectiveness into account as current assessments do.

136. The authorities report that they have worked over the past years to address the deficiencies identified in the previous report. The authorities indicate that they have adjusted and enhanced preventive measures, improved institutional cooperation, and invested in training and raising awareness.

137. Kuwait has also made efforts in recent years to address the recommendations made by the 2004 IMF AML/CFT assessment, as well as increase compliance with the revised FATF Recommendations by issuing Regulation 9 of 2005, implementing the requirements of SR.VIII and SR.IX, and ratifying the Palermo Convention and additional protocols. Also, a number of training and awareness programs have been provided to financial and nonfinancial institutions to help in understanding and combating ML and TF.

### **The draft AML/CFT Law:**

138. The draft legislation for combating ML and TF has been submitted to the National Assembly in 2007 for approval. It constitutes a positive step towards an enhanced AML/CFT framework in Kuwait.



While many elements of the relevant international standards are addressed in the draft law, a number of them have not been incorporated or are treated incompletely. The draft AML/CFT law addresses a number of issues including the criminalization of TF, broader requirements for SR.IX, and the establishment of the FIU.

139. The assessment team is of the view that additional work must be done in order to bring the AML/CFT draft law into line with AML/CFT standards. In particular, the authorities should consider the comments and recommendations in the Detailed Assessment Report. It will be important in enacting a law that all relevant Kuwait texts (Penal Code, commercial procedure code, banking secrecy law, AML/CFT law, and any other relevant texts, such as the banking law) are consistent with each other and in line with the international standards.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1 Criminalization of Money Laundering (R.1 & 2)

##### 2.1.1 Description and Analysis

#### **Legal Framework:**

140. Kuwait has criminalized ML (ML) through Law No. 35 of 2002 (the AML Law). This Law was complemented by Resolution 9 of 2005<sup>19</sup> which contains detailed regulations relating to the implementation of the AML Law.

141. Kuwait has ratified the 1988 United Nations (UN) Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention)<sup>20</sup> and the 2000 UN Convention against Transnational Organized Crime (Palermo Convention), including the Protocols thereto.<sup>21</sup> Through these ratifications, these treaties have become an integral part of Kuwaiti law and constitute an important component of Kuwait's AML regime.

#### **Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offense):**

142. Article 1 of the AML Law contains a comprehensive definition of ML which covers most of the elements of the criminalization of ML.<sup>22</sup> The definition reads as follows: “A financial or non-financial operation or group of operations aiming to conceal or disguise the illicit origin of money or proceeds from any crime making them appear as money or properties derived from a lawful origin [and] also any act contributing to the process of employment or transfer of money or proceeds originating directly or indirectly from a crime or to the concealment or disguise of their origin is considered as such.” The notion of “any crime” contained in the ML definition covers felonies and misdemeanors<sup>23</sup> and includes crimes which are predicate offenses committed abroad.<sup>24</sup>

143. The definitions of “money and properties”<sup>25</sup> of “receipts and proceeds”<sup>26</sup> and of “instrumentalities”<sup>27</sup> contained in Resolution 9 of 2005 are broadly in line with the corresponding definitions contained in the Glossary of definitions used in the AML/CFT Methodology.

<sup>19</sup> Resolution 9 of 2005 for “Procedures and Rules Required to Execute Provisions of Law 35/2002 for Combating Money Laundering”.

<sup>20</sup> Kuwait ratified the Vienna Convention on November 3, 2000.

<sup>21</sup> Kuwait ratified the Palermo Convention on May 16, 2006.

<sup>22</sup> ML is defined as “a financial or non-financial operation or group of operations aiming to conceal to disguise the illicit origin of money or proceeds from any crime making them appear as money or proceeds derived from a lawful origin [and] also any act contributing to the process of employment or transfer of money or proceeds originating directly or indirectly from a crime or to the concealment or disguise of their origin is considered as such”.

<sup>23</sup> Articles 3 and 5 of the Penal Code, Law 16/1960.

<sup>24</sup> Articles 11 and 12 of the Penal Code, Law 16/1960.

<sup>25</sup> “Any assets, of any kind whether physical or conceptual, moveable or real estate, documents or deeds proving these assets or any related right” (Article 1.f.).

144. Article 2 of the AML Law sets forth different types of conducts that constitute the ML offense as follows:

- Committing, or participating in, ML knowing that the money or proceeds are derived from a crime;<sup>28</sup>
- Converting, transferring, possessing, acquiring, using, keeping, or receiving money or proceeds, knowing that they are derived from a crime, or participating in one of those activities;<sup>29</sup>
- Concealing or disguising the true nature of money or proceeds, their origin, place, manner of disposition, movement or rights to them or their possession, knowing that they are derived from a crime, or participating in one of those activities.<sup>30</sup>

145. The combined reading of Articles 1 and 2 of the AML Law are broadly in line with Article 6 of the Palermo Convention and Article 3 of the Vienna Convention.

146. In particular, Article 2 of the Kuwaiti AML Law may be applied regardless of the intended purpose of the conversion or transfer. Mere knowledge of the illicit source of the funds suffices for criminal liability to be triggered.

#### **The Laundered Property (c. 1.2):**

147. The offense of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. Article 1 of the AML Law refers to “money or properties from any crime”. It follows, from the combined reading of this provision with Article 1.f of Resolution 9 of 2005, that the Kuwaiti notion of “money or properties” covers any property that is the result of, or the reward for, the crime.

#### **Proving Property is the Proceeds of Crime (c. 1.2.1):**

148. Kuwaiti criminal legislation does not require that a person be convicted of a predicate offense to prove the illicit origin of proceeds. A person can thus be convicted for ML without having previously been convicted of the underlying predicate offense.<sup>31</sup> However, Director of the Financial Crimes Department of the PPO (who is in charge of all ML investigations and prosecutions) acknowledged that, in practice, a prior conviction for the predicate crime is often used as a basis for bringing charges for ML. In the absence of a conviction for the predicate offense, prosecutors would sometimes be more hesitant to bring charges for a stand-alone ML offense.

149. To address this issue and enhance the effective application of the ML provisions by improving cooperation and coordination amongst the various sections of the PPO dealing with the predicate crimes and with ML (and pending the approval by Parliament of a new AML/CFT Law), Resolution 1 of 2010 was adopted by the Director of the PPO on June 28, 2010.

<sup>26</sup> “Any funds derived or acquired directly or indirectly from committing a crime from crimes provided by law such as dealing in narcotics, or cultivating, importing or exporting thereof, dealing in arms and ammunition, offending public funds and other crimes” (Article 1.g.).

<sup>27</sup> “Any item used or prepared to be used in any way to commit a crime listed by the law”. (Article 1.e.)

<sup>28</sup> Article 2.1 of the AML Law.

<sup>29</sup> Article 2.2 of the AML Law.

<sup>30</sup> Article 2.3 of the AML Law.

<sup>31</sup> If the prosecutor can prove that money results from a criminal offense (not necessarily a specific offense) and that the defendant knows that, an ML conviction can be secured.

150. This Resolution (which refers to Article 16 of the AML Law and the earlier Resolution 57 of 2002 that determined the competencies of different sections of the PPO) provides that the directors of the various departments of the PPO should take the following steps in all ML-related cases:

- As a general rule, all ML investigations and prosecutions are to be carried out by the Financial Crimes Department of the PPO (responsible for dealing with ML cases);
- If the other departments of the PPO suspect ML when conducting an investigation or a prosecution into a predicate offense and determine that the various parts of the investigation/s or prosecution/s are not properly coordinated, they should transfer the case to the Financial Crimes Department for further investigation and/or prosecution of the case as a whole;
- Alternatively, if the other departments of the PPO determine that there is proper coordination of the various parts of the investigation/s or prosecution/s with the Financial Crimes Department of the PPO in an ML-related case, they should continue carrying out the investigation/s or prosecution/s in close coordination with the Financial Crimes Department, and should enter all relevant documents in the IT system for future reference; and

151. Finally, the Financial Crimes Department should prepare a special registry for all ML cases and should inquire with the courts about all the convictions. The authorities informed the assessment team that Article 176 of the Law of Penal Trials and Procedures requires the President of the Court to deliver judgments in public hearings and all judgments are thus public. Judgments are also published in specialized journals.

152. This Resolution should improve coordination within the PPO amongst prosecutors dealing with predicate crimes and those dealing with ML.

### **The Scope of the Predicate Offenses (c. 1.3):**

153. Predicate offenses for ML are, according to Article 1 of the AML Law, any felonies and misdemeanors under Kuwaiti criminal law.

154. The list of predicate offenses for ML covers most of the designated categories of offenses listed in the FATF Glossary to the 40 Recommendations, with the notable exceptions of smuggling of migrants and terrorism financing. As regards the latter, it should be noted that, having ratified all the treaties annexed to the SFT Convention, Kuwaiti law criminalizes some terrorism-related offenses contained in those treaties.

155. Under Kuwaiti law, trafficking in human beings and smuggling of migrants are both addressed in the same manner in one provision, namely, Article 185 of the Penal Code.<sup>32</sup> The two Protocols to the Palermo Convention, however, make a clear distinction between trafficking in human beings and smuggling of migrants.<sup>33</sup> The difference between the two crimes is that while, in the case of trafficking in

<sup>32</sup> “Any person [who] enters or exits from Kuwait a person for disposition as a slave, and any person [who] buys or sells or presents a person as a slave, shall be sentenced to imprisonment for a period not more than 5 years or a fine not more than 375 KD or to both”.

<sup>33</sup> “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs [...]. ‘Smuggling of migrants’ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident [...].”

persons, the element of “exploitation” of the victim is always present; this is not necessarily the case with regard to the smuggling of migrants. In other words, while the two phenomena may overlap, they do not always coincide, thereby calling for the adoption of two separate offenses.

156. In the case of Kuwait, the definition contained in Article 185 of the Penal Code seems to relate more to trafficking in persons than to smuggling of migrants (in particular, as the reference to a “slave” status clearly suggests exploitation). Therefore, the assessment team considers that the offense of smuggling of migrants is not, as such, criminalized under Kuwaiti law. The authorities informed the assessment team that a draft law dealing with the two offenses of trafficking in persons and of smuggling of migrants is pending Parliamentary approval.

157. Kuwaiti law does not contain a stand alone criminalization of terrorism.<sup>34</sup> Kuwaiti criminal law criminalizes a series of terrorism-related offenses, such as all the offenses contained in the treaties annexed to the 1999 International Convention for the Suppression of the Financing of Terrorism (*e.g.*, the unlawful seizure of aircrafts, unlawful acts against the safety of civil aviation, taking of hostages, unlawful acts of violence at airports, and unlawful acts against the safety of maritime navigation).<sup>35</sup>

158. TF is not criminalized under the Kuwaiti law. The Kuwaiti authorities pointed out to the assessment team that TF can be considered as being criminalized pursuant to the criminalization of participation in terrorism-related crimes by way of instigation, conspiracy, or aiding and abetting. As further developed in Section 2.2 below, the assessment team maintains that TF is not criminalized in accordance with SR.II and that it is not a predicate offense to ML for the purposes of Recommendation 1.

159. Failure to criminalize such activities not only weakens the domestic AML/CFT regulatory framework, but it may be problematic in dealing with international cooperation cases (particularly extradition cases where dual criminality is required).

**Table 8 - Predicate Offences in Kuwait**

| Designated categories of offenses in the Glossary to the FATF 40+9 | Predicate offenses under Kuwaiti law  |
|--|---|
| Participation in an organized criminal group and racketeering      | Article 30 and 228 of the Penal Code, respectively  |
| Terrorism, including financing of terrorism                        | Criminalization of some terrorism-related offences through the ratification of the 9 treaties annexed to the 1999 SFT Convention <sup>1</sup> |
| Trafficking in human beings and migrant smuggling                  | Article 185 of the Penal Code (trafficking in human beings)   |
| Sexual exploitation, including sexual exploitation of children     | Articles 186-192 and Articles 200-201 of the Penal Code   |
| Illicit trafficking in narcotics drugs and psychotropic substances | Law 48/1987   |
| Illicit arm trafficking  | Law 13/1991   |
| Illicit trafficking in stolen and other goods                      | Law 10/2003   |
| Corruption and bribery <sup>2</sup>                                | Articles 35-42 of Law 31/1970   |
| Fraud  | Articles 231-233 of the Penal Code  |

<sup>34</sup> The authorities informed the assessment team that a draft law on the criminalization of terrorism (in addition to the draft AML/CFT Law) was pending Parliamentary approval.

<sup>35</sup> Although Kuwait has not ratified the 1999 Convention, it has ratified all the treaties referred to in its Annex.

| Designated categories of offenses in the Glossary to the FATF 40+9 | Predicate offenses under Kuwaiti law                       |
|--|--|
| Counterfeiting currency  | Article 263 of the Penal Code                              |
| Counterfeiting and piracy of products                              | Articles 257-259 of the Penal Code                         |
| Environmental crimes   | Law 12/1964  |
| Murder, grievous bodily injuries                                   | Article 149 of the Penal Code, as modified by Law 85/1983  |
| Kidnapping, illegal restraints and hostage-taking                  | Article 178 of the Penal Code                              |
| Robbery or theft   | Articles 217-219 of the Penal Code                         |
| Smuggling  | Law 10/2003  |
| Extortion  | Article 225 of the Penal Code                              |
| Forgery  | Articles 257-259 of the Penal Code                         |
| Piracy   | Article 170 of the Penal Code and Article 4 of Law 31/1970 |
| Insider trading and market manipulation                            | Articles 118 and 122 of Law 7/2010 <sup>3</sup>            |

**Table Notes:**

- 1970 Convention for the Suppression of Unlawful Seizure of Aircraft; 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons , including Diplomatic Agents; 1979 International Convention against the Taking of Hostages; 1980 Convention on the Physical Protection of Nuclear Material; 1988 Protocol to the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; 1988 Protocole for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf; 1997 International Convention for the Suppression of Terrorist Bombings.
- Kuwait ratified the United Nations Convention against Corruption on February 16, 2007.
- Law 7/2010 establishing the Financial Market Authority and regulating trading in securities.

**Threshold Approach for Predicate Offenses (c. 1.4):**

160. The predicate offenses to ML include all crimes under Kuwaiti criminal law, including felonies and misdemeanors.

**Extraterritorially-Committed Predicate Offenses (c. 1.5):**

161. Pursuant to Articles 11<sup>36</sup> and 12<sup>37</sup> of the Kuwaiti Penal Code, the provisions of the Penal Code apply to conduct which occurred partially outside Kuwait, and which constitutes a crime (felony or misdemeanor) in Kuwait. The reference to “under Kuwaiti law” implies that the ML provisions are also applicable to predicate offenses that have been committed outside of Kuwait.

<sup>36</sup> “[The Penal Code] applies [to] every person committing any crime stipulated [herein] in the territory of Kuwait or affiliated region. [It also] applies to [any] person [who] commits any act outside Kuwait making him [the principal author] or [the] accomplice in a felony [that] took place wholly or partly in the territory of Kuwait”.

<sup>37</sup> “[The] provisions of [the Penal Code] apply to [any] Kuwaiti national committing any act stipulated [herein] outside Kuwait and pursuant to [the] provisions of the law applicable in the [country] in which the act was committed, if he [returned] to Kuwait without [having been] discharged [of his charges] by [the] foreign court”.

**Laundering One's Own Illicit Funds (c. 1.6):**

162. The authorities informed the assessment team that self-laundering is criminalized in Kuwait. Article 2 of the AML Law is indeed broad enough to allow for the prosecution of both the predicate offense and the subsequent laundering of the proceeds of the predicate offense.

**Ancillary Offenses (c. 1.7):**

163. The Kuwaiti Penal Code provides for appropriate ancillary offenses to the offense of ML. Article 1 of the AML Law, by criminalizing “any act contributing to” the ML offense, combined with Articles 48 and 49 of the Penal Code which deal with accomplices, aiding and abetting, facilitating and counseling. Article 56 of the Penal Code deals with “conspiracy to commit a felony or a misdemeanor,” which would include an ML offense. Attempt is criminalized under Article 45 of the Kuwaiti Penal Code.<sup>38</sup>

**Additional Element—If an act overseas, which does not constitute an offense overseas but would be a predicate offense if it occurred domestically, leads to an offense of ML (c. 1.8):**

164. When an act is committed in another country and it is not a criminal offense in that country, it cannot constitute a predicate offense for ML in Kuwait (even if it would have been a predicate offense, had it been committed in Kuwait).

**Liability of Natural Persons (c. 2.1):**

165. Pursuant to Article 40 of the Kuwaiti Penal Code, only “intentional” acts are considered crimes under Kuwaiti law, unless a specific provision (such as Article 11 of the AML Law) expressly criminalizes negligence. In the case of ML, the law requires the perpetrator to know that the objects being dealt with were derived from an unlawful act, and prosecutors must prove this knowledge beyond reasonable doubt. Article 41 of the Penal Code provides that criminal intent is considered to be present if the perpetrator intended to commit the constitutive elements of the offense and achieves the results punishable by law.

166. Article 2 of the AML Law follows this general principle and establishes the level of proof required for criminal liability in ML cases to the knowledge that the property constituted the proceeds of a crime.

**The Mental Element of the ML Offense (c. 2.2):**

167. The Penal Code<sup>39</sup> provides that the intentional element of an offense, including the offense of ML, may be inferred from objective factual circumstances. The authorities indicated to the assessment team that a judge, in his discretion, can infer knowledge from objective factual circumstances.

**Liability of Legal Persons (c. 2.3):**

168. Under Kuwaiti law, most legal persons are subject to criminal liability. Article 12 of the AML Law provides that companies can be held criminally liable for ML and may be punishable for the ML offense. Companies may be punished with a fine not exceeding one million KD if the crime was

<sup>38</sup> Article 45 of the Penal Code reads as follows: “Criminal attempt is for the author to commit an act with the intention of executing it, but was not accomplished for reasons beyond his will. Thinking about a crime or planning to commit it is not considered a crime.

“The suspect commits the attempt in the case of exhausting his activity despite the completion of the crime, or stop it against his will without doing all the actions that he could commit. Also, it is not precluded to consider the act as an attempt in case of the impossibility of the accomplishment of the circumstances of the crime for reasons that are unknown to the author”.

<sup>39</sup> Article 41 of the Penal Code.

committed in their interest or in their name by one of their bodies, directors, representatives, or personnel. Additional sanctions may include the cancellation of the company's license.

169. However, the notion of "company" contained in Article 12 of the AML Law does not include, for instance, public stockholding companies<sup>40</sup> or nonprofit organizations (NPOs),<sup>41</sup> but only companies licensed by the MOCI. As a result, the PPO could not, for instance, charge an NPO for ML, but only the individual persons acting as managers or administrators of that NPO. This limits the scope of application of this provision.

**Liability of Legal Persons should not preclude possible parallel criminal, civil, or administrative proceedings (c. 2.4):**

170. As noted above, the Kuwaiti Penal Code provides for criminal liability of companies for ML offenses. In addition, administrative proceedings may be initiated.

171. The Minister of Commerce and Industry may, without prejudice to the criminal proceedings, initiate administrative proceedings against companies.<sup>42</sup> In addition, the CBK has the power to initiate administrative proceedings against banks that violate the law.<sup>43</sup>

**Sanctions for ML (c. 2.5):**

172. ML is punishable by imprisonment of not more than seven years, a fine ranging between half and all of the proceeds involved and confiscation of the proceeds, without prejudice to the rights of *bona fide* third parties.<sup>44</sup> The termination of the criminal action for any reason does not prevent confiscation of the property derived from ML operations.<sup>45</sup> The sanction may be doubled where the ML offense is committed by an organized group or the offender uses his power, position, or influence.<sup>46</sup>

173. In order to facilitate cooperation of persons with law enforcement authorities in the investigation and prosecution of ML, the AML Law provides that the penalties indicated above can be suspended by the court for a person who, on his or her own initiative, informs the authorities of the crime.<sup>47</sup>

174. Finally, the court may order that a person or a company be prohibited from carrying out a business activity for a specified period of time, where that person or company has committed an offense as part of a business activity that requires a license.<sup>48</sup>

175. As shown by the above description, Kuwaiti law (be it the Penal Code or the AML Law) provides for a wide range of sanctions for ML (although they mostly are applied to natural persons). These sanctions seem to fall within the average of the predicate offenses (*e.g.*, up to five years of imprisonment for trafficking in persons, up to ten years of imprisonment for counterfeiting currency, up to seven years of imprisonment for counterfeiting and piracy of products, up to five years for corruption and bribery).

176. The Director of the Financial Crimes Department of the PPO, however, told the assessment team that he felt the need for stronger penalties both as a deterrent and as a punishment for ML because it is such a serious crime.

<sup>40</sup> See the Explanatory Memorandum to the AML Law.

<sup>41</sup> Charities and NPOs are licensed by the Ministry of Social Affairs and Labor.

<sup>42</sup> Article 2 of the MOCI Resolution 204/2004.

<sup>43</sup> Article 85 of Law 32/1968 (CBK Law).

<sup>44</sup> Article 6 of the AML Law.

<sup>45</sup> Article 6 of the AML Law.

<sup>46</sup> Article 7 of the AML Law.

<sup>47</sup> Article 10 of the AML Law.

<sup>48</sup> Article 72 of the Penal Code.



### Analysis of effectiveness:

177. The Penal Code, the Criminal Procedure Code (CPC), and the AML Law are the centerpieces of Kuwait's criminal law response to ML and related predicate offenses. In addition, the institutional foundations of the criminal system comprise well-informed judges and prosecutors who guarantee a reasonably uniform application of the law. The central role of the PPO and the wide powers at its disposal for ML investigations and prosecutions, including, as further developed in Section 6, in the area of international cooperation, provide the basis for a generally sound AML regime.

178. Kuwaiti law criminalizes ML in line with the material elements of the Vienna and Palermo Conventions. However, questions can be raised in regard to its current effective implementation. In particular, the authorities acknowledged that even though the law does not provide for such a requirement, a conviction for a predicate offense<sup>49</sup> would often be used as a basis to bring charges for ML and that in the absence of a conviction for the predicate offense prosecutors would sometimes be more hesitant to prosecute stand-alone ML offenses.

179. The newly-adopted Resolution 1 of 2010<sup>50</sup> may, however, improve coordination and cooperation between the Financial Crimes Department of the PPO and the other departments of the PPO dealing with predicate crimes in the future. This is particularly relevant in a context like Kuwait's, in which the PPO has discretion as to whether or not to initiate a criminal proceeding.

180. Official statistics provided by the authorities indicate that there have been 28 convictions for ML in five years (official statistics are available for 2005–2010) which is within the average in the region. However, the authorities did not provide the assessment team with a copy of the sentences that could not ascertain whether these are convictions for stand-alone ML offenses or only when combined with the predicate offense(s).

181. The effectiveness of the AML framework is impeded further by the following elements: (i) smuggling of migrants and terrorism financing, are not explicitly criminalized, and, thus, are not predicate offenses for ML; and (ii) criminal liability for ML does not extend to all legal persons, but only to companies.

**Table 9- Money Laundering Cases**

| Year         | Incoming | Under investigation | Archive | Not convicted | Convicted | Under consideration |
|--------------|----------|---------------------|---------|---------------|-----------|---------------------|
| 2005         | 13       | 0                   | 6       | 5             | 2         | 0                   |
| 2006         | 16       | 0                   | 7       | 3             | 6         | 0                   |
| 2007         | 26       | 0                   | 18      | 3             | 5         | 0                   |
| 2008         | 25       | 0                   | 15      | 2             | 8         | 0                   |
| 2009         | 36       | 2                   | 23      | 2             | 7         | 2                   |
| 2010         | 4        | 4                   | 0       | 0             | 0         | 0                   |
| <b>Total</b> | 120      | 6                   | 69      | 15            | 28        | 2                   |

<sup>49</sup> Predicate offenses reported by the authorities for ML convictions are mostly related to fraud, counterfeiting, and embezzlement.

<sup>50</sup> The effectiveness of which cannot be assessed in this report due to its recent adoption.

## 2.1.2 Recommendations and Comments

### Recommendation 1:

182. The authorities are recommended to:

- Effectively undertake prosecutions for ML also in cases where no prior conviction for the predicate offense has been obtained.
- Criminalize the following categories of offenses: smuggling of migrants and terrorism financing.

### Recommendation 2:

183. The authorities are recommended to:

- Extend criminal liability to all legal persons, not just the companies licensed by the MOCI.

## 2.1.3 Compliance with Recommendations 1 & 2

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.1 | LC     | <ul style="list-style-type: none"> <li>• Smuggling of migrants and terrorism financing are not predicate offenses for ML.</li> <li>• Reluctance to undertake ML prosecutions without prior convictions for the predicate offense.</li> </ul> |
| R.2 | LC     | <ul style="list-style-type: none"> <li>• Criminal liability only applies to companies, and not to other legal persons.</li> </ul>  |

## 2.2 Criminalization of Terrorist Financing (SR.II)

### 2.2.1 Description and Analysis

#### Legal Framework:

184. There is no legal provision in Kuwait that specifically criminalizes terrorism<sup>51</sup> and its financing.<sup>52</sup> Kuwait has not ratified the 1999 International Convention on the Suppression of the Financing of Terrorism (the 1999 Convention). Kuwait is, however, a party to all the Conventions listed in the Annex to the 1999 Convention. All the offenses contained in the Annex to the 1999 Convention are, therefore, criminalized under Kuwaiti criminal law.

#### Criminalization of Financing of Terrorism (c. II.1):

185. The authorities claim that TF may be prosecuted based on the participatory offenses of “instigating, conspiring, or aiding and abetting” a terrorist (related) offense.<sup>53</sup> Examples of the terrorism-related crimes given by the authorities include the crimes contained in the treaties annexed to the 1999 Convention (*e.g.*, the unlawful seizure of aircraft, unlawful acts against the safety of civil aviation, taking of hostages, unlawful acts of violence at airports, and unlawful acts against the safety of maritime navigation). The authorities note that there have been four convictions for what they consider to be TF.

<sup>51</sup> A draft Law on terrorism is pending Parliamentary approval.

<sup>52</sup> A draft AML/CFT Law is pending Parliamentary approval.

<sup>53</sup> The authorities note that TF is criminalized “in accordance with Article 2 of the [International Convention on the Suppression of the TF] as a manifestation of participation in terrorist crimes by way of instigation, conspiracy, or aiding and abetting”.

186. The offenses defined in the treaties annexed to the 1999 SFT Convention are criminalized under Kuwaiti law and the authorities informed the assessment team that the financing of such offenses is prosecuted as “participation, instigation, conspiracy, or aiding and abetting.”

187. It remains, though, that the criminalization of TF solely on the basis of instigating, aiding and abetting, attempting, or conspiring a terrorist (related) offense as suggested by the authorities does not comply with SR.II.

#### **Predicate Offense for Money Laundering (c. II.2):**

188. While all the offenses contained in the treaties annexed to the 1999 Convention are predicate offenses for ML (following the “all-crime” approach of the Kuwaiti criminal law), TF is not a crime in Kuwait and, thus, it is not a predicate offense for ML.

#### **Jurisdiction for Terrorist Financing Offense (c. II.3):**

189. While Articles 11–13 of the Penal Code deal with jurisdictional questions generally, as TF is not as such a crime in Kuwait, jurisdiction-related issues in relation to TF are not applicable.

190. It should also be noted that Article 12 of the Penal Code only applies to persons who commit an offense in another country, not to their “accomplices.” Therefore, in such a case, even the criminalization of TF based on the participatory offenses as claimed by the authorities would not apply.

#### **The Mental Element of the Terrorist Financing offense (applying c. 2.2 in R.2) & Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):**

191. As TF is not as such a crime in Kuwait, these criteria cannot be properly assessed.

192. However, as with the ML offense, Kuwaiti law permits the intentional element of any offense to be inferred from objective factual circumstances. Presumably, this general principle will also apply to the “instigation, conspiracy, or aiding and abetting” of a terrorist (related) offense which, according to the authorities, includes TF.

193. Articles 47 to 49 of the Penal Code deal with general criminal liability for any person who supports, incites, conspires, or helps another person in the commission of a criminal offense. The authorities informed the assessment team that these provisions refer to natural persons, not legal persons. Hence, defining the TF offense based on the participatory offenses would exclude criminal liability of legal persons for a TF offense (as interpreted by the authorities).

#### **Sanctions for TF (applying c. 2.5 in R.2):**

194. The assessment team did not have access to any of the four judgments relating to what the authorities consider to be TF. The assessment team could not ascertain the sanctions which were applied in all these cases, or the legal basis used for the convictions.

#### **Statistics (R.32):**

195. The authorities submitted statistics showing four convictions for what they consider to be TF from 2005 to 2010. The assessment team, however, could not confirm these convictions.

### **2.2.2 Recommendations and Comments**

- The authorities should criminalize TF in accordance with SR.II.

### 2.2.3 Compliance with Special Recommendation II

|       | Rating | Summary of factors underlying rating  |
|-------|--------|---|
| SR.II | NC     | <ul style="list-style-type: none"> <li>No specific provision criminalizing TF.</li> </ul> |

## 2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

### 2.3.1 Description and Analysis

#### Legal Framework:

196. Title 2 of the Kuwaiti Penal Code includes “consequent and complementary sanctions”, including, amongst others, confiscation. Article 78 of the Kuwaiti Penal Code specifically provides for the confiscation of proceeds or instrumentalities of crime.

197. Moreover, the AML Law<sup>54</sup> confirms this general provision by allowing for the confiscation of “money, possession, proceeds and instrumentalities used in committing the crime,” without prejudice to the rights of *bona fide* third parties.

198. These provisions apply to all offenses in the Kuwaiti criminal legislation, including felonies and misdemeanors, which cover all predicate offenses for ML (as provided under Kuwaiti criminal legislation), as well as the ML offenses (as defined in the AML Law).

#### **Confiscation of Property related to ML, TF, or other predicate offenses including property of corresponding value (c. 3.1) and Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):**

199. As indicated above, Kuwaiti legislation allows for the confiscation of “money, possession, proceeds and instrumentalities” (as defined in the Ministerial Resolution No. 9 of 2005) used to commit ML or a predicate offense, or obtained as a consequence of such crimes. The Penal Code<sup>55</sup> allows for the confiscation of property obtained directly or indirectly from the commission of the offense. Moreover, the reference to “consequent materials” in Article 78 of the Penal Code confirms that not only direct but also indirect proceeds may be confiscated.

200. With regard to TF, although there is no specific provision criminalizing it, as such, the authorities informed the assessment team that they are able to confiscate proceeds and instrumentalities used to commit one of the conducts that the authorities consider to be TF (*e.g.*, participation in, aiding and abetting, a crime which amounts under Kuwaiti law to a terrorist-related crime, including the unlawful seizure of aircraft, unlawful acts against the safety of civil aviation, taking of hostages, unlawful acts of violence at airports, and unlawful acts against the safety of maritime navigation).

201. There is no provision in Kuwaiti law allowing for the confiscation of property of corresponding value. Article 12 of the Palermo Convention<sup>56</sup> requires Parties to the Convention to adopt such measures as may be necessary to enable confiscation of, *inter alia*, property which corresponds to the value of the proceeds of crime. Although Kuwait has ratified this Convention, it has not fully implemented this particular provision.

<sup>54</sup> Article 6 of the AML Law.

<sup>55</sup> Article 78 of the Penal Code refers to property subject to confiscation “used or meant to be used.”

<sup>56</sup> Ratified in Kuwait by Law 5/2006.

202. The authorities informed the assessment team that the AML Law<sup>57</sup> is to be interpreted in such a way as to allow confiscation of properties held or owned by a third party. The assessment team agreed that the reference to the “confiscation of money, possession, proceeds and instrumentalities used in committing the crime” in Article 6 of the AML Law is wide enough to cover the requirements of this standard.

**Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):**

203. The Criminal Procedure Code<sup>58</sup> allows the PPO to search and, ultimately, seize properties, to prevent any dealing, transfer or disposal of property subject to confiscation. Kuwaiti legislation<sup>59</sup> provides that the PPO may order the defendant not to dispose of or otherwise deal with his money or part with it<sup>60</sup> until the criminal action is settled, when he believes that the defendant may act in such a way as to prejudice the ultimate confiscation (*e.g.*, by dissipating the assets).

204. If it is proven that the person who owns or controls the property subject to confiscation undertakes any act which may ultimately prejudice confiscation of the seized items, such a person will be sentenced to imprisonment, even if he/she was not convicted yet. The property subject to confiscation will remain seized until the case has been settled. In other words, it is a criminal offense in Kuwait to carry out any dealings with property subject to confiscation.

205. Provisional measures under Kuwaiti law are mostly seizure (rather than freezing) as the competent authorities take control of the specified assets or other funds. The seized funds or other assets remain the property of the person or entity that held an interest in the specified funds or other assets at the time of the seizure, although the competent authorities will take over possession, administration, or management of the seized funds or other assets.

**Ex Parte Application for Provisional Measures (c. 3.3):**

206. Provisional measures are applied *ex-parte*, based on an order by the public prosecution or by the investigators.<sup>61</sup> No prior notice is required.

**Identification and Tracing of Property subject to Confiscation (c. 3.4):**

207. It should be noted that Kuwaiti criminal procedural law gives the PPO discretion to decide whether or not to start an investigation and a prosecution, if there is suspicion that a criminal offense has been committed.

208. This principle also applies to the identification and tracing of property that is subject to confiscation or suspected of being the proceeds of crime. The Criminal Procedure Code<sup>62</sup> allows law enforcement authorities to identify and trace property which is or may become subject to confiscation or which is suspected to be the proceeds of crime.

<sup>57</sup> Article 6 of the AML Law.

<sup>58</sup> Parts C and D of the CPC (Law 17/1960).

<sup>59</sup> Article 8 of the AML Law.

<sup>60</sup> It should be recalled that Article 1.f of Resolution 9/2005 in turn defines “money and properties” as “[a]ny assets, of any kind whether physical or conceptual, moveable or real estate, documents or deeds proving these assets or any related right”.

<sup>61</sup> Article 8 of the AML Law and Article 77 of the Criminal Procedure Code.

<sup>62</sup> Articles 78–89.

**Protection of *Bona Fide* Third Parties (c. 3.5):**

209. The rights of *bona fide* third parties are protected from any confiscation measure pursuant to the AML Law and the Penal Code.<sup>63</sup> According to Kuwaiti legislation, the rights of third parties remain unaffected by the transfer of title to the State subsequent to the confiscation of the property. As a result, *bona fide* third parties may claim their rights with respect to the confiscated property against the State. These provisions are in line with the relevant provisions of the Palermo Convention.<sup>64</sup>

**Power to Void Actions (c. 3.6):**

210. Kuwaiti legislation contains authority for the PPO to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that, as a result of those actions, the authorities would be prejudiced in their ability to recover property subject to confiscation.

211. The AML Law<sup>65</sup> provides that the PPO “may order the defendant not to dispose of or otherwise deal with his money or part with it<sup>66</sup> until the criminal action is settled.” The Criminal Procedure Code<sup>67</sup> also provides that items ordered to be seized shall remain seized as long as it is required to settle the case. Any objection to keep items seized shall be submitted to the President of the Court of First Instance, who shall settle the matter after having examined the relevant documents and heard the parties.

**Additional Elements (Rec. 3)—Provision for: a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):**

212. The Kuwaiti confiscation regime does not authorize civil (*in rem*) forfeiture, but provides for the confiscation of property belonging to organizations that are found to be primarily criminal in nature.<sup>68</sup> The Kuwaiti criminal legislation does not allow for the reversal of the burden of proof.

**Analysis of effectiveness:**

213. The legal framework for the confiscation regime provides for a wide range of confiscation, seizure, and provisional measures with regard to property laundered, proceeds from, and instrumentalities used in, ML or predicate offenses.

214. It is difficult to ascertain the value of property which was subject to final confiscation and the effectiveness of the overall AML confiscation regime from the statistics provided by the authorities (for the period 2005–2010), as the amounts indicated include property subject to provisional measures (which are not final measures). However, the number of cases in which seizure/confiscation occurred seems rather low compared to other countries and to the number of ML convictions. The authorities did not develop comprehensive statistics about the number of cases and the amounts of property frozen, seized, and confiscated relating to ML and criminal proceeds.

<sup>63</sup> Articles 6, 7, and 12 of the AML Law, as well as Article 78 of the Penal Code explicitly provide that confiscation may occur “without prejudice to *bona fide* third party rights”.

<sup>64</sup> Paragraph 8 of Article 12.

<sup>65</sup> Article 8 of the AML Law.

<sup>66</sup> As defined in Article 1.f of the MOF Resolution 9 of 2005 issued on July 13, 2005.

<sup>67</sup> Article 94 of the Criminal Procedure Code.

<sup>68</sup> Article 7 of the AML Law.

**Table 10 - Number of convictions and amount of seized and confiscated property**

| Year | Number | Value         | Number of convictions for ML |
|------|--------|---------------|------------------------------|
| 2005 | 1      | -             | 2                            |
| 2006 | 2      | KD 38 000     | 6                            |
| 2007 | 1      | USD 502 000   | 5                            |
| 2008 | 4      | -             | 8                            |
| 2009 | 3      | KD 70 837.500 | 7                            |

### 2.3.2 Recommendations and Comments

215. The authorities are recommended to:

- Make provision allowing for confiscation of property of corresponding value.
- Ensure that the AML confiscation regime is applied effectively and is frequently used to seize and confiscate criminal assets for ML and predicate crimes.

### 2.3.3 Compliance with Recommendation 3

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.3 | LC     | <ul style="list-style-type: none"> <li>• Impossibility to confiscate property of corresponding value.</li> <li>• Lack of evidence of the effectiveness of the AML confiscation framework.</li> </ul> |

## 2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

### 2.4.1 Description and Analysis

#### Legal Framework:

216. There is no law in Kuwait that provides for the freezing of terrorist assets in the context of UNSCRs 1267 and 1373, and their respective successor Resolutions. There is a process<sup>69</sup> in place, which is not formally provided in any legal text, to implement freezing orders under UNSCRs 1267 and 1373. The MFA is entrusted with the task of receiving notifications under UNSCRs 1267 and 1373, and of transmitting those to the relevant agencies within Kuwait. There is no legal provision specifically entrusting the MFA with this role.

217. Following two cases which were successfully brought to court against freezing orders taken under these resolutions on the ground of the absence of adequate legislation in Kuwait, the authorities (Ministry of Justice) realized the need to have legislation in place to deal with the implementation of UNSCRs 1267 and 1373.

<sup>69</sup> The process is similar for UNSCRs 1267 and 1373, but it is channeled through two different committees, namely, the National AML/CFT Committee (for UNSCR 1267) and the Committee on Combating Terrorism (CCT) (for UNSCR 1373).

218. General criminal procedure legislation allows<sup>70</sup> law enforcement authorities, in a general criminal investigation or prosecution, to seize properties and to prevent any dealing, transfer, or disposal of such properties subject to confiscation.

**Freezing Assets under S/Res/1267 (c. III.1):**

219. The authorities informed the assessment team that, when the MFA receives from its permanent delegation in New York the consolidated list of persons and entities subject to the sanction measures under UNSCR 1267, the MFA forwards the list to the members of the National AML/CFT Committee “within two/three working days” maximum. Thereafter, it is up to each agency to implement the necessary measures related to freezing the assets of those entities or individuals identified by the Sanctions Committee.

220. SR.III provides that “laws and procedures” be in place to implement UNSCR 1267. The assessment team was informed that there are no such laws or specific procedures in place. Rather, there is the above “routine” practice which is followed for the implementation of the sanctions under UNSCR 1267.

221. The notion of “without delay” in SR.III should be interpreted as meaning within a matter of hours,<sup>71</sup> thereby making the “more-than-two/three-working-days” timeline referred to by the Kuwaiti authorities too long a time to satisfactorily comply with SR.III.

222. Furthermore, the authorities provided no information as to whether the freezing may occur without prior notice to the designated person involved.

223. No regular feedback is provided by the agencies represented in the National AML/CFT Committee to the MFA as to the actions taken to implement the freezing orders (with the possible exception of the Central Bank).

224. However, the authorities informed the assessment team that, in practice, funds have been frozen in the context of the implementation of UNSCR 1267. The assessment team was not able to verify this information.

**Freezing Assets under S/Res/1373 (c. III.2):**

225. The MFA informed the assessment team that, in order to implement UNSCR 1373, they set up a “Committee on Combating Terrorism” (CCT) composed of representatives from the Central Bank of Kuwait, the Ministry of the Interior, the Ministry of Justice, the Ministry of Defense, the Ministry of Commerce and Industry, the Ministry of Social Affairs and Labor, the Ministry of Finance, the General Administration of Customs, the Public Prosecution Office. However, there is no regulation establishing this Committee, or describing the procedure (mechanism) it follows in implementing UNSCR 1373. The whole procedure was agreed to at a meeting of the CCT itself, and was only set forth in the minutes of the meeting. The assessment team could not gain access to these minutes.

226. In practice, according to the authorities, the procedure followed is similar to the one for UNSCR 1267. When the MFA receives a notification under UNSCR 1373 from its permanent delegation in New York, it forwards the notification to the members of the CCT “within two/three working days” maximum. Thereafter, it is up to each agency to implement the necessary measures.

<sup>70</sup> Article 80 of the Criminal Procedure Code.

<sup>71</sup> See the Glossary of definitions used in the AML/CFT Methodology.



227. The assessment team could not ascertain the frequency of the meetings of the CCT. Anecdotal evidence suggests, however, that this Committee does not meet regularly, raising questions regarding its effectiveness and its real role in the context of the implementation of UNSCR 1373.

228. There is no specific law and procedure in place in Kuwait for the implementation of UNSCR 1373 in line with SR.III. There is no domestic decision-making process on designations or a process to freeze their assets. The whole process, when it happens, takes more than “a matter of hours” and the assessment team could not ascertain whether the freezing occurs without prior notice to the designated person involved.

229. There is no regular feedback to the MFA from the agencies represented on the CCT as to the actions they have taken pursuant to the notifications under UNSCR 1373. However, the authorities informed the assessment team that, in practice, funds have been frozen in the context of the implementation of UNSCR 1373. The assessment team was not able to verify this information.

#### **Freezing Actions Taken by Other Countries (c. III.3):**

230. The authorities noted that they do not give the same value to lists issued by other countries as they do for lists issued by the UN. However, those “country lists” are handled through the same process described above. The agencies represented on the CCT are sent these lists “for information” only.

231. There is no law or procedure in place in Kuwait to properly handle requests from other countries to take freezing actions, to examine such requests, or to take action to freeze assets in response to the request, if appropriate, without delay and without prior notice to targets.

#### **Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):**

232. There is no provision in Kuwait that provides specifically that freezing actions should extend to funds or other assets: (i) wholly or jointly owned or controlled, directly or indirectly, by designated persons under UNSCR 1267 or by terrorists, those who finance terrorism or terrorist organizations within the meaning of UNSCR 1373; and (ii) derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism, or terrorist organizations.

#### **Communication to the Financial Sector (c. III.5):**

233. The authorities informed the assessment team that, when notifications under UNSCRs 1267 or 1373 reach the Central Bank of Kuwait, the latter sends memoranda to all banks, investment and exchange companies on freezing the assets and funds of certain entities and persons included in the list issued by the Sanctions Committee, including the need to give high priority to compliance with the UNSCRs. FIs under the supervision of the CBK have to inform the CBK within five working days about the existence of any persons or entities appearing on the list and have to freeze the related assets. This information is then sent by the CBK to the MFA.

#### **Guidance to FIs (c. III.6):**

234. Banks, investment and exchange companies must provide the CBK,<sup>72</sup> within five working days from the date of the letter sent to them, with information concerning the freezing of assets and funds of the persons and entities whose names appear in the list issued under the relevant UNSCRs. According to the CBK’s instructions, this should be done in accordance with the sample letters provided for this purpose. The CBK will, in turn, inform the MFA.

<sup>72</sup> According to the Instructions issued by the CBK on October 19, 2004.

**De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):**

235. The same process followed for “listing” is followed for “de-listing” requests. The MFA informs the various agencies (through the procedure described above) of the de-listing notices received within a maximum of two/three working days. Those agencies are then expected to act accordingly and to unfreeze the funds.

236. As far as the CBK is concerned, it sends circulars to all of its supervised entities instructing them to unfreeze the funds within five working days of the date of the notice, and to inform the Central Bank that they have done so. The CBK will, in turn, inform the MFA of the measures that have been taken. The assessment team could not ascertain the frequency with which that has happened.

**Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):**

237. With respect to procedures for unfreezing the funds of persons mistakenly included in the freezing process, the affected person should inform the entity that froze his or her accounts or funds that there was an error in the process of freezing (*e.g.*, due to the similarity of names). The entity that froze the funds then informs the Central Bank of Kuwait, which, in turn, informs the Ministry of Foreign Affairs.

238. The affected person has the right to file a complaint with a local court<sup>73</sup> against the concerned bank (the implementing entity) and the CBK (the supervisory agency) to unfreeze his or her assets. In such a case, the CBK shall send the details of the case to the Ministry of Foreign Affairs, which will inform the Kuwaiti delegation to the United Nations of the details. The case may be submitted to the Sanctions Committee in accordance with UNSCR 1267 to verify whether the freeze occurred in error. If the committee agrees with the authorities, the funds shall be unfrozen and released.

**Access to frozen funds for expenses and other purposes (c. III.9):**

239. The authorities informed the assessment team that, in accordance with UNSCR 1452 of 2002, the MFA receives requests to allow affected persons to meet their living expenses.

240. The authorities informed the assessment team that they handled one case of a person seeking access to frozen funds for living expenses under UNSCR 1452. However, the authorities provided no detail about this case to the assessment team.

**Review of Freezing Decisions (c. III.10):**

241. The Criminal Procedure Code<sup>74</sup> contains a general provision allowing a person whose assets have been frozen to appeal the decision to the Court of First Instance. The authorities informed the assessment team that this information is reiterated in the communication concerning the freeze. However, this provision is not specific to the implementation of the UNSCRs, but is rather a general provision of criminal procedure.

**Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):**

242. As described under Recommendation 3, Kuwaiti law contains a wide range of search, seizure, and confiscation measures. However, the inability to confiscate property of corresponding value may have an impact on the seizing and confiscation of terrorist-related funds or other assets in contexts other than those described under criteria III.1–III.10.

<sup>73</sup> Pursuant to Article 94 of the Criminal Procedure Code.

<sup>74</sup> Article 94 of the Criminal Procedure Code.

**Protection of Rights of Third Parties (c. III.12):**

243. While the rights of *bona fide* third parties are explicitly preserved in ML cases, no such provision exists specifically for TF as TF is not a criminal offense under Kuwaiti law.

**Enforcing the Obligations under SR.III (c. III.13):**

244. There is no specific measure in place in Kuwait to effectively monitor for compliance with relevant legislation, rules, or regulations governing the obligations under SR.III; nor are there specific measures to impose civil, administrative, or criminal sanctions for failure to comply with such legislation, rules, or regulations.<sup>75</sup> One exception concerns the general sanctioning power of the CBK over its supervised entities who fail to act within five working days following an instruction by the CBK. However, these sanctioning powers are general and not specific to the implementation of the relevant UNSCRs.

**Statistics (R.32):****Table 11 - Frozen assets of UNSCRs<sup>1</sup> designated persons and entities**

| Year | No. of persons /entities | Value of frozen assets                        |
|------|--------------------------|---|
| 2005 | 1                        | 5 300 KD                                      |
| 2006 | 1                        | 0   |
| 2007 | 0                        | 0   |
| 2008 | 4                        | 624/1 929 KD + securities<br>(about 1 756 KD) |
| 2009 | 0                        | 0   |

**Table note:**

1. The Assessment Team could not confirm the accuracy of these statistics. The MFA could not itself confirm the accuracy of the statistics, but affirmed that they were compiled by the CBK, raising questions about the level of coordination and feedback existing in the country with regard to the implementation of UNSCRs 1267 and 1373.

**Additional Element (SR.III)—Implementation of Measures in Best Practices Paper for SR.III (c. III.14) & Additional Element (SR.III)—Implementation of Procedures to Access Frozen Funds (c. III.15):**

245. The authorities provided no information on these matters.

**2.4.2 Recommendations and Comments**

246. The authorities are recommended to:

- Adopt laws and procedures to comply with SR.III. In particular, the authorities should adopt legislation that provides for the freezing of terrorist assets in the context of UNSCRs 1267 and 1373, and their respective successor Resolutions, and for the proper handling of freezing requests from other countries (including a specific procedure for the implementation of UNSCRs 1267 and 1373).

<sup>75</sup> The one exception to this would be the CBK, in the context of its regular oversight over its supervised entities. On the other hand, the types of violations for which the MOCI seems to be able to issue sanctions do not include any reference to the implementation (or lack thereof) of the relevant UNSCRs.

- Ensure that the implementation of the freezing orders takes place within “a matter of hours”<sup>76</sup> and without prior notice to the target.
- Ensure that the institutions which are not subject to the supervision of the CBK are aware about the implications of the notifications received under UNSCRs 1267 and 1373, and the manner in which they should be implemented.
- Adopt specific provision criminalizing TF.

### 2.4.3 Compliance with Special Recommendation III

|        | Rating | Summary of factors underlying rating  |
|--------|--------|---|
| SR.III | NC     | <ul style="list-style-type: none"> <li>• There is no law and procedure in place to implement UNSCRs 1267 and 1373, or to handle freezing requests from other countries.</li> <li>• There is no authority responsible for the designations, or a legal basis for the freezing/seizing orders.</li> <li>• Implementation of freezing orders, when it occurs, takes more than “a matter of hours.”</li> <li>• No coordination mechanism in place for the implementation of UNSCRs 1267 and 1373.</li> <li>• No communication mechanisms or guidance for institutions not subject to the CBK supervision.</li> <li>• Lack of an appropriate review mechanism.</li> <li>• Lack of clear monitoring and sanctioning procedures to verify implementation of freezing requests.</li> <li>• No criminalization of TF.</li> </ul> |

### Authorities

## 2.5 The Financial Intelligence Unit and its Functions (R.26)

### 2.5.1 Description and Analysis

#### Legal Framework:

247. Pursuant to Article 16 of the AML Law, the PPO is the sole body authorized to receive STRs and to investigate and prosecute suspected ML offenses. In 2003, a MOF decree No. 10 gave the Governor of the CBK the authority to establish the KFIU in the CBK. Resolution 1/191/2003 issued by the Governor of the CBK established the KFIU. While the KFIU receives its basic authority under the MOF and Governor’s decisions, its powers to analyze and investigate STRs are derived<sup>77</sup> solely from the powers extended to it from the PPO via a “report-by-report” memorandum.

#### Establishment of FIU as National Center (c. 26.1):

248. The legal structure of the KFIU is complex; it was formed within the CBK as part of the on-site supervision section. The decree 10/2003 establishing it sets forth the membership of the decision body of the KFIU as including representatives of the: (i) CBK; (ii) MOCI; (iii) Ministry of the Interior, Criminal Investigation Department (MOI); and (iv) General Directorate for Customs (GDC). Its staff is currently fungible, moving between the AML Unit of the CBK and the KFIU. This intermingling of duties has

<sup>76</sup> It rather takes over two/three days under the current system.

<sup>77</sup> From the MOU between the PPO and FIU on the procedure of handling reported cases.

resulted in some confusion for reporting entities regarding the respective roles and powers of the CBK, the KFIU, and the PPO within the AML framework. In addition, the KFIU's functions and mandate only cover fighting ML and do not extend to combating TF.

249. Article 5 of the AML Law authorizes the PPO to receive STRs directly from the reporting entities and institutions. These reports must be filed to the PPO and are currently considered to be a criminal complaint. Upon receipt, the PPO sends the STRs to the Governor of the CBK in his capacity as the head of the KFIU. At the time of receipt of the STR, the KFIU also receives a memorandum from the PPO setting out the scope of investigatory powers and authority granted to the KFIU to assist in its STR analysis and investigation.

250. The PPO has also the power to initiate an investigation if the information contained in the STR constitutes solid grounds to suspect ML and no additional information is needed from the KFIU. By initiating an investigation, the PPO qualifies the STR as criminal complaint according to the CPC. This qualification may lead the PPO to inform the suspected persons of the existence of the STR or complaint. Some reporting entities informed the assessment team that filing an STR to the PPO constitutes sometimes a reason for a higher threshold of suspicion for reporting.

251. There is no statutory law or regulation setting out the analysis or information gathering powers of the KFIU. The cover memorandum from the PPO sets out a summary of the STR and requests that the KFIU provide analysis information and a technical opinion regarding the reported suspicion. Through the powers granted in the cover memorandum, the KFIU will have the authority to ask for information, statistics, and documentation from any entity or person in Kuwait or to review it on-site. The KFIU usually seeks the assistance of the members from the CBK, MOI, MOCI, and GDC to collect administrative, financial, and law enforcement information.

252. Following the collection and analysis of information, the Governor of the Central Bank, in his capacity as head of the KFIU, provides the PPO with a report that includes an opinion as to whether there are grounds to suspect ML.

#### **Guidelines to Financial Institutions on Reporting STR (c. 26.2):**

253. A standard form for STRs has been developed by the CBK and was transmitted to FIs and some DNFBPs with the help of MOCI and CMA. Although the KFIU encourages reporting entities to use this form, STRs submitted in other forms are accepted.

254. To date, the KFIU or other competent authorities have not issued any guidance to the reporting entities to assist them in identifying suspicious transactions, or to establish procedures for the reporting of STRs. The CBK has provided guidance on typologies, but the KSE and MOCI have not. The lack of written guidelines and guidance accessible to all precludes the reporting entities from having a common understanding of the reporting requirements.

255. In addition and as mentioned above, the intermingling of duties between the CBK, the KFIU, and the PPO has resulted in some confusion for reporting entities regarding the respective roles and powers of these authorities within the AML framework and the authority to whom they should file the STRs.

#### **Access to Information on Timely Basis by KFIU (c. 26.3):**

256. The referral issued by the PPO grants the KFIU, through its members, full authority to demand information and documents from any governmental or nongovernmental authority or entity or from individuals, as well as to visit the headquarters of such authorities to investigate all documents or records that it deems appropriate. The members of the KFIU can collect the necessary information in order to analyze the suspected cases referred to it.

257. Such broad powers of investigation could jeopardize the confidentiality of information at the KFIU. There is no legislation that prevents the members of the KFIU, especially the member from the CDI, from using the information contained in the PPO referrals for investigation or other purposes. Such investigation could alert the person who is the subject of an STR and prevent the continuation of the analysis and investigation of the case. (For more information, please refer to criterion 26.7.)

258. The information is usually collected within two to three weeks. It enables the KFIU to conduct preliminary analysis. The report sent to the PPO contains usually a description about the accounts of the suspected persons and details about the other information collected from the KFIU members. The table below details the administrative, law enforcement and financial information the KFIU members have access to.

**Table 12 - KFIU access to information**

| MEMBER                | SOURCE/TYPE OF INFORMATION  |
|-----------------------|---|
| <b>CBK</b>            | <b>KFIU local database (Excel Sheets):</b> Information about previous STRs, PPO's requests and related information.<br><b>FCT-LCT supervisory sector database (Oracle):</b> Foreign Currency Transactions and Large Cash Transactions reported according to the AML Law for all transactions above 3000 KD. |
| <b>CDI at the MOI</b> | <b>Police Database:</b> National ID and photographs of subjects, residence and addresses, antecedents, vehicle registration holders, driver's licences and vehicles, serious-crime information and (current) investigations<br><b>Interpol database:</b> International alerts                               |
| <b>MOCI</b>           | <b>Commercial Register:</b> beneficial ownership of companies (this information is limited, please refer to Recommendation 33 for more details); Real Estate Register (Property and Owners)   |
| <b>GDC</b>            | <b>Local database:</b> Entry/ Exit from Kuwait; Declarations of Cash upon entry to the country for amounts exceeding 3000 KD; Customs files (import/export, trafficking, etc.)  |

259. Overall, the KFIU does not appear to have the appropriate level of technical resources to properly undertake in-depth analysis of the collected information. In addition, the financial resources allocated to this function are insufficient and do not reflect the importance that should be devoted to it. The reports reviewed include some red flags, opinions and conclusions, but lack in-depth tactical or operational analysis. The FIU staff is not conducting strategic analysis at this stage.

#### **Additional Information from Reporting Parties (c. 26.4):**

260. The KFIU is authorized to obtain additional information, on a case-by-case basis, in accordance with the referral memorandum issued by the PPO. In practice, the KFIU has requested additional information from reporting entities under the supervision of the CBK but has not done so with regard to FIs not under the CBK's supervision or DNFBPs. The practice is that the KFIU requests additional information about accounts from the banks only.

#### **Dissemination of Information (c. 26.5):**

261. Once the analysis of the information is completed, the Governor of the Central Bank, in his capacity as head of the KFIU, provides the PPO with a report that includes an opinion as to whether there are grounds to suspect ML. These reports are considered as replies to the initial request coming from the PPO. Therefore, the KFIU do not have the power to disseminate (or file the report) but is obliged to reply to all the requests of analysis coming from the PPO. The PPO may: (i) proceed with a prosecution; (ii) close the file for lack of evidence; or (iii) conduct further investigation with the assistance of the CID.

262. Further, the KFIU has an extremely limited ability to share information spontaneously with its foreign counterparts. Because it lacks independent powers, it can only act under instruction from the PPO. Any request for information received from a foreign FIU must be channeled through the PPO and can only be satisfied if approved by the PPO.

### **Operational Independence (c. 26.6):**

263. The KFIU governance model is quite complex, and relies on the involvement of official from several institutions. There are a number of elements that affect the operational independence of the KFIU:

- Legal basis for the establishment of the KFIU: The AML Law designates the PPO as the authority responsible of receiving STRs. The PPO receives the STRs and “delegates” the tasks of analyzing them to the KFIU while retaining overall “dissemination” discretion. The MOU between the PPO and the Governor of the CBK acting as the head of the KFIU is intended to organize the division of tasks between the two institutions. However, in practice, the KFIU does not receive the STRs and its powers to analyze them are derived solely from the powers extended to it by the PPO via a “report-by-report” memorandum. Also, the KFIU can only exchange information domestically and internationally based on the PPO’s instructions. Therefore, none of these two authorities constitutes a national center for receiving, analyzing, and disseminating STRs and other information regarding potential ML or TF.
- Budget and designation of the director of the FIU: The KFIU does not have an independent budget or a permanent staff. The director of the KFIU is appointed, suspended, and discharged by the Governor of the CBK and its staff is currently fungible, moving between the AML Unit of the CBK and the KFIU. It is currently embedded in the CBK and does not have operational independence and autonomy.
- The relationship with the MOI (particularly with the member of the KFIU from the CID): There is no legislative provision that prohibits the CID member from initiating investigations that could go beyond the KFIU analysis function and, thus, jeopardize the confidentiality of the information and tip off the individuals who are the subjects of the STR.

### **Protection of Information Held by KFIU (c. 26.7):**

264. The authorities believe that the information received by the KFIU staff is subject to the provisions on the protection of information provided in various laws such as Article 11 of the AML Law and the provisions on confidentiality in the civil service law. The KFIU staff from the MOI is an officer and, as such, is subject to Article 15<sup>78</sup> of Law No. 23 of 1968 (Police Law). Also, KFIU members are prohibited from disclosing information based on Article 11 of Law No. 35 of 2002.

265. However, the assessment team’s view is that there is some uncertainty surrounding the applicability of the provisions mentioned above and that these provisions are not sufficient to protect the information held by the KFIU. In practice, the STRs and related information held by the KFIU are entered into a database. There is no log history to record all the queries made by KFIU employees. Furthermore, the premises of the KFIU are not properly secured and can be accessed by the CBK staff.

<sup>78</sup> Article (15) of the law prohibits police officers from: (i) disclosing any information that is related to his work, even after his service in the police force is terminated; (ii) maintaining a copy of any paper related to any work that is personally assigned to him; (iii) writing in journals and publish by any means whether an opinion, a research, or an article, except with the permission from the Undersecretary upon reviewing the publication; (iv) purchasing, selling, leasing, or renting any funds for the police force even through public auction; (v) working or having an appearance that is contradictory to his military dignity; (vi) working in trade; and (vii) doing work for others for a wage with the exception of his relatives up to the fourth degree.

266. Finally, the PPO is receiving the STRs and has the power to initiate an investigation if the information contained in it constitutes solid grounds to suspect ML. The PPO can launch an investigation if there is a belief that no additional information is needed from the KFIU. This may lead the PPO to inform the suspected persons of the existence of the STR.

**Publication of Annual Reports (c. 26.8):**

267. The KFIU has not yet released any statistics, trend analysis, and/or typologies or annual reports concerning its activities.

**Membership of Egmont Group (c. 26.9):**

268. USA/FinCEN, Egypt and Bahrain FIUs are the co-sponsors of the KFIU to join the Egmont Group. The decision on this request has not yet been made for several reasons, including the lack of independence of the KFIU and the fact that its mandate only cover AML and do not extend to CFT. The KFIU, therefore, does not meet the Egmont definition of an FIU.

**Egmont Principles of Exchange of Information among FIUs (c. 26.10):**

269. The KFIU cannot share information with its foreign counterparts because it can only act under instruction from the PPO. Any request for information received from a foreign FIU must be channeled through the PPO, and can only be given if approved by the PPO. The KFIU did not consider putting in place the Egmont Group Statement of Purpose and its Principles for Information Exchange.

**Adequacy of Resources—KFIU (R. 30)**

270. The KFIU has no true organizational structure and no permanent staff. The total number of its part-time staff and members is 15. In addition to the head of the unit, the staff includes twelve employees of the CBK working part time on collecting and analyzing information. The members come from CBK, CID, GDC, and MOCI. They meet when necessary. The CBK bears all of the administrative costs of the unit. Overall, the KFIU does not appear to have the sufficient technical resources to properly undertake its functions.

271. The staff of the CBK working part-time at the KFIU is composed of civil servants who are subject to the employment standards set forth in the civil service law, including nondisclosure of information, as stipulated in Civil Service Law No. 15 of 1979. According to the authorities, all the KFIU incoming employees undergo background checks and a security clearance which includes criminal record checks and interviews to ensure that the appropriate security measures are in place to maintain the integrity of the KFIU operations.

272. Although some staff have received training and, in turn, has provided training for other concerned authorities and reporting entities, additional specialized and practical in-depth training on the functions of the KFIU namely the analysis would be beneficial.

**Statistics (R.32)**

273. Since its establishment, the PPO has received and asked the KFIU to analyze, 115 STRs. All have been analyzed and transmitted back to the PPO.



**Table 13 - Breakdown of the total amount of STRs and other relevant information submitted to the KFIU**

| Year               | 2005      | 2006      | 2007      | 2008      | 2009            | Total      |
|--------------------|-----------|-----------|-----------|-----------|-----------------|------------|
| FI                 | 9         | 9         | 24        | 19        | 30 <sup>1</sup> | 91         |
| DNFBP              | 1         | 2         | 0         | 1         | 1               | 5          |
| Other <sup>2</sup> | 3         | 5         | 2         | 4         | 5               | 19         |
| <b>Total</b>       | <b>13</b> | <b>16</b> | <b>26</b> | <b>24</b> | <b>36</b>       | <b>115</b> |

**Table Notes:**

1. The total 19 STRs in 2008 and 30 STRs in 2009 were filed by the same bank.
2. "Other" refers to government agencies or NPOs.

274. The KFIU, through the PPO, receives ML-related information from other sources that are considered STRs and recorded as such. The requests are retransmitted to the PPO by the head of the KFIU. The KFIU does not receive feedback from the PPO about the results of its investigations (*i.e.*, referral to the court, filing for lack of evidence. etc.). The KFIU does not review periodically the effectiveness of its system of reviewing STRs.

**Analysis of Effectiveness:**

275. As of the date of the on-site visit, the KFIU did not appear to be in a position to carry out its functions efficiently. Given the central role of the PPO in receiving the STRs directly from the FIs, and in granting the KFIU specific powers to review each STR, the KFIU is not efficient in its operation. The KFIU does not have the independence to receive, analyze, and disseminate information in a manner consistent with international standards. While it may request additional information from reporting parties, it may only do so after having been granted the specific power in each case by the PPO. The KFIU currently has no direct access to financial, administrative, or law enforcement information, although it may ask for such information on a case-by-case basis through its members. Likewise, it cannot disseminate information to domestic or international authorities without express consent, on a case-by-case basis, from the PPO. The PPO can only exchange information with competent judicial authorities or pursuant to a treaty. As foreign FIUs are not judicial authorities, there exists no scope for spontaneous exchanges of information.

276. To date, the KFIU has not issued any guidance to the industry to assist it in identifying suspicious transactions, or to establish procedures for the reporting of STRs. The CBK has provided information on typologies, but the KSE and MOCI have not.

277. As the KFIU's power to cooperate internationally is directly derived from the PPO's powers, the sharing of the STR intelligence is severely limited and will ultimately hamper any possible timely response to requests for information from foreign law enforcement or other FIUs.

278. Finally, the KFIU: (i) does not have sufficient operational independence and autonomy to perform its functions; (ii) is not securely protecting the information it holds; and (iii) does not release periodic reports that include statistics, typologies, trends, and information about its activities.

**2.5.2 Recommendations and Comments**

279. Adopt the draft AML/CFT legislation currently before the Parliament that creates an independent FIU in Kuwait that will receive, analyze, and disseminate information regarding potential ML or TF. More precisely, the authorities are recommended to:

- Address the legal basis that established the KFIU as a national center for receiving (and, as permitted, requesting), analyzing, and disseminating disclosures of STRs and other relevant information concerning suspected ML or TF activities.
- Ensure that the KFIU provides FIs and other reporting parties with guidance regarding the manner of reporting, including the procedures to be followed when reporting.
- Ensure that the KFIU (i) reinforce its access, on a timely basis to the financial, administrative and law enforcement information; (ii) request on regular basis additional information from reporting entities; (iii) enhance the quality of its STR operational and tactical analysis; and (iv) conduct strategic analysis.
- Protect the security of the information held by the KFIU and disseminate it in accordance with the law.
- Ensure that the KFIU publishes periodically annual reports, typologies and trends of ML/TF.
- Ensure that the KFIU periodically reviews the effectiveness of the system to combat ML and TF and improves its collection of statistics.
- Provide the KFIU with its own dedicated staff and supply it with the appropriate IT equipment and analytical databases to accomplish its mission. The staff should receive in-depth training on the core functions of the FIU.

### 2.5.3 Compliance with Recommendation 26

|      | Rating | Summary of factors relevant to s.2.5 underlying overall rating   |
|------|--------|--|
| R.26 | NC     | <ul style="list-style-type: none"> <li>• Absence of a clear legal basis for establishing the KFIU and providing it with its powers and functions.</li> <li>• No clear guidance on filing STRs has been issued by the KFIU.</li> <li>• Insufficient tactical, operational and strategic analysis of STRs and other related information.</li> <li>• Absence of a legal basis to request additional information from FIs and DNFBPs.</li> <li>• The KFIU is not authorized to disseminate financial information to domestic agencies for investigation or when there are grounds to suspect ML or TF.</li> <li>• Inadequate operational independence and autonomy to ensure that the KFIU is free from undue influence or interference.</li> <li>• Inadequate protection of information and premises.</li> <li>• No publication of periodic reports.</li> </ul> |

## 2.6 Law Enforcement, Prosecution and other Competent Authorities—the Framework for the Investigation and Prosecution of Offenses, and for Confiscation and Freezing (R.27, & 28)

### 2.6.1 Description and Analysis

#### Legal Framework:

280. The responsibilities, rights, and duties of law enforcement and the PPO are predominantly set forth in the Kuwaiti Criminal Procedure Code (CPC). In addition, under Article 16 of the AML Law, the

PPO is the principal entity that has the responsibility for investigating and prosecuting ML cases. Criminal financial investigations are directed and authorized by the PPO and are carried out by a specialized division at the MOI, the Criminal Investigation Directorate (CID). The law enforcement agencies are accountable for their actions to one of the prosecutors in the PPO. If necessary, the PPO may authorize law enforcement agencies to apply coercive measures, including special investigative techniques. The PPO has discretionary powers to decide whether or not to prosecute an alleged crime.

#### **Designation of Authorities ML/TF Investigations (c. 27.1):**

281. The PPO has the responsibility for initially receiving the STRs and for directing the analysis and investigation of any potential money laundering. The PPO has very wide powers to investigate crimes and can obtain bank or other records by means of a simple letter of request. The PPO and the CID work closely on all criminal cases, although in most cases the PPO will determine the direction and scope of an investigation. There is a specialized unit within the PPO to investigate and prosecute financial crime, as well as within the CID. It is these units which have the responsibility for conducting ML investigations.

#### **Prosecutors:**

282. In MOJ Order 15 of 2002, the PPO has designated the Financial Crimes Department as the competent department within the PPO to investigate and prosecute ML cases. The Department is composed of 25 prosecutors, all of whom are trained in conducting financial investigations and prosecutions. Additionally, the Financial Crimes Department can call upon the General Prosecutions Department for assistance, if necessary. All requests regarding foreign assistance are handled by the Criminal Execution Affairs and the Foreign Communication Office within the PPO. Each department is provided with adequate technical resources (including IT equipment) to record and keep track of their cases.

283. The Financial Crime Unit at the CID is the designated law enforcement agency for ML investigations, while TF investigations are the sole responsibility of the State Security Department at the MOI.

#### **Criminal Investigation Directorate:**

284. The CID has approximately 1,400 officers and staff sergeants responsible for the investigation of criminal activity within Kuwait. CID is divided into 15 departments—Criminal, Research, Financial Crimes, Anti-Narcotics, Moral Crimes, Forgery, Juvenile, Interpol, and others. The Financial Crimes Department (FCD) is primarily responsible for investigating ML and is staffed at the headquarters level with 30 staff sergeants and approximately one investigator in each of the branch offices. Depending on the underlying predicate crime, the relevant other department will team up with the FCD to investigate the ML and predicate crimes.

285. The CID has a large database containing criminal records, case tracking information on passports, immigration and other public-type of information that can be accessed by the designated investigators. Additionally, CID participates in the Interpol N25 Network which gives investigators immediate access to information from Interpol, as well as the ability to email requests for assistance to foreign law enforcement.

#### **State Security Bureau (SSB):**

286. The SSB was created by a Ministerial decree in 2008 as a general department at the MOI. Its primary responsibility is to investigate crimes against the State. Although terrorism and its financing are not criminalized in the penal code, the SSB nevertheless investigates cases of “instigating, conspiring, or aiding and abetting” crimes against the State as defined in Law No. 31 of 1970. The SSB has a specialized division in charge of investigating these cases. Finally, a ministerial decision dated August 31, 2010

provides that starting January 1, 2011, ML investigations will be conducted by the SSB under the authority of the PPO.

**Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):**

287. While the authority to postpone or waive the arrest of suspected persons, or the seizure of the money or both, is not expressly found in a law or similar measures, law enforcement and prosecutorial authorities follow these measures in practice. Decisions to arrest or seize, or to do both, are issued based on Article 48 and Article 90–94 of the CPC and are subject to tactical considerations and could be postponed to enable further investigations or to avoid interfering with the prosecution of a crime. Immediate seizure is only required when the objects are forbidden and there is a danger for public health or when they are a threat to the public safety, considerations which will not apply to financial assets.

288. The PPO may decide at what point in time during a criminal financial investigation the issuance of a warrant of arrest is appropriate, or at what time it should request to have such an order repealed. In addition, the ability to postpone the arrest of suspects or the seizure of property can be exercised in the context of controlled deliveries or undercover operations.

**Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):**

289. These techniques are not regulated in the CPC or the AML Law. However, according to the authorities, these special investigative techniques such as undercover operations, controlled delivery, use of informants and wiretapping are permitted with approval of the PPO or the court. The authorities repeatedly confirmed that these techniques routinely used by CID in the investigation of some of the predicate offenses (in particular, drug trafficking and smuggling). In the absence of statistics, the assessment team was not able to ascertain whether such techniques were actually used to investigate the predicate offences. While such techniques have not been used to date in the investigation of ML or FT, they can be used in the future. However, provisions related to these techniques should be included under the Kuwaiti Law.

**Additional Element—Use of Special Investigative Techniques for ML/TF (c. 27.4):**

290. The CID and the SSB, which are the competent authorities in investigating and collecting information related to ML and TF offenses, respectively, reported that they make regular use of special investigative techniques. No statistics are kept on the use of these techniques for combating ML, TF, and the underlying predicate offenses.

**Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):**

291. To date, authorities have not considered putting in place specialized investigation groups in other countries for conducting multi-national cooperative financial investigations.

292. On the national level, the cooperation between the PPO, CID, and Customs takes place through the National Committee meetings. Likewise, the powers given to the FIU from the memorandum issued by the PPO, allow the KFIU to call upon the assistance of the CBK, CID, and Customs, thus ensuring cooperation and information sharing among law enforcement and other competent authorities.

**Additional Elements—Review of ML & TF Trends by Law Enforcement Authorities (c. 27.6):**

293. ML and TF methods, techniques, and trends are not reviewed by law enforcement authorities on a regular, interagency basis. No analysis or studies have been conducted or disseminated.

**Ability to Compel Production of and Searches for Documents and Information (c. 28.1):**

294. The PPO is entitled to request any document it deems necessary for the purpose of carrying out a criminal investigation. Refusal of, or noncompliance with, the PPO's request for information is not allowed under any circumstances.

295. Law enforcement authorities can obtain any document and information for use in their investigations, as soon as a criminal financial investigation has been authorized (Article 39 of the CPC) by the PPO. FIs' secrecy laws do not inhibit access to documents and information (see Section 3, Recommendation 4).

296. Pursuant to Article 40 of the CPC, an investigating officer in charge of the investigation is entitled to:

- To require all persons and authorities to **compel production of** records, identity documents, papers, items, or anything else related to the offense. It also authorizes the PPO to require the person in possession of such items to deliver them to him and to allow the investigator to review them. (Article 77 of the CPC);
- To **search persons or premises** and messages to uncover items that were used in the crime, resulted from it, or are related to it. (Articles 78-89 of the CPC);
- To **seize and obtain** transferred funds and all items related to the crime. (Articles 90 and 91 of the CPC).

297. In addition, Article 8 of the AML Law states that the PPO has the right to prohibit criminal persons from disbursing all or part of his money until a settlement is made in the criminal claim. When such an order is issued, the PPO appoints one of his deputies to manage the detained funds.

298. These powers are usually used by the PPO to investigate ML cases. The PPO may also issue a warrant to the CID for seizure of records or information. Further, the PPO may separately instruct the FIU to collect information for analysis and may instruct the CID to carry out further investigations after a report has been issued by the KFIU.

**Power to Take Witnesses' Statement (c. 28.2):**

299. The PPO has the power to summon witnesses, hear their testimony, and discuss with them all matters related to the alleged crime when this is beneficial for the investigation. This provision is applicable to all investigations and claims related to ML as well as to the underlying predicate offenses and all related procedures.<sup>79</sup>

**Adequacy of resources – LEA (R. 30)****PPO- Financial Crimes Department (FCD)**

300. The assessment team met with the FCD which seems to be adequately structured, funded, staffed, and provided with sufficient resources. The department has 30 specialized prosecutors on financial crimes (including ML) and 56 legal assistants.

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<sup>79</sup> Article 99 of the CPC.

## **CID and SSB at MOI**

301. The police authorities (CID and SSB) met by the assessment team did not mention particular difficulties in relation to staffing, funding, or resources.

### **Integrity of competent authorities (c.30.2)**

302. Regarding professional standards and integrity, PPOs and law enforcement agents are subject to a screening at the time of entry. They have to abide by their respective codes of conduct. Inspections can be conducted by the relevant ministry or by the police internal investigations department. These departments investigate cases of illegal activities by persons who threaten the integrity of public authorities.

### **Training for competent authorities (c.30.3)**

303. The level of training of some police officers and their ability to deal with complex cases was critically assessed by members of the judiciary the assessment team met with. They raised the issue that law enforcement agencies often bring forward cases without sufficient proof.

304. Members of the PPO, CID, and Customs have received ML training from outside sources, including the CBK and MOCI. Additional training has been provided by the U.S. and the U.K. authorities. Although not specially certified, the CID officers within the Financial Crimes section all have received specialized training in conducting financial investigations.

### **Additional element—Special training for judges (c.30.4)**

305. Training is provided to administrative, investigative, prosecutorial, and judicial authorities. Training is provided to the judicial authorities in the frame of the annual further training program organized by the Ministry of Justice. An extensive and in-depth training specifically on ML and TF offenses, the seizure, freezing, and confiscation of property is still lacking.

### **Statistics (R.32)**

306. All criminal case statistics are kept within a database in the IT Department of the Ministry of Justice. It is possible to query the database as to the type of case, the defendant, conviction, punishment, etc. The CID has a sophisticated case tracking system capable of tracking investigation information.

### **Analysis of Effectiveness**

307. While the AML Law allows an ML conviction based on the laundering of property generated by any criminal activity, and does not require a conviction for the predicate crime, there seems to be little appreciation that ML, in many instances, is conducted by the same perpetrator of the predicate crime. It appears that the CID concentrates its investigations solely on the predicate crime and does not follow the proceeds and examine potential ML activity.

308. Further, in discussions with the PPO and the Ministry of the Interior, it became clear that these agencies are under the belief that most ML cases will be developed through the investigation of STRs. In practice, most ML cases are developed through the vigorous investigation of the predicate crimes and by following the proceeds generated from those crimes; but even more importantly, ML crimes must be proactively investigated, using such techniques as undercover operations and the use of electronic surveillance. All the investigations conducted by the CID were initiated based on the request of the PPO upon receiving the STRs from FIs.

309. Although all law enforcement entities have received training in ML typologies, there is an overall lack of belief among the authorities that Kuwait is vulnerable to money laundering. Discussions revealed

that most law enforcement believed that because of the overall wealth of most Kuwaiti citizens, there was no need for them to launder money, much less exploit the vulnerabilities of the stock market or the gold market. This belief, coupled with the widely held mistaken understanding that ML only involves the use of cash, will negatively affect the LEA's ability to investigate investigation of ML and FT cases.

310. Finally, and even though the SSB is investigating TF cases relating to crimes against the State Law, the absence of the criminalization of TF as an autonomous or predicate offense adversely affects the effectiveness of their investigative/compulsory measures.

## 2.6.2 Recommendations and Comments

311. The authorities are recommended to:

- Take a more proactive approach to investigating and prosecuting ML and TF.
- Introduce an autonomous and predicate TF offense required to complete the AML/CFT regime.
- Ensure that law enforcement authorities keep comprehensive statistics on the amount of criminal proceeds seized and confiscated and on the number of ML/TF investigations, prosecutions, and judgments to measure the effectiveness and competence of the AML/CFT system.

## 2.6.3 Compliance with Recommendations 27 & 28

|      | Rating | Summary of factors relevant to s.2.6 underlying overall rating  |
|------|--------|---|
| R.27 | PC     | <ul style="list-style-type: none"> <li>• No autonomous or predicate TF offense as legal basis for investigative/compulsory measures.</li> <li>• Overall, investigation and prosecution authorities do not appear to adequately pursue ML cases.</li> <li>• Shortage of evidence as to the effectiveness of law enforcement authorities and the lack of statistics.</li> </ul> |
| R.28 | PC     | <ul style="list-style-type: none"> <li>• No autonomous or predicate TF offense as a legal basis for investigative/compulsory measures.</li> <li>• Shortage of evidence as to the effectiveness of law enforcement authorities and the lack of statistics.</li> </ul>  |

## 2.7 Cross-Border Declaration or Disclosure (SR.IX)

### 2.7.1 Description and Analysis

#### Legal Framework:

312. Kuwait introduced a cross-border cash control regime in Article 4 of the AML Law to align itself with the FATF standards. Article 4 of the AML Law, implemented by MOF Resolution 9 of 2003, requires any traveler coming into Kuwait through any port of entry to report all currency, national or foreign, gold bars or any other precious materials above the value of KD 3 000 (around USD 10 900) to Customs. This reporting requirement has been implemented starting in February 2007 pursuant to an instruction issued by the General Administration of Customs (GAC). Reporting forms have been created, printed, and distributed for use.

### **Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):**

313. There are two airports in Kuwait city (Sheikh Saad and the international airport), three ports (Shioukh, Saiba and Doha) and three land entry points (Nawasib and Salma with Saudi Arabia and Abdelli with Iraq).

314. Kuwait has opted for a declaration system which imposes an obligation on individuals importing cash and gold bars or any other precious materials above the value of KD 3 000 (around USD 10 900) to make a declaration to Customs.

315. The AML Law does not apply to the cross-border transportation of cash and bearer negotiable instruments leaving the country. The general provisions pertaining to the smuggling of goods apply to transportation by means of freight or cargo containers and mail. This is governed by the general declaration regime of the Customs Law whereby all “goods” (and their value) have to be declared through Customs. In practice, Customs officials consider that currency transported through cargo and mail shall be deemed to be “goods” for the purpose of the Customs Law. Therefore, these provisions are applicable in the cases of non-declaration of currency and bearer negotiable instruments entering the country. However, in case of non/false declaration or suspicion of ML or TF, the Customs Authority is using the same powers used for smuggling (*i.e.*, arresting passengers, seizing goods) are used for currency.

316. In the absence of a clear definition of “other precious materials,” the implementation of the declaration system for inbound cash and precious materials is not viewed as sufficient to include bearer negotiable instruments. The term bearer negotiable instruments should be clearly defined in the law or implementing regulations.

317. The Customs Authority prepared the Customs declaration form, which includes all the data on the traveler and is used to monitor all funds, securities, jewelry, and other precious materials at the time of physical entry into the country through any Customs port. These forms are disseminated at the airports, seaports, and land borders where travelers are required to use them when entering the country.

318. Signs are displayed at entry into the airport alerting incoming passengers to the requirements. Customs officers are required to provide the forms for completion by passengers. The latter should make a declaration that they exceed the normal cash and precious materials limits and in circumstances where Customs officers detect undeclared currency movements that exceed the threshold.

### **Request Information on Origin and Use of Currency (c. IX.2):**

319. Pursuant to Article 122 of the Customs Law, officers have the power to require evidence in support of any information required regarding import or export of goods. This includes the authority to make further enquiries on the origin or use of the cash. However, these powers can only be used in case of suspicion of trafficking in goods.

320. Although these powers are limited to cases of trafficking, they are currently used upon discovery of a false declaration of currency or precious materials or a failure to declare them. Customs does not have the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use unless they are connected to the trafficking of goods.

### **Restraint of Currency (c. IX.3):**

321. Several articles in the Customs Law No. 10 of 2003 grant Customs officers the authority to investigate, arrest, and inspect in the case of trafficking of goods, in their capacity as judicial officers.



322. The power to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found, is limited to trafficking cases. Therefore, Customs officials can request that an order be issued from the PPO for arrest, inspection, banning from travel, retaining of funds, or any other necessary procedures.

**Retention of Information of Currency and Identification Data by Authorities when appropriate (including in Supra-National Approach) (c. IX.4):**

323. Article 115 of the Customs Law specifically charges Customs officers to keep a record of all information about the transportation of goods. However, there are no specific requirements to retain records about the amount of currency or bearer negotiable instruments declared or otherwise detected, or the identification data of the bearer for use by the appropriate authorities in instances when: (i) a declaration exceeds the prescribed threshold; or (ii) there is a false declaration; or (iii) there is a suspicion of ML or TF.

324. In practice, this information is retained for five years through the Customs automatic currency system. This is a secure system accessed only through passwords in accordance with the Customs Law (Article 175) that require them to keep the registers, receipts, data, and other customs documents for five years.

**Access to Information by FIU (c. IX.5):**

325. The information gathered through the declaration system is not directly available to the FIU. However, the FIU includes a representative of the Customs Authority, who provides all the required information in case of suspicion against individuals or various entities.

326. In case of transportation incidents, the information is sent to the PPO as a case of non declaration after arresting the amounts and the carrier.

**Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):**

327. According to the authorities, coordination for law enforcement purposes between the relevant authorities is a matter of common practice. This is particularly enhanced by the comparatively small size of the Kuwait law enforcement community. There is an established coordination practice between law enforcement and other interested authorities, such as Immigration at the MOI, the department competent of controlling the transportation of gold at the MOCI and the KFIU. Coordination with Immigration is facilitated in that the officers have close places of control at the entry/exit to the country. Coordination between the Customs and CID at the MOI is structured within the KFIU, comprising officers from both agencies with all AML/CFT issues arising from the declaration system.

**International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):**

328. Information is exchanged through international and regional conventions, to which Kuwait is a party, bilateral treaties, and the Regional Intelligence Liaison Office (RILO), which exchanges information with countries through several mechanisms.<sup>80</sup>

<sup>80</sup> The mechanisms include: indexing data gathered on a daily basis; defining information requirements; exchange of information on major seizures; monitoring security and commercial seizures; reporting on a daily, quarterly, and annual basis; investigation and analysis; reporting to and educating all levels of information management; reading and analyzing incoming reports and bulletins, and assessing risks; exchange of warnings and bulletins; developing sources of information; defining and anticipating smuggling trends; developing a plan to collect and analyze

**Sanctions for Making False Declarations/Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8)**

329. It is an offense sanctioned by a maximum of one year imprisonment and/or KD 1 000 fine (around USD 3 600) (Article 13 of the AML Law) for individuals who do not comply with the obligations of Article 4 of the AML Law relating to declaring currency in excess of a specified amount being brought into Kuwait.

**Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):**

330. In practice, the Customs officers are using their powers of seizing trafficked goods to seize the currency or precious goods and arrest the carrier(s) and prepare a report that is being forwarded to the PPO.

**Confiscation of Currency Related to ML/TF (applying c. 3.1-3.6 in R.3, c. IX.10):**

331. The PPO has the power to seize and confiscate currency or bearer negotiable instruments that is being brought into Kuwait and related to ML and TF. (For more information, refer to Recommendation 3).

**Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR.III, c. IX.11):**

332. The GAC is represented on both the National AML/CFT Committee and the CCT. As such, it receives the notifications relating to UNSCRs 1267 and 1373. In cases where persons on the lists are transporting currency or financial instruments across borders, the persons and funds will be detained and a report will be prepared of the incident and forwarded to the PPO.

**Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):**

333. Information is exchanged among countries through bilateral treaties and under an MOU with the World Customs Organization. The information exchange is made through RILO which is an office specialized in information exchange, and which distributes warning notices to countries that have international conventions and memoranda of understanding, according to the principle of reciprocity. When the Customs Authority detects any unusual transaction across borders or ports involving gold, precious metals, or gems, it notifies the corresponding agency in the country of origin.

334. The requirement of the AML Law was extended to specifically include gold and precious goods. Import of such precious goods receives special attention from the Customs authority which, as a matter of practice, reports any unusual or suspicious movements of gold and precious goods to the appropriate authority. The RILO could be used to report such cases to the country of origin; however, in the absence of statistics, it was not clear whether the authorities are using it for that purpose.

**Safeguards for Proper Use of Information (c. IX.13):**

335. According to the authorities, there is an automated system at the Intelligence Division within the Customs Authority that contains all the information of the declarations. Furthermore, the information is categorized as intelligence material and is disseminated to the KFIU, upon its request.

**Training, Data Collection, Enforcement and Targeting Programs (c. IX.14):**

336. According to the authorities, all Customs investigators and border staff have received training with respect to the requirement to identify and assess the movements of cash into Kuwait. Guidance and

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information; authentication of information, entering data on security and commercial seizures on the Customs Integrated Network (CIN) and making use of network databases and their various features.

instruction have been published in Customs instructions. Data relevant to the cross-border movement of cash is collated in the Intelligence Division within the Customs Authority.

**Additional Element—Implementation of SR.IX Best Practices (c. IX.16):**

337. The authorities have not given consideration to the implementation of the measures set out in FATF's International Best Practices.

**Additional Element—Computerization of Database Accessible to Competent Authorities (c. IX.17):**

338. The reports are maintained in a computerized database. It is only accessible by the Customs officers working at the intelligence unit within Customs and upon request from the KFIU.

**Statistics (R.32): Table 14 - Number and value of cash courier declarations**

| Year | No. of declarations | Value in K.D |
|------|---------------------|--------------|
| 2008 | 1458                | 88 043 000   |
| 2009 | 1308                | 98 023 000   |

**Adequacy of Resources—Customs (R.30)**

339. The Customs authority is responsible for law enforcement in the areas of persons and goods trafficking. It has approximately 1 000 Customs inspectors throughout Kuwait. Approximately 300–350 are stationed at the Kuwait International Airport, with approximately 25 roving inspectors examining passengers and cargo. Customs has recently created a 10-person Intelligence Division which has investigation powers. Of those 10 people, two are designated to investigate money laundering. Customs' powers to investigate crimes are limited to those crimes discovered within the Customs areas. They are dependent on the Ministry of Interior CID and the PPO to conduct any follow-up investigations. Customs employees who work at the FIU have the right and authority to access the Customs electronic database constantly, including in the absence of a request by the FIU. They are provided through a member and a representative of the Public Directorate for Customs in the Committee.

**Standards/integrity:**

340. According to the authorities, the Customs Authority has a well-developed officer recruitment process. All staff are of high integrity and appropriately skilled. Customs Authority's investigators are generally officers with extensive previous operational and investigative experience and, as a result, have received adequate training to be able to work in these areas.

341. Currently, Customs has x-ray machines for the examination of cargo and trucks at the northern border, but do not have sufficient x-ray equipment at the port to examine every container. Examinations are primarily performed on inbound shipments. There is no unified computer system country-wide.

**Analysis of Effectiveness:**

342. The implementation of SR.IX is based on mechanisms that are inconsistent and incomplete. The AML Law covers only the inbound reporting of large amounts of currency, gold, and other precious materials. The failure to also require the reporting of outbound movements severely limits the powers of the Customs authorities to stop and investigate the outbound movement of large amounts of gold or currency; only in cases where the Intelligence Department of Customs has developed proper evidence that such movement involves illegal proceeds will Customs be allowed to seize the property. Only a small percentage of outbound transportation of illegal proceeds is actually identified. Without the additional tool

of the cross-border reporting, efforts to stop such cross-border movement of illegal proceeds will be hampered.

343. Because smuggling activities are a widespread form of crime in the country, it is most probable that any investigation of such crimes will lead also to significant ML cases. Finally, the absence of the criminalization of TF as an autonomous or predicate offense will affect the effectiveness of the implementation of SR.IX.

### 2.7.2 Recommendations and Comments

344. The authorities are recommended to:

- Amend the AML Law to provide a clear legal basis for a declaration system when leaving the country and adopt a national strategic approach to detect the physical cross-border transportation of currency and bearer negotiable instruments. The system should apply to both incoming and outgoing transportation of currency and bearer negotiable instruments and should be extended to the shipment of currency and bearer negotiable instruments through cargo containers and the mail.
- Define clearly the term “bearer negotiable instruments” to include monetary instruments in bearer form such as: travelers cheques; negotiable instruments (including cheques, promissory notes, and money orders) that are either in bearer form, endorsed without restriction made out to a fictitious payee, or otherwise in such a form that title can pass upon delivery; and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee’s name omitted.
- Take legislative steps to align the cross-border cash and bearer negotiable instruments powers to Customs to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of ML or TF and the temporary restraint measures, and the adequate and uniform level of sanctions.
- Provide Customs with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found, where there is a suspicion of ML or TF; or where there is a false declaration.
- Enhance the exchange of information between the customs and the KFIU and create a database at the Customs to record all declared data related to currencies and bearer financial instruments.

### 2.7.3 Compliance with Special Recommendation IX

|       | Rating | Summary of factors relevant to S.2.7 underlying overall rating   |
|-------|--------|--|
| SR.IX | PC     | <ul style="list-style-type: none"> <li>• Absence of requirement of the declaration system for outbound cross-border transportation of cash and bearer negotiable instruments.</li> <li>• Absence of clear definition of bearer negotiable instruments.</li> <li>• Absence of implementation of the system for outbound transportation of currency and bearer negotiable instruments.</li> <li>• Lack of clear powers to request and obtain further information from the carrier with regard to the origin of the currency or the bearer negotiable instruments and their intended use.</li> <li>• No specific powers to be able to stop or restrain currency and bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found.</li> <li>• Lack of proportionate sanctions for false disclosure, failure to disclose, or cross-</li> </ul> |

|  | Rating | Summary of factors relevant to S.2.7 underlying overall rating   |
|--|--------|--|
|  |        | <p>border transportation for ML and TF purposes.</p> <ul style="list-style-type: none"><li data-bbox="443 293 1027 322">• Lack of requirement for the retention of records.</li><li data-bbox="443 338 1410 394">• The absence of criminalization of TF as autonomous or predicate offense will affect the effectiveness of the implementation of SR.IX.</li><li data-bbox="443 409 1410 465">• Insufficient statistics upon which to assess the effectiveness of the measures in place.</li></ul> |

### 3. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

#### Customer Due Diligence & Record Keeping

##### General

345. The legal framework for AML/CFT preventive measures, including customer due diligence (CDD) and record-keeping requirements consists of the AML Law and Resolution 9 of 2005 (Resolution 9/2005). Additional requirements and guidance can be found in instructions and resolutions issued by the CBK, the MOCI, and the KSE.

346. The AML Law specifies the FIs and individuals subject to the Law. Under Article 3 of the AML Law, the covered FIs are banks, investment companies, money exchange agencies, and corporations, including insurance companies. Article 3 also allows the MOF to determine additional FIs and individuals subject to the preventive measures outlined in Article 3.

347. Under Article 3 of the AML Law, the preventive measures regime is limited to: (i) the prohibition of opening, establishing or maintaining anonymous accounts (ii) the proper identification of the clients according to official documents issued by competent authorities, (iii) five year record-keeping of all documents related to business transactions, (iv) reporting of suspicious financial transactions, and (v) the adoption of internal AML training programs, and internal procedures to detect suspicious transactions. Article 5 states that the PPO shall determine the competent authority within the PPO to receive reports on cases where there is a suspicion of -money laundering.

348. Articles 6, 7, 11, 12 and 13 of the AML Law provide for a range of criminal penalties for the offense of money laundering, for failing to report a suspicious transaction, for the disclosure of information regarding one of the crimes stated in Article 2, and for damaging or concealing documents or instruments relevant to such crimes.

349. The AML Law was issued by a legislative body and imposes mandatory requirements with sanctions for non-compliance. The assessment team thus determined that the law serves as primary legislation.

350. Article 19 of the AML Law provides the Minister of Finance with the mandate and power to set out a resolution regarding the implementation procedures and regulation of such Law.

351. Pursuant to the powers granted under Article 19 of the AML Law, the Minister of Finance issued Ministerial Resolution 9/2005 on “Procedures and Rules Required for Implementing the Provisions of Law No. 35/2002”.

352. Resolution 9/2005 is an implementing regulation for the AML Law. As permitted by Article 3 of the AML Law, Article 2 of Resolution 9/2005 expands on the FIs set out in the same Law, and covers banks, investment companies, exchange companies, exchange organizations, insurance companies, agents and brokers, financial brokerage companies and institutions, that provide services of keeping and collecting third party funds and companies managing third parties funds. Article 2 of Resolution 9/2005 also expands the AML Law to non-FIs, including dealers in precious metals and stones, auditors, real estate agents, and lawyers.

353. Article 3 of Resolution 9/2005 provides for additional preventive measures to those set out in Article 3 of the AML Law. Article 3, part (b) of Resolution 9/2005 requires financial institutions to identify customers who wish to open an account or conduct a transaction over KD 3 000, and outlines the acceptable forms of identification, including a civil ID, passport, commercial license, etc. Article 3, part (c) of Resolution 9/2005 requires document retention of all financial and nonfinancial transactions for a period of five years; Article 3, parts (d) and (e), require the training of personnel in the field of AML, and the creation and enforcement of an internal auditing system for the detection of suspicious transactions.

354. Article 4 of Resolution 9/2005 states that financial institutions who fail to comply with the requirements stipulated in Article 3 (CDD, recordkeeping, training, internal control systems) are subject to the criminal penalties outlined in Article 11 of the AML Law. As Resolution 9/2005 is an implementing regulation for the AML Law, and imposes mandatory requirements with sanctions for noncompliance, assessors determined that it serves as secondary legislation, and falls within the definition of law or regulation.

355. Article 3 of the AML Law states that those FIs and individuals referred to under the same article, shall strictly abide by the ministerial instructions and resolutions issued by supervisory government authorities regarding the aforementioned articles and also any other ministerial instructions and resolutions related to ML operations. Neither the AML Law nor Resolution 9/2005 explicitly designates the competent authority or authorities responsible for ensuring the compliance of FIs with the requirements to combat ML and TF. The authorities interpret this provision as empowering the individual supervisory authorities with the responsibility of ensuring compliance by financial institutions with the requirements to combat ML and TF. However, assessors believe that this requirement still does not appear to be clear and deserves further clarification.

356. Despite the lack of direct designation for AML/CFT supervision, the CBK, the KSE, and the MOCI have exercised their respective statutory powers and have assumed responsibility with regard to AML supervisory matters.

357. The CBK, the KSE, and the MOCI, have issued instructions that, in some cases, require FIs to comply with more specific CDD requirements. The precise extent to which these regulatory instruments further elaborate the preventive regime is dependent upon which supervisory authority has issued the instructions.

358. Law No. 32 of 1968 entitled “Currency, the CBK and the Organization of Banking Business” (the CBK Law) establishes the CBK as the regulatory authority for all banks operating in Kuwait. The Ministerial Resolution issued on January 8, 1987 for investment companies and the Ministerial Resolution issued on March 19, 1984 for exchange companies each independently places investment companies and exchange companies under the supervision of the CBK. Article 71 of the CBK Law establishes the authority of the CBK to issue instructions to banks, investment companies, and exchange companies for the purpose of furthering the CBK’s credit or monetary policy or to ensure the sound progress of banking business. This provision is interpreted by the CBK as a general power to issue instructions in AML/CFT field, though this is not explicitly provided.

359. Pursuant to Law 32/1968, Article 71, the CBK has issued three instructions regarding AML/CFT compliance: (i) Instruction No. (2/BS/92/2002) was issued to banks; (ii) Instruction No. (2/IS-IIS/180/2005) was issued to investment companies; and (iii) Instruction No. (2/RS/95/2003) was issued to exchange companies. All these instructions use a mandatory language and are enforceable.

360. As the instructions are not laws, decrees, or implementing regulations, assessors determined that these instructions are not primary or secondary legislation. However, Article 85 of the CBK Law provides the CBK with the power to sanction a bank, an investment company or an exchange company in the event that these financial institutions violate the provisions of the law or the decisions and instructions issued by

the CBK. Law 32/1968 provides the CBK with a wide range of sanctions, which concern legal and natural persons. The CBK supervises banks, investment companies and exchange companies to ensure that these FIs comply with the AML/CFT obligations and under the powers granted by Article 85 of the CBK Law, has applied sanctions to the FIs under its supervision (warnings, financial penalties, suspensions and withdrawal of the license), for failure to comply with the AML/CFT requirements set forth in the AML Law, Resolution 9/2005, and the CBK instructions.

361. To conclude, taking into account all these elements, the assessors determined that the instructions issued by the CBK for banks, investment companies and exchange companies do constitute other enforceable means (OEM), as defined by the FATF.

362. Article 3 of the Emiri Decree of 1983 organizing the KSE (Emiri Decree of 1983) gives the KSE the responsibility of regulating and protecting transactions on the financial market; Article 6 makes the KSE Market Committee responsible for setting the general rules and policies of the KSE within the goals of the KSE<sup>81</sup>. Pursuant to the authority of Article 6 of the Emiri Decree of 1983, the KSE issued Ministerial Resolution 35/1983 (KSE By-Laws), Promulgating the KSE By-law. Article 21, paragraph (f) of Resolution 35/1983 states that brokerage companies shall satisfy the requirements of any further conditions laid down by the Stock Exchange Market Committee. Article 25 of Resolution 25/1983 requires that all brokers, operating as brokerage firms abide by the provisions of the Emiri Decree of 1983 regulating the activities of the KSE, and its by-laws, as well as all resolutions and instructions issued by the KSE.

363. Pursuant to Article 25 of the KSE bylaws, the Director of the KSE issued Resolution 31 of 2003<sup>81</sup> "Anti-Money Laundering and Combating the Financing of Terrorism" (Resolution 31/2003). The AML/CFT obligations set forth under Resolution 31/2003 apply to brokerage companies and portfolio management companies. As Resolution 31/2003 is not a law, decree, or implementing regulation, assessors determined that it is not primary or secondary legislation. However, Article 14 of the Emiri Decree of 1983 and Article 60 of the KSE By-Laws give the Disciplinary Board of the KSE the power to decide cases relating to stock brokers and the companies whose securities are listed in the market regarding any violation to the provisions of such Decree, or the rules and decisions organizing the KSE. This includes the issuance of administrative penalties related to market conduct, ranging from notification to compulsory advance deposit of the underlying stocks or money for the trader.

364. While Resolution 31/2003 sets out requirements, the KSE is limited in its authority to enforce compliance with AML/CFT requirements; sanctions for non-compliance are limited to administrative penalties that are market conduct related, and are therefore not effective, proportionate or dissuasive. In addition, the KSE does not supervise in practice brokerage companies to ensure that these FIs comply with the AML/CFT requirements and has never applied a sanction. Therefore, the assessors determined that Resolution 31/2003 is not OEM.

365. Article 1, Law No. 32/1969, states no commercial entity may open an installation or office to do business or practice any profession without a license from the MOCI. This requirement applies to all FIs operating in Kuwait. Article 2 of the Emiri Decree of 12 August 1986, states that the MOCI shall be responsible for supervising commercial companies, commercial registration and public shops in accordance with the provisions of the laws and by-laws. Assessors were not provided with the legal definition of "commercial companies." Assessors could not determine from the information provided the extent of the supervision that was granted to the MOCI under the Emiri Decree. Therefore, assessors determined that the documentation provided did not grant the MOCI with explicit authority to supervise and regulate insurance companies and exchange organizations.

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<sup>81</sup> The Market Committee of the KSE is established in Article 5 of the Emiri Decree of 1983.



366. The Minister of Commerce issued AML/CFT Resolution No. 252 of 2002. According to Article 1, Resolution 252/2002 applies to the following FIs: investment companies, insurance companies, brokers and agents, exchange companies and organizations, and other FIs not under the CBK's supervision. While investment companies and exchange companies are named, they are under the supervision of the CBK and are required to comply with the more stringent requirements of the Instructions to Investment Companies and Instructions to Exchange Companies issued by the CBK.

367. Kuwaiti authorities report that with regard to the institutions covered by Resolution 252/2002, other than insurance companies and exchange organizations, the only FIs not under the CBK's supervision are brokers and brokerage companies, which are under the supervision of the KSE.

368. As Resolution 252/2002 is not a law, decree, or implementing regulation, assessors determined that it is not primary or secondary legislation. In addition, the assessors are unaware of documents vesting the MOCI with explicit authority to supervise and regulate insurance companies, and exchange organizations, leaving a gap in the legal authority for the MOCI to supervise and regulate these financial entities. Due to this gap in the legal authority, the MOCI lacks the explicit authority to set out enforceable requirements or to apply sanctions for non-compliance. Therefore, assessors determined that Resolution 252/2002 does not qualify as OEM.

### 3.1 Risk of Money Laundering or Terrorist Financing

369. Kuwait has decided to apply a uniform set of AML/CFT measures to the financial system. Although the AML Law and its implementing resolution impose obligations on FIs with respect to combating money laundering, the authorities have not yet conducted a systemic review or assessment of potential ML and TF risks affecting FIs that could serve as the basis for applying enhanced and/or reduced measures in the financial system.

370. The CBK, MOCI, and KSE instructions and resolutions have not been structured to recognize the possibility of a risk-based approach to the implementation of the preventive measures.

371. Thus, the existing AML legal and supervisory framework has been developed without having given consideration to ML/TF risk levels.

### 3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

#### 3.2.1 Description and Analysis

##### **Legal Framework:**

372. The legal framework for AML/CFT preventive measures, including CDD requirements, consists of the AML Law, Ministerial Resolution 9/2005 issued by the MOF, and the resolutions and instructions issued by the supervisory authorities as follows: CBK Instruction for banks (2/BS/92/2002), CBK Instruction for exchange companies (2/RS/95/2003), CBK Instruction for investment companies (2/IS-IIS/180/2005), CBK Instruction for PEPs (2/R B, R B A/R I, R I A/242/2009), KSE Resolution 31/2003, and MOCI Resolution 252/2002.

##### **Prohibition of Anonymous Accounts (c. 5.1):**

373. The AML Law explicitly prohibits FIs from opening anonymous accounts or accounts in fictitious names. Pursuant to Article 3, banks, investment companies, money exchange agencies and corporations, insurance companies and other FIs, and individuals determined by the Minister of Finance should not keep any unidentified account or accounts in false or symbolic names or open such accounts.

374. In the same way, Ministerial Resolution 9/2005 under Article 3 states that “the entities set forth in Article 2 shall not maintain or open accounts or conduct transactions of any type, or lease safes keep bonds, securities or commercial paper, notes, jewels or valuable metals or any other valuable item, under anonymous, false or code names”.

375. The authorities, as well as the private sector, stated that no anonymous accounts or account in fictitious or code names exist in Kuwait and that the prohibition to keep anonymous accounts and accounts in fictitious or code names also includes the prohibition to maintain numbered accounts. The authorities indicated that the customer identification requirements to be met by FIs at the time of the account opening do not allow numbered accounts as in all cases the titleholder of an account must be either an identified natural or legal person.

**When is CDD required (c. 5.2):**

376. Article 3 of the AML Law states that banks, investment companies, money exchange agencies and corporations, insurance companies, and other FIs and individuals determined by the Minister of Finance shall abide by the proper identification of their clients according to official documents issued by the competent authorities.

377. Neither the AML Law nor Ministerial Resolution 9/2005 provides a definition of the term “client.” The instructions and resolution issued by the supervisors are also silent in this regard. The legal framework does not mention whether the term “client” includes permanent and occasional customers and natural, legal persons and arrangements. The extent to which the concept is applied depends on the specific information and documentation required by Ministerial Resolution No. 9/2005 and the instructions and resolutions issued by the competent authorities for each of the individuals.

378. The AML Law is silent as to when FIs are expected to implement the CDD measures.. The obligation to identify and verify the client’s identity when establishing business relationships is addressed by Ministerial Resolution 9/2005, which is considered as secondary legislation for the purpose of this assessment.

379. In this regard, Ministerial Resolution 9/2005 requires FIs to identify and verify the identity of their clients before establishing business relationships. Article 3 states that FIs and non-FIs set forth under Article 2 “must not open any account or process any transaction worth more than KD 3 000 or the equivalent thereof in foreign exchange without first verifying the identity and capacity of the client and the beneficial owner.”

380. Article 3 of Ministerial Resolution 9/2005 provides a broad requirement and does not indicate the extent to which the requirement applies to regular and occasional customers.

381. Financial institutions are required to undertake customer due diligence measures for both regular and occasional customers. However, the threshold provided by Ministerial Resolution 9/2005 raises some concerns. In this regard, although the AML Law provides for the identification of the customer irrespective of any applicable threshold, the threshold does exist in its implementing resolution and without any further clarification would apply similarly to both regular and occasional customers.

382. The actual wording of the requirement under Article 3 of Ministerial Resolution 9/2005 may suggest that when processing transactions under KD 3 000, financial institutions are not required to verify the identity of the customer and the actual beneficiary. As such, the requirement only requires FIs to verify the identity and capacity of the client and beneficiary for those transactions above KD 3 000, which limits the application of CDD measures.

383. While the standard allows the application of a threshold for undertaking CDD with occasional customers, it requires financial institutions to conduct CDD for regular clients irrespective of any applicable threshold.

384. This is especially relevant for exchange companies, as these financial institutions do not open or hold accounts, but are supposed to register customers for repeated transactions.

385. The authorities acknowledge that the threshold set forth under Article 3 of Ministerial Resolution 9/2005 may raise a certain level of confusion. However, they pointed out that the AML Law does not provide any threshold and that, in practice, FIs identify and verify the identity of all regular customers irrespective of any applicable threshold.

386. Meetings with officials from financial institutions visited during the assessment confirmed that FIs undertake the CDD measures for regular customers, irrespective of any applicable threshold. However, the authorities should review Article 3 of Ministerial Resolution 9/2005 in order to clarify and ensure that no threshold is applied for undertaking CDD measures regarding regular customers.

387. It is worth mentioning that banks, exchange companies, investment companies, exchange organizations and insurance companies stated that they directly undertake the CDD measures. In the securities industry, the situation differs. Brokerage companies, although being subject to the AML provisions, do not perform any CDD measures. All customers of brokerage companies wishing to trade on the KSE must open an account with the Kuwait Clearing Company, which can later be used at any brokerage company registered in the KSE with the aim to trade in the secondary market. The KCC is the financial institution that undertakes CDD measures. Brokerage companies do not keep the identification data and rely on the CDD performed by the KCC without undertaking any further measure in this regard.

388. Lastly, there are no requirements in primary or secondary legislation addressing CDD measures when (i) carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR.VII (ii) there is a suspicion of ML or TF; or (iii) the FI has doubts about the veracity or adequacy of previously obtained customer identification data.

389. The instruction issued by the CBK for banks (Instruction 2/BS/92/2002) and for exchange companies (2/RS/95/2003) set forth requirements for occasional transactions that are wire transfers, but for the purpose of this assessment they are considered other enforceable means and fall short of complying with the requirement of this criterion.

390. The current obligations imposed by primary and secondary legislation present major shortcomings with a large majority of the requirements of this criterion.

391. Kuwait should review article 3 of Ministerial Resolution 9/2005 in order to clarify that the threshold applies only to occasional customers and clarify as appropriate the other cases where CDD measures should be required.

#### **Identification measures and verification sources (c. 5.3):**

392. Article 3 of the AML Law provides for the proper identification by FIs of their clients according to official documents issued by competent authorities, but is silent with respect to the identification data that must be obtained by the financial institutions. These requirements are mainly addressed by Ministerial Resolution 9/2005 and the instructions and regulations issued by the supervisory authorities.

393. Article 3 of Ministerial Resolution 9/2005 sets forth the standard customer identification data and provides the requirements as to the basis for identification and verification of the different types of customers. On this matter, Article 3 states that the client's identity shall be determined and verified on the

basis of following documents: in the case of natural persons, financial institutions are required to obtain: (i) the Civil ID for citizens and residents and other nationals, provided the card is valid; and (ii) the passport or travel document for persons not living in the state.

394. It is worth mentioning that the Civil ID is an official document issued by the Public Authority for Civil Information (Law 32/1982) and is regarded as a fundamental and reliable means of establishing true identity in Kuwait. The authorities indicated that the Civil ID contains the following information: holder's name, picture, address, telephone number, date of birth, and where applicable, the employer's name, and place of work, among other relevant information.

395. In the case of legal persons, specifically with regard to companies and institutions, the source document that FIs should use to identify and verify the customer's identity is the license issued by the Ministry of Commerce and Industry.

396. The commercial license issued by the MOCI provides for the following information: name of company or institution, address, file number, expiration date, date of issuance, and license number. It also provides for a reference to its Articles of Association and incorporates a certification by the Notary Public by the Ministry of Commerce. The authorities as well as FIs stated that this license supports the legal status of the company to conduct business in the jurisdiction.

397. As for other types of legal persons, Paragraph 5 of Article 3 of Ministerial Resolution 9/2005 requires financial institutions to obtain "official documents". As for legal persons established outside Kuwait, Article 3 requires financial institutions to obtain the "documents issued or approved by the competent authorities in the state to which non-resident companies, institutions and establishments are associated."

398. As stated, the requirement for the identification of legal persons that are not companies or institutions (for example: foundations, anstalt, partnerships, associations) still does not appear to be sufficient and would deserve further explanation. It should be clarified what official documents need to be obtained by financial institutions in order to identify and verify the identity of such legal persons.

399. Overall, the current measures for identifying legal persons are limited and do not provide for the identification of the customer using reliable, independent source documents, data, or information. The requirements for the identification of certain legal persons such as "foundations, anstalt, and associations" under Ministerial Resolution 9/2005 are limited. Despite the obligation to require "the official documents," there is no further requirement in order to verify the identity of such legal persons. At a minimum, the supporting documentation should provide for the legal status of the legal persons, its articles of incorporation, registration number, directors, etc.

400. In addition to the obligations established by the AML Law and Article 3 of Ministerial Resolution 9/2005, CBK Instruction for banks, (2/BS/92/2002) under Article 2, CBK Instruction for exchange companies (2/ES/95/2003) under Article 2, and CBK Instruction for investment companies (2/IS-IIS/180/2005) under Article 4, require FIs to "have written policies approved by their boards of directors, or management in the case of exchange companies, with regard to "Know Your Client" which should contain the minimum identification data that should be obtained from the client before establishing a business relationship", as follows: verifying client ID, client's profession or business, source of income, purpose for opening the account, and other information. The identification data under the CBK Instructions is similar to the one provided for under Article 3 of Ministerial Resolution 9/2005.

401. Additionally, with regard to occasional clients who have no account or permanent relation with the bank, Article 4 of Instruction for banks (2/BS/92/2002) states that banks, before executing these transactions and services, shall obtain the personal ID documents, and may not execute any transaction if a copy of the client's personal ID document is not supplied.

402. The MOCI and the KSE also under their respective Resolutions provide for the required CDD measures (identification data), but for the purpose of this assessment, the CBK Instructions and the Resolutions issued by the MOCI and the KSE are not considered primary or secondary legislation.

**Identification of Legal Persons or Other Arrangements (c. 5.4):**

403. Article 3, paragraph 4 of Resolution 9/2005 requires FIs to identify and verify the identity and capacity of the client and the actual beneficiary. In this regard, Article 4 requires FIs to obtain “the necessary documents, papers, instruments and judicial rulings establishing that a person has been appointed to represent the concerned company, institution or person.”

404. The requirement in place provides for the identification and verification of any person purporting to act on behalf of a company, institution, or person but falls short of providing for the identification and verification of the person purporting to act on behalf of other types of legal persons, such as foundations, anstalts, partnerships, or associations.

405. There are requirements imposed by the CBK on banks (2/BS/92/2002) and investment companies (2/IS-IIS/180/2005), (nothing for exchange companies), under Article 5, Paragraph 5.2 and Article 3, Paragraph 3.2, respectively, that state that if the client has opened an account on behalf of a third party, the required legal documents and those supporting the nature and scope of the legal representation shall be provided, as well as the name of the clients benefiting from the account. However, as these requirements are established by other enforceable means, they are not relevant for the purpose of assessing Kuwait’s compliance with this criterion.

406. With regard to the obligation to verify the legal status of the legal persons or legal arrangements as required by criterion 5.4. (b), Article 3, Paragraph 3, of Ministerial Resolution 9/2005 requires FIs to obtain a commercial license issued by the MOCI for companies and institutions which according to the authorities, includes the necessary information to verify the legal status of the legal person and serves as a source for verifying the client’s identity. As explained under criterion 5.3, the commercial license provides for the name of the company or institution, address, file number, expiration date, date of issuance, license number, Articles of Association and a certification by the Notary Public by the Ministry of Commerce.

407. As for all other legal entities (foundations, anstalt, partnerships, etc), the obligation for the FIs is to identify and verify the identity through “official documents and documents issued or approved by the competent authorities in the state to which non-resident companies, institutions and establishments are associated.” As previously mentioned under the analysis of criterion 5.3, the actual requirement does not appear to be clear and deserves further explanation. There are limited means for verifying the client’s identity. As stated, the requirement does not allow FIs to verify the legal status of such legal persons.

408. Article 3, Paragraphs 3.3 and 3.4 of Instruction for banks (2/BS/92/2002), Article 1, Paragraph 1.3 and 1.4 of Instruction for exchange companies (2/RS/95/2003), and Article 2 Paragraph 2.3 and 2.4 of Instruction for investment companies (2/IS-IIS/180/2005), state that these FIs while performing CDD must obtain a license issued by the MOCI for individual firms, in addition to the Civil ID of the firm’s owner, and a form authenticating the signature with respect to commercial companies on condition that the documents are valid.

409. In addition to this, Article 5, Paragraph 5.3 of Instruction for banks (2/BS/92/2002), and Article 3, Paragraph 3.3 of Instruction for investment companies (2/IS-IIS/180/2005) state that with regard to legal persons, FIs “should ascertain the existence of the firm/company together with the place of business and names of authorized directors and that persons acting on behalf of the company have legal authorization to do so”.

410. KSE Resolution 31/2003 requires a license issued by the MOCI, for Kuwaiti establishments and companies, along with their Articles of Incorporation and by-laws and the Articles of Incorporation and by-laws of non-Kuwaiti companies, or other document of incorporation, which must be authenticated by the competent authority.

411. MOCI Resolution 252/2002 does not explicitly require insurance companies and exchange organizations to verify the legal status of the legal person or legal arrangement.

412. The Kuwaiti legislation does not provide for the creation of trusts or other similar legal arrangements. At the time of the assessment, there was no information available that would indicate that the private sector holds funds under foreign trusts and/or provides other trust services.

**Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):**

413. The AML Law does not establish the requirement to identify and verify the identity of the beneficial owner. However, Article 3 Paragraph (b), of Ministerial Resolution 9/2005, which is considered secondary legislation, requires the identification and verification of the identity and capacity of the client and the beneficial owner.

414. Notwithstanding the requirement for FIs to “identify the beneficial owner,” neither the AML Law nor the Ministerial Resolution provide a clear definition of what constitutes beneficial ownership and there is no further guidance on how this should be addressed by FIs.

415. In this regard, the Law should establish the obligation to identify the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It should also require the identification of those persons who exercise ultimate effective control over a legal person or arrangement and the natural persons with a controlling interest or who comprise the mind and management of the company.

416. Neither the CBK, the MOCI nor the KSE have addressed this within their respective Instructions/Regulations. As a result, the private sector had to develop their own understanding of what is required under Article 3 of Ministerial Resolution 9/2005 and this has resulted in an inconsistent approach among the FIs with regard to the identification and verification of the beneficial owner.

417. As already mentioned under the analysis of criterion 5.4, Article 3, Paragraph 4 of Ministerial Resolution 9/2005 provides for the identification of the person that has been appointed to represent the concerned company, institution, or person. The article does not provide for the identification of the person acting on behalf of other legal persons. In the case of the CBK, Instruction (2/BS/92/2002) under Article 5, paragraph 5.2, and Instruction (2/IS-IIS/180/2005) under Article 3, Paragraph 3.2, provide for the identification of the person on whose behalf a transaction is being conducted as well as the name(s) of the client(s) benefiting from the account.

418. Article 5 Paragraph 5.1 of the Instructions for banks (2/BS/92/2002) and Article 3, Paragraph 3.1, of the Instruction for investment companies (2/IS-IIS/180/2005), require banks and investment companies to obtain an affidavit from the client when opening the account, stating that he is the beneficiary of the account opened in his name or stating any additional beneficiaries. In addition, Paragraphs 5.5 and 3.4 of Instruction (2/BS/92/2002) and (2/IS-ISS/180/2005) state that if there is any doubt that the client is not operating an account for himself but for a third party or body, and has not responded to the bank’s request to provide it with legal documentation showing the true beneficiary of the account, the bank or investment company shall close the account immediately. There are no requirements for exchange companies since these FIs are not allowed to hold deposits and cannot maintain an ongoing account relationship.

419. The requirements to identify and verify the actual beneficial owner applicable to FIs are broad and do not provide for the level of details contained under the standard. Although the formal requirement under Ministerial Resolution 9/2005 is to identify the beneficial owner, neither the AML Law nor Ministerial Resolution 9/2005 specify what are the reasonable measures to allow the FI to be satisfied that they know who the customer is.

420. As for the rest of the sectors, there are no requirements under MOCI Resolution 252/2002 or KSE Resolution 31/2003 providing further guidance, with respect to the need for the insurance companies, exchange organizations and brokerage companies, to identify the beneficial owner.

421. As such, there are no provisions in primary or secondary legislation establishing an obligation on FIs to determine for all customers (natural persons, all type of legal persons, and legal arrangements) whether the customer is acting on behalf of another person and take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

422. Likewise, for customers that are legal persons or legal arrangements, there are no provisions in primary or secondary legislation or other enforceable means establishing an obligation for FIs to take reasonable measures to understand the ownership and control structure of the customer and to determine the natural persons who ultimately own or control the customer.

423. The authorities stated that during their on-site inspections, they verify that FIs identify and verify the identity of the beneficial owner using relevant and reliable information. However, there was no evidence to support the legal basis of this practice.

424. The authorities consider that the current requirement applies to all legal persons, association, foundations, anstalts, partnerships, or similar bodies that can establish permanent customer relationships and that such information on beneficial ownership can be obtained by FIs by the deed of incorporation of companies. However, in practice, regarding legal persons, these documents do not contain information on the persons who own or control a legal person, and even less the ultimate beneficial owners.

#### **Information on Purpose and Nature of Business Relationship (c. 5.6):**

425. Article 2, Paragraph 2.1, of the CBK Instruction for banks (2/BS/92/2002) and Article 4, Paragraph 4.1. of the CBK Instruction for investment companies (2/IS-IIS/180/20005) require banks and investment companies to have a written policy approved by their boards of directors that include the minimum amount of information and data that shall be fulfilled before the establishment of a business relationship, which includes the following: verifying client ID, client's profession or business, source of income, purpose in opening the account, and other relevant information.

426. However, the requirements in place fall short of requiring banks and investment companies to obtain information regarding the intended nature of the business relationship.

427. CBK Instruction (2/ES/95/2003) does not require exchange companies to require and obtain information on the purpose and intended nature of the business relationship. According to the authorities, this is due to the fact that exchange companies are prohibited from opening or holding accounts for their clients and the fact that all of their relationships are transaction-based.

428. With regard to the securities industry, Article 2 of KSE Resolution 31/2003, states that any request to open an account and the forms attached to it must include the name of the account holder, his identity number or other proof of identity, his occupation and type of activity, the purpose of the business relationship, and other relevant information. However, the requirement in place falls short of requiring FIs to obtain information regarding the intended nature of the business relationship.

429. Further, MOCI Resolution 252/2002 does not require insurance companies or exchange organizations to obtain information on the purpose and intended nature of the business relationship.

**Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):**

430. There is no obligation under primary or secondary legislation or other enforceable means that requires FIs to conduct ongoing due diligence on the business relationships or provide for the scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

431. With regard to the obligation set forth under criterion 5.7.2, Article 2, Paragraph 2.2 of the CBK Instruction (2/BS/92/2002), and Article 4, Paragraph 4.2., of the CBK Instruction (2/IS-IIS/180/2005) require banks and investment companies to update the identification data in a regular and suitable manner. They also provide for the continued validity of the client ID and any significant changes to his business and accounts.

432. Notwithstanding the requirement under the CBK Instructions to update the customer data, there is no additional guidance as to what the adequate timeframe for updating customer data is.

433. Exchange companies are not allowed to hold deposits and cannot maintain ongoing account relationships; their relationships are all transaction-based. However, Paragraph 2.2. of the CBK Instruction for exchange companies (2/ES/95/2003) mirrors the requirement imposed by the CBK on banks and investment companies and requires exchange companies to ensure the validity of the client's ID and any changes that might occur in the activity of the client or the sources of its income.

434. Banks, exchange companies, and investment companies are required to ensure that documents, data or information collected under the CDD process is kept up-to-date, but there is no specific requirement for FIs to undertake regular reviews to ensure that their records are up-to-date. The requirement under the CBK Instructions is somewhat ambiguous in terms of whether it requires institutions proactively to update the information by regular reviews, or simply to keep records up-to-date with respect to any additional information that may be provided by customers from time to time.

435. Meetings with FIs revealed that there is an inconsistent approach with regard to the update of customers' identification data. While some FIs seem to be updating the information on an annual basis, others simply seem to be relying on the occurrence of a specific event in order to update it. Overall, there seems to be no regular reviews of the existing information. In addition, FIs are not knowledgeable of what constitutes high risk categories of customers or business relationships.

436. Neither MOCI Resolution 252/2002 nor KSE Resolution 31/2003 require the FIs under their supervision to ensure that documents, data, or information collected under the CDD process is kept up-to-date by undertaking reviews of existing records, particularly for higher-risk categories of customers or business relationships in accordance with criterion 5.7.2.

**Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):**

437. CBK Instructions for banks, exchange companies, and investment companies, as well as the Resolutions enacted by the MOCI for the insurance sector and the exchange organizations and by the KSE for the brokerage companies set a standard due diligence process to be applied in all cases. However, there are no specific obligations to apply enhanced procedures with respect to high-risk categories of customers, business relationships, or transactions.



438. Except for the requirements set forth under Instruction (2/R B, R B A/R I, R I A/242/2009) with regard to PEPs, which are covered under Recommendation 6, the CBK does not require banks, exchange companies, or investment companies to perform enhanced due diligence for higher-risk categories of customers.

**Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):**

439. The AML Law, the implementing Resolution 9/2005, and the Instructions/Resolutions in place do not provide for the application of simplified or reduced CDD measures. Financial institutions are required to apply the full range of CDD measures to all customers.

**Risk—Simplification/Reduction of CDD Measures relating to overseas residents (c. 5.10; Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high-risk scenarios exist (c. 5.11); Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12) :**

440. N/A

**Timing of Verification of Identity—General Rule (c. 5.13):**

441. The term *identification* as used in Ministerial Resolution 9/2005 includes *verification*, requiring the presentation, by the customer, of a formal document for the purpose of establishing identity.

442. Article 3 of Ministerial Resolution 9/2005, provides for the identification and verification of the client’s identity, his capacity and the beneficial owner before opening any account or processing any transaction of more than KD 3 000 or equivalent value in foreign exchange.

443. Article 3 of the CBK Instruction (2/BS/92/2002) states that “banks may only open an account, after copies of official documents determining the client ID have been provided”. The requirements in place also provide for the verification of the client ID, purpose of opening the account, and other information. Article 2 of the CBK Instruction for investment companies (2/IS-IIS/180/2005) mirrors the same requirement.

444. Exchange companies are not allowed to hold deposits and cannot maintain an ongoing account relationship. CBK Instruction (2/RS/95/2003) states that “when offering a service to customers, whether they purchase or sell currencies, traveler’s checks, precious metals or the execution of financial transfers in Kuwaiti dinars or any other foreign currency exceeding KD 300, or other services, all exchange companies and their branches must obtain a copy of a document mentioned below that proves the identity of the client”.

445. KSE Resolution 31/2003 for brokerage companies, portfolio management companies, and clearing companies also provides for the verification of the identity of the customer before the establishment of a business relationship but falls short from requiring the identification and verification of the beneficial owner. Further, this Resolution is not legally binding.

446. MOCI Resolution 252/2005 requires insurance companies, and exchange organizations to verify the identity of their clients when they engage in a business relationship, without clarifying whether this should be done “before” or “during” the course of establishing a business relationship.

447. During the on-site visit, the assessment team noted that in general, financial institutions have a common understanding that they are not allowed to perform any transaction or to establish any business relationship without prior verification of the identity of the customer. However, the authorities should review Article 3 of Ministerial Resolution 9/2005 in order to clarify that no threshold is applicable for

undertaking CDD regarding regular customers and make sure that all regular customers are identified and verified when establishing business relationships.

**Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):**

448. Ministerial Resolution 9/2005 provides for the proper identification and verification of the client's identity before opening an account or executing a transaction worth more than KD 3000 or the equivalent thereof in foreign exchange. The same requirement is stipulated by the Instructions and Resolutions enacted by the supervisory authorities. The regulations do not permit FIs to complete the verification of the identity of the customer and the beneficial owner following the establishment of the business relationship.

449. This criterion is considered "not applicable" in light of the obligation established by Ministerial Resolution 9/2005 for all FIs to identify and should verify the identity of the client when establishing business relations or conducting transactions for occasional customers.

**Failure to Complete CDD before commencing the Business Relationship (c. 5.15):**

450. The AML Law and Ministerial Resolution 9/2005 provide for the proper identification and verification of the client's identity before opening the account or executing a transaction worth more than KD 3000 or the equivalent in foreign exchange.

451. The CBK Instructions for banks, exchange companies, and investment companies, as well as the Resolution issued by the MOCI for insurance companies, and exchange organizations, and the KSE Resolution for the securities sector require FIs to refrain from opening an account, commencing business relations, or performing a transaction when those FIs are unable to comply with the CDD process.

452. The current framework sets out identification requirements in a way that prohibits opening an account, commencing business relationships, or performing transactions if the FI is unable to comply with Criteria 5.3 to 5.5.

453. However, there are no provisions in primary or secondary legislation, or in OEM requiring FIs to consider making a suspicious transaction report when they are unable to complete the CDD measures.

**Failure to Complete CDD after commencing the Business Relationship (c. 5.16):**

454. Pursuant to Article 3 of Ministerial Resolution 9/2005, FIs are required to identify and verify the customer's identity before establishing a business relationship and conducting transactions. They are not permitted to conduct business until the requirement is met.

455. The regulations are silent on what actions an institution should take in the event that the business relationship has already commenced and the financial institution can no longer be satisfied that it knows the genuine identity of the customer for whom it has already opened an account. There are no provisions in primary or secondary legislation or other enforceable means requiring FIs to terminate the business relationship and to consider making a suspicious transaction report.

456. Article 2, Paragraph 2.3, of the CBK Instruction for banks (2/BS/92/2002) states that measures are to be taken against any client who does not provide the bank with the identification data, whether at the start of the relationship or when updating data and information. Similar provision are contained in the Instruction (2/RS/95/2003) for exchange companies and the Instruction (2/IS-IIS/180/2005) for investment companies.

457. In addition, Article 5, Paragraph 5.5., of the CBK Instruction for banks and Article 3, Paragraph 3.4, of the CBK Instruction for investment companies state that, in case a client is not operating an account for himself but for a third party or body and has not responded to the banks' request to provide it with legal documentation showing the true beneficiary of the account, the bank shall close the account immediately, taking into consideration any liabilities or legal procedures the bank has to take. However, this requirement is limited to the case where the FI cannot verify for the true beneficiary of the account and does not specify what actions a financial institution should take in the event that it has doubts about the veracity or adequacy of previously obtained identification data.

**Existing Customers—CDD Requirements (c. 5.17):**

458. In accordance with Article 5, Paragraph 5.1 of CBK Instruction (2/BS/92/2002), banks shall verify the information set forth in Article 5 for all new accounts as well as existing accounts. Article 3 of CBK Instruction (2/IS-IIS/180/2005), mirrors this requirement.

459. The requirements under Article 5 provide for the identification of the client, an affidavit that he is the beneficiary of the account, situations where the client has opened an account on behalf of a third party, CDD for legal persons, among others, but do not require to apply CDD on the basis of materiality and risk and to conduct due diligence on such existing relationship at appropriate times.

460. The CBK indicated that, in Kuwait, banks and investment companies are required to apply CDD measures both to new and existing clients, and are not given any discretion to apply such measures based on "materiality and risk." The authorities indicated that banks and investment companies have already applied the CDD requirements to all existing customers. Further, authorities indicated, that during its on-site inspections, the CBK verifies that banks and investment companies have applied the CDD requirements to all existing customers.

461. The resolutions enacted by the MOCI and the KSE contain no reference to the application of the CDD principles to customers who opened accounts prior to the introduction of the AML legislation.

**Existing Anonymous-account Customers – CDD Requirements (c. 5.18):**

462. The AML Law prohibits anonymous accounts or accounts in fictitious names. The same prohibition is provided under Ministerial Resolution 9/2005 and the instructions and resolutions issued by the supervisory authorities.

463. The authorities, as well as the FIs visited during the on-site mission stated that there are no known existing customers in the system that could be considered anonymous or fictitious.

464. According to the authorities, there is no history of anonymous accounts in Kuwait due to the long-standing provisions that prohibit them.

**Analysis of Effectiveness**

*Recommendation 5*

465. The preventive measures under the AML Law are very general, especially with regard to the provisions relating to customer identification. These measures are complemented by Ministerial Resolution 9/2005 and by Instructions/Resolutions issued by the supervisory authorities. However, the measures in place lack the level of detail required under the standard. In addition, some requirements that should be in law or regulation are addressed in other enforceable means or other lower-level instruments (MOCI Resolution 252/2002 and KSE Resolution 31/2003).

466. The general provision of the AML Law and Ministerial Resolution No. 9/2005 apply to all FIs equally. However, the extent to which each supervisor has elaborated more specific preventive measures varies across sectors and is much less robust for those FIs that fall under the supervision of the MOCI and the MC/KSE. In addition, the securities sector, as well as the insurance companies, and exchange organizations have a lower level of awareness of the minimal requirements that exist within the legal framework.

467. Despite the common understanding among financial institutions of the need to identify and verify the identity of all regular customers, irrespective of any applicable threshold, it would be desirable to amend Article 3 of Ministerial Resolution 9/2005 in order to specifically clarify that the threshold currently in place only applies to occasional customers.

468. There are significant deficiencies that apply to all sectors, especially in connection to the legal framework requiring CDD measures. These include inadequate provisions related to: the timing for undertaking CDD measures; the identification and verification of some legal persons; the verification of persons purporting to act on behalf of certain type of legal persons and the required CDD measures; the identification and verification of the beneficial owner, the conduct of ongoing due diligence on the business relationship; the review of existing records collected under the CDD process, particularly for higher-risk categories of customers or business relationships; the performance of enhanced due diligence for higher-risk categories; and the requirement to apply CDD requirements to existing customers of exchange organizations, insurance companies and brokerage companies on the basis of materiality and risk. Moreover, not all FIs operating in Kuwait are required to obtain information on the purpose and intended nature of the business relationship.

469. The absence of a clear definition under primary or secondary legislation of what constitutes beneficial ownership creates inconsistency in the application of the CDD measures in this area. The lack of transparency over the real ownership and control of legal persons is a matter of serious concern as it poses considerable ML/TF risks. Authorities should ensure that FIs apply effective preventive measures and properly identify and verify all their customers.

470. There clearly needs to be a further clarification from the regulators as to what is expected in the whole area of beneficial ownership. The notion of the natural person (s) who ultimately owns or controls the customer and the natural person exercising ultimate ownership and control over a legal person, should be clearly defined to ensure a proper implementation by the reporting entities.

471. As for the identification and verification of customers that are legal persons especially companies and institutions, FIs normally ask for the license provided by the Ministry of Commerce and Industry but do not seem to be knowledgeable of the identification data that is required for other legal persons. Therefore, financial institutions would benefit from further guidance in this regard.

472. The level of compliance with CDD requirements varies among the different FIs operating in Kuwait. For the most part, the effectiveness of implementation of the existing requirements and obligations is low, reflecting very little knowledge or understanding of the obligations in place, especially by the exchange companies and exchange organizations and within the securities and insurance sector.

#### *Banks, exchange companies, and investment companies*

473. Banks and investment companies appear to have an acceptable level of appreciation of the different requirements imposed by the AML Law, its implementing resolution, and the instructions enacted in this regard by the Central Bank of Kuwait.

474. Discussions with banks and investment companies suggest that these institutions in practice obtain sufficient identification and documentation from their clients prior to establishing a business

relationship and verify their customer's identity in accordance with the requirements imposed by the CBK. Most of the FIs rely on official documents, such as the Civil ID, license by the Ministry of Commerce and Industry, and Articles of Incorporation for legal persons.

475. With regard to the identification of the beneficial owner, FIs indicated that they basically verify the license issued by the Ministry of Commerce and Industry and the Articles of Association; however, these documents do not provide for the ownership and control structure of the customer. In general FIs do not seem to be aware of the necessary measures that need to be taken in order to identify and verify the identity of the beneficial owner, which could be explained by the lack of guidance in this regard, not only in the AML Law, but also under Ministerial Resolution 9/2005 and the Instructions issued by the CBK.

476. While most FIs rely on the requirements imposed by the Central Bank, larger FIs, especially the foreign ones, appear to have stronger customer due diligence policies, and they monitor and perform enhanced due diligence for higher-risk categories of customers, businesses, and transactions. However, this is an internal practice, given that there are no requirements in place under the Kuwaiti legal framework.

477. There is a limited perception of the high-risk associated with certain categories of customers and business relationships, and, except for large FIs, enhanced due diligence is not applied. This could also be explained by the fact that the CBK Instructions do not require FIs to perform enhanced due diligence for higher risk categories of customers, business relationships and transactions.

478. As a consequence of the lack of requirement under the current legal framework to conduct ongoing due diligence on the business relationship, there is an inconsistent approach among FIs. While few banks and investment companies include the scrutiny of transactions undertaken throughout the course of the relationship to ensure that transactions are consistent with the customer's profile, most FIs simply rely on specialized monitoring software, sometimes developed internally, which do not necessarily include all KYC data to effectively ensure that the transactions being conducted by the customer are consistent with the FI's knowledge of the customer, their business and risk profile.

479. Similarly, due to the lack of guidance in this regard, FIs do not have an overall appreciation of the need to update customer data. While some banks and investment companies update their customer data once a year, others update the customer data less frequently. Overall, FIs do not undertake regular reviews of existing records. Therefore, to ensure consistency and effectiveness by financial institutions, the authorities should expressly require FIs to undertake reviews of existing records, provide additional guidance and clarify what the adequate timeframe for updating customer data is.

480. Overall, insurance companies, exchange organizations and brokerage companies do not update their customer data.

*Insurance companies, exchange organizations and brokerage companies*

481. Exchange organizations and the securities and insurance sector have a low level of understanding of the CDD requirements that apply to them.

482. The level of compliance among exchange organizations, insurance companies, and brokerage companies is inadequate. The CDD measures do not seem to be effectively implemented. This is mainly explained by the lack of AML/CFT supervision both by the MOCI and the KSE.

483. Brokerage companies are reporting entities under Ministerial Resolution 9/2005 and as such, they are independently responsible for identifying and verifying the identity of their customers. However, brokerage companies do not undertake CDD measures, do not conduct ongoing due diligence on the business relationships and do not perform any of the preventive measures.

484. The awareness of the AML/CFT requirements is very low and brokerage companies seem to rely on the fact that the necessary CDD should be performed by the Kuwait Clearing Company, which is, in fact, responsible for the account opening. Notwithstanding, under the FATF recommendations, FIs are also supposed to perform ongoing monitoring of the accounts to ensure that the transactions being conducted by the customer are consistent with the FIs knowledge of the customer, their business and risk profile. Meetings with the private sector suggest that they monitor the accounts mainly to comply with the requirements set forth under the sector-specific law, and that they do not include an AML component.

#### **Foreign Politically Exposed Persons (PEPs)—Risk Management (c. 6.1):**

485. The requirements for dealing with PEPs are covered under CBK Instruction (2/RB, R BA/RS, RSA/242/2009), CBK Instruction (2/BS/92/2002) for banks, CBK Instruction (2/IS-IIS/180/2005) for investment companies, which for the purpose of this assessment are considered as other enforceable means.

486. The requirements set forth under CBK Instruction (2/R B, R B A/RS, RSA/242/2009) are specifically related to PEPs and apply to banks and investment companies.

487. Therefore, there are no provisions, measures, or requirements in place for exchange companies, insurance companies and agents, exchange organizations, or brokerage companies that address any of the essential criteria (c.6.1 to c.6.4) with respect to PEPs (including having appropriate risk management systems to determine whether the customer is a politically exposed person, obtaining senior management approval for establishing business relationships with such customers, taking reasonable measures to establish the source of wealth and the source of funds, and conducting enhanced ongoing monitoring of the business relationship).

#### *Risk Management Systems*

488. Article 1 of the CBK Instruction for PEPs requires banks and investment companies to have in place a written policy approved by the Board of Directors for dealing with PEPs. In addition to this, it states that the policy shall include the definition and identification of PEPs.

489. However, the Instruction does not provide a definition of PEPs in line with the FATF glossary to assist FIs and allow them to determine who the political exposed persons are. As such the definition should include those individual who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and important political party officials, among others.

490. Article 2 requires banks and investment companies to have in place specific procedures to be followed upon dealing with the accounts/portfolios opened for PEPs. It also states that “*information databases shall be periodically updated and that these procedures shall be applied to current customers, if they become part of the politically exposed persons who are considered high risk persons*”. In addition, Article 2 requires FIs to conduct a periodical audit of the accounts and transactions of these individuals, to monitor their execution, as well as the availability of appropriate control to limit the risks related to these individuals.

491. Article 3 states that banks and investment companies are required to verify the identity of PEPs when processing any transaction for them, in accordance with the requirements imposed by the CBK.

492. Article 5 allows banks and investment companies to refer to lists of names and positions of PEPs through specialized information and databases. However, there is no further guidance in this respect. As such, the requirements in place fall short of requiring FIs to perform CDD measures and to put in place

appropriate risk management systems to determine whether the potential customer, the customer, or the beneficial owner is a PEP.

493. The CBK should provide FIs including banks, and investment companies with additional measures that need to be included in their written policies as well as specific procedures when dealing with PEPs.

#### **Foreign PEPs—Management approval (c. 6.2; 6.2.1):**

494. Article 1 of CBK Instruction (2/RB, RBA/RI, RIA/242/2009) requires banks and investment companies to obtain senior management approval for establishing business relationships with or conducting any transaction for a PEP.

495. In addition to this, Article 2 states that “databases shall be periodically updated and such procedures shall be applied to current customers, if they become a PEP, as soon as the bank/investment company becomes aware of the customer’s change in status”.

496. However, the requirements set forth under Article 1 and Article 2 of the CBK Instruction fall short of complying with criteria 6.2.1 as they do not require banks and investment companies to obtain senior management approval to continue the business relationship when the accepted customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP.

#### **Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):**

497. Article 2.1 of the CBK Instruction for banks, Article 2.1 of the CBK instruction for exchange companies, and Article 4.1 of CBK instruction for investment companies state that financial institutions should have a written policy approved by their board of directors with regard to the identification of customers. The requirement provides for a minimum set of information and data that needs to be provided before establishing a business relationship or executing a transaction.

498. Banks, exchange companies and investment companies are required to obtain information regarding the source of income. However, the requirement in place falls short of requiring banks, exchange companies and investment companies to establish the source of wealth.

499. In addition, the requirement in place falls short of requiring FIs to take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.

#### **Foreign PEPs—Ongoing Monitoring (c. 6.4):**

500. FIs are not required to conduct enhanced ongoing monitoring when they are in a business relationship with a PEP.

#### **Domestic PEPs—Requirements (Additional Element c. 6.5):**

501. The current requirements do not extend to PEPs who hold prominent public functions domestically.

#### **Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):**

502. Kuwait ratified the United Nations Convention against Corruption on February 16, 2007.

## Analysis of Effectiveness

503. Except for banks and investment companies, the rest of the reporting entities, exchange companies, insurance companies, exchange organizations, and brokerage companies, do not appear understand the need to identify PEPs. In addition, the underlying notion of PEPs is not universally understood by the FIs in Kuwait. Exchange companies, insurance companies, exchange organizations, and brokerage companies do not have in place any measures with respect to PEPs. The level of implementation across banks and investment companies also varies. While some institutions are aware of the need to have in place and implement enhanced customer due diligence measures, others simply perform normal customer due diligence measures without having in place appropriate risk management systems.

### Cross-Border Correspondent Accounts and Similar Relationships—Introduction

504. Only banks, investment companies, and exchange companies engage in cross-border correspondent relationships. The authorities have indicated that insurance companies, exchange organizations, and brokerage companies do not engage in similar cross-border relationships

505. CBK Instruction (2/BS/92/2002) for banks, CBK Instruction (2/ES/95/2003) for exchange companies, and CBK Instruction (2/IS-IIS/180/2005) for investment companies establish the requirements that FIs should comply with while engaging in cross border correspondent relationships.

#### Requirement to Obtain Information on Respondent Institution (c. 7.1):

506. Article 6, Paragraph 6.3 of CBK Instruction for banks, Article 5 Paragraph 5.3 of CBK Instruction for exchange companies, and Article 6, Paragraph 6.3 of CBK Instruction for investment companies state that these FIs, upon executing their transactions, whether for their own or their clients' interest, through correspondents in other countries shall make sure that sufficient information on the respondent institution is available.

507. However, the requirement in place falls short of the standard because it only provides for the need to gather "sufficient information" without clarifying that the information should allow the FI to understand the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a ML or TF investigation or regulatory action.

508. The authorities indicated that the requirement to gather "sufficient information" means that any information useful and publicly available about the correspondent has to be obtained, including the nature of the respondent's business, the reputation of the institution, the quality of supervision and whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

509. The assessors consider that the "need to gather sufficient information" does not address the requirement set forth under criteria 7.1. In addition, it is worth noting that meetings with the private sector revealed that overall FIs do not obtain information with regard to the quality of supervision of the respondent financial institution and were not able to indicate what type of information they normally gather with regard to the respondent institution.

510. In light of this, the assessors consider that the requirements currently in place should be supported with specific guidelines. There clearly needs to be further clarification from the regulators as to what is expected in this regard, in order to allow FIs to effectively implement the necessary measures so as to understand the nature of the respondent's business, its reputation, quality of supervision, etc.



**Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):**

511. Article 6, Paragraph 6.4 of CBK Instruction for banks, Article 5, Paragraph 5.4 of CBK Instruction for exchange companies, and Article 6, Paragraph 6.4 of CBK Instruction for investment companies require FIs to take reasonable measures to ascertain that the correspondent has proper systems for combating ML and TF.

512. The authorities claim that the requirement to “*take reasonable measures to ascertain that the correspondent has proper systems*” implies the obligation to ascertain that they are adequate and effective. The financial institutions also understand that the obligation under the CBK instructions is to ascertain that the respondent institution’s AML/CFT controls are adequate and effective.

**Approval of Establishing Correspondent Relationships (c. 7.3):**

513. Article 6, Paragraph 6.2 of CBK Instruction for banks, Article 5, Paragraph 5.2 of CBK Instruction for exchange companies, and Article 6, Paragraph 6.2 of CBK Instruction for investment companies require FIs to obtain the approval of the board of directors before establishing new correspondent relationships.

**Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):**

514. Article 6, Paragraph 6.2 of CBK Instruction for banks, Article 5, Paragraph 5.2 of CBK Instruction for exchange companies and Article 6, Paragraph 6.2 of CBK Instruction for investment companies state that the relations between banks, exchange companies, and investment companies and their correspondents shall be governed by approved contracts or agreements regulating the relationship between both parties. In addition to this, they state that “*agreements with correspondents shall be conditional on provision of corroborating documentation determining client identity before processing a transaction, and that this documentation shall be retained for perusal, as necessary*”.

515. The authorities have stated that the agreement has to regulate all aspects of the relationship and the obligations arising from this relationship for both the Kuwaiti and the respondent bank, including AML/CFT responsibilities. However, the assessors consider that the “*obligation to govern by approved contracts or agreements the relations between banks, exchange companies and investment companies with correspondents*” does not necessarily imply the obligation to document the respective AML/CFT responsibilities of each institution as currently required under criterion 7.4.

516. The assessors did not have access to a contract or agreement in order to validate that FIs effectively document the AML/CFT responsibilities of each institution.

**Payable-Through Accounts (c. 7.5):**

517. There are no provisions or prohibitions dealing with correspondent relationships involving the maintenance of “payable-through accounts.”

518. FIs indicated that they do not have correspondent accounts that are used by third parties to transact business on their own behalf, and that therefore, there are no payable-through accounts in effect.

519. Furthermore, the CBK stated that FIs are not allowed to offer any service or products without the prior approval of the CBK. They also stated that no regulation expressly permits the provision of payable-through accounts services and that before granting such approval, the CBK would require: i) that the financial institution satisfies itself that the respondent financial institution has performed all normal CDD obligations on those customers that have direct access to the accounts of the correspondent financial

institution and, ii) that the respondent FI is able to provide all relevant customer identification data upon request.

### **Analysis of Effectiveness**

520. The CBK stated that while conducting on-site inspections, the On-Site Department reviews and examines the cross border correspondent relationship which includes a review of the contracts and agreements. This requirement appears on a checklist for AML compliance under the “CBK Examiners Manual”.

521. Generally, there appears to be different levels of awareness among FIs of the risks associated with cross border correspondent relationships. While some FIs seem to be applying appropriate measures, others, although engaging in this type of relationships, could not indicate to the assessors what type of measures they put in place, in addition to performing normal due diligence. There is lack of satisfactory evidence that FIs are complying with the requirements set forth by the CBK.

### **Misuse of New Technology for ML/TF (c. 8.1):**

522. Article 8 of CBK Instruction for banks and Article 5 of CBK Instruction for investment companies state that “due diligence shall be exerted to identify the risks of using modern technologies to launder money and finance terrorism, particularly for concealing the identity of the person making the transaction and the sources of associated funds. Appropriate measures must be taken to prevent the use of these methods, when necessary”.

523. The Instruction for investment companies goes further, stating that “appropriate measures must be taken to prevent the use of these methods to conduct suspicious transactions”.

524. There are no requirements in place for exchange companies, insurance companies, exchange organizations, and brokerage companies to address the requirements set forth under criteria 8.1 with regard to new technologies.

### **Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):**

525. Article 8, Section 8.2 of CBK Instructions for banks states that “as regards transactions processed online or through the internet, the contents of these instructions and especially those related to provision of the client’s personal ID and basic information, shall be complied with.”

526. Article 5 of CBK Instruction for investment companies states that “in the case of telephone or online transactions or transactions conducted through the internet, the present Instructions must be complied with, especially with regard to supplying the verified, personal ID of clients and their basic details.”

527. The provisions in place fall short of complying with the standard as they do not require FIs to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions, both when establishing business relationships and when conducting ongoing due diligence.

528. There are no requirements in place for exchange companies, insurance companies, exchange organizations, or brokerage companies to address the requirements set forth under criteria 8.2 or 8.2.1 with regard to non-face-to-face transactions.

## Analysis of Effectiveness

529. There was no information pertaining to the effectiveness of the measures undertaken by banks and investment companies to prevent the misuse of technological developments in ML schemes, as well as to address risks associated with non-face-to-face transactions.

530. Although there is no obligation under law or regulation for persons to be present when establishing or opening an account, the general understanding among banks, exchange companies and investment companies is that all potential account-holders, must present themselves in person to fulfill the identification and verification procedures. However, FIs were not able to indicate what type of measures they have in place for dealing with non face-to-face transactions conducted after the account opening, (e.g. use of ATM machines, trading in securities, among others).

531. The CBK states that through its IT unit, it tests and ensures the adequacy of such systems. However, no satisfactory evidence was provided in this regard.

532. The lack of requirements with regard to exchange companies, insurance companies and exchange organizations, but particularly with respect to brokerage companies where many transactions are non-face-to-face, severely impacts the effectiveness under this recommendation.

533. Investors in securities can place their orders through a broker by telephone, or in person, but meetings with the private sector revealed that many orders are currently placed by telephone. There are no specific requirements in the AML Law, Ministerial Resolution 9/2005 or resolutions enacted by the KSE that address the risks posed in this area.

### 3.2.2 Recommendations and Comments

#### *Recommendation 5*

534. There are significant shortcomings in Kuwait's AML/CFT framework. This is due, in part, to the fact that a number of requirements that should be set out in primary or secondary legislation are addressed through OEMs or other lower-level texts. In most cases, the measures in place for customer identification are too general and lack the level of detail required under the standard. In addition, a number of CDD requirements are missing.

535. The authorities should review Article 3 of Ministerial Resolution 9/2005 in order to clarify and make sure that no threshold is applied to undertake CDD measures regarding regular customers.

536. Neither the AML Law nor Ministerial Resolution 9/2005 provide a definition of what constitutes beneficial ownership, creating a clear need for further clarification from regulators as to what is expected in the whole area of beneficial ownership.

537. In order to address the shortcomings in the financial sector, it is recommended that the authorities establish, through primary or secondary legislation, clear requirements for FIs to:

- Undertake customer due diligence (CDD) measures when:
  - Carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR.VII.
  - There is a suspicion of ML or TF, regardless of any exemptions or thresholds.

- The FI has doubts about the veracity or adequacy of previously obtained customer identification data.
- Identify and verify the identity of all types of legal persons, not just companies and institutions, using reliable, independent, data or information (identification data).
- Verify that any person purporting to act on behalf of a legal person (not only for companies and institutions) is so authorized, and identify and verify the identity of that person.
- Take reasonable measures to determine, for all customers, whether the customer is acting on behalf of another person; who are the natural persons who ultimately own or control the customer; and also those persons who exercise ultimate effective control over a legal person or arrangement.
- Conduct ongoing due diligence on the business relationship.

538. The authorities are recommended to establish, through law, regulation, or other enforceable means, clear obligations/requirements for FIs to:

- Understand the ownership and control structure of the customers.
- Verify the legal status of all legal persons.
- Obtain information on the purpose and intended nature of the business relationship with regard to insurance companies and exchange organizations.
- Obtain information on the intended nature of the business relationship with regard to banks, investment companies and brokerage companies.
- Include the scrutiny of transactions undertaken through the course of that relationship to ensure that the transactions being conducted are consistent with the institutions' knowledge of their customers, their business and risk profile, and where necessary, the source of funds.
- Undertake reviews of existing records collected under the CDD process, particularly for higher-risk categories of customers or business relationships.
- Ensure that documents, data, or information collected by insurance companies, exchange organizations, and brokerage companies under the CDD process are kept up-to-date and relevant.
- Perform enhanced due diligence for higher-risk categories of customers, business relationships and transactions.
- Consider making a suspicious transaction report when FIs are unable to comply with Criteria 5.3 to 5.6.
- Terminate the business relationship and make a suspicious transaction report after the business relationship has commenced, but the FI is no longer satisfied with the veracity or adequacy of previously obtained identification data.
- Require insurance companies, exchange organizations and brokerage companies to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

- Lastly, authorities should ensure that the AML/CFT measures are effectively implemented by FIs, by ensuring an appropriate monitoring of the compliance of FIs with Kuwait's AML/CFT measures and by imposing sanctions for failure to comply with these measures.

#### *Recommendation 6*

539. The authorities should fully extend the requirements of Recommendations 6 to exchange companies, insurance companies, exchange organizations, and brokerage companies.

540. The authorities should provide a definition of PEPs in line with the standards.

541. Banks and investment companies should be required to: perform CDD measures and put in place appropriate risk management systems to determine whether a potential customer, a customer or a beneficial owner is a PEP; obtain senior management approval to continue a business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP; take reasonable measures to establish the source of wealth of customers, and the source of wealth and the source of funds of beneficial owners identified as PEPs, and conduct enhanced ongoing monitoring when they are in a business relationship with a PEP.

#### *Recommendation 7*

542. The authorities should require banks, exchange companies and investment companies to:

- Gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision.
- Document the respective AML/CFT responsibilities of each institution.

#### *Recommendation 8*

543. The authorities should fully extend the requirements regarding non-face-to-face transactions and new technologies to exchange companies, insurance companies, exchange organizations, and brokerage companies.

544. All FIs in Kuwait should be required to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. Measures for managing risks should include specific and effective CDD procedures that apply to non-face-to-face customers. The policies and procedures should apply when establishing the customer relationship and when conducting ongoing due diligence.

### **3.2.3 Compliance with Recommendations 5 to 8**

|            | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|------------|---------------|--|
| <b>R.5</b> | <b>NC</b>     | <p>Lack of explicit obligations imposed by law or regulation (primary or secondary legislation) for:</p> <ul style="list-style-type: none"> <li>• Undertaking customer due diligence measures when: <ul style="list-style-type: none"> <li>○ Carrying out occasional transactions that are wire transfers in the circumstances covered by Interpretative Note to SR.VII;</li> <li>○ There is suspicion of ML or TF, regardless of any exemptions or thresholds;</li> <li>○ The FI has doubts about the veracity or adequacy of previously obtained customer identification data.</li> </ul> </li> <li>• Identifying and verifying the identity of any person purporting to act on behalf of a</li> </ul> |

|     | Rating | Summary of factors underlying rating  |
|-----|--------|---|
|     |        | <p>legal person (not only for companies and institutions).</p> <ul style="list-style-type: none"> <li>● Identifying all types of legal persons, using reliable, independent, data or information (identification data).</li> <li>● Taking reasonable measures to determine, for all customers, whether the customer is acting on behalf of another person, who are the natural persons who ultimately own or control the customer, and also those persons who exercise ultimate effective control over a legal person or arrangement.</li> <li>● Conducting ongoing due diligence on the business relationship, including the scrutiny of transactions undertaken through the relationship.</li> </ul> <p>Lack of measures in law, regulation or other enforceable means that require FIs to:</p> <ul style="list-style-type: none"> <li>● Verify the legal status of all legal persons.</li> <li>● Understand the ownership and control structure of the customers.</li> <li>● Obtain information on the purpose and intended nature of the business relationship with regard to insurance companies and exchange organizations and the intended nature of the business relationship with regard to banks, investment companies, and brokerage companies.</li> <li>● Undertake reviews of existing records collected under the CDD process, particularly for higher-risk categories of customers and business relationships.</li> <li>● Ensure that documents, data, and information collected by insurance companies, exchange organizations, and brokerage companies under the CDD process are kept up-to-date and relevant.</li> <li>● Perform enhanced due diligence for higher-risk categories of customer, business relationships, and transactions.</li> <li>● Consider making a suspicious transaction report when FIs are unable to comply with Criteria 5.3 to 5.6.</li> <li>● Terminate the business relationship and consider making a suspicious transaction report after the business relationship has commenced, but the FI is not longer satisfied with the veracity or adequacy of previously obtained customer identification data.</li> <li>● Apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times (insurance companies, exchange organizations and brokerage companies).</li> </ul> <p>Effectiveness issues:</p> <ul style="list-style-type: none"> <li>● The effective implementation of the requirements is undermined by factors, such as: <ul style="list-style-type: none"> <li>○ The lack of evidence supporting that implementation is effective, especially for exchange companies, insurance companies, exchange organizations, and brokerage companies.</li> <li>○ The lack of effective supervision of insurance companies, exchange organizations, and brokerage companies.</li> </ul> </li> </ul> |
| R.6 | NC     | <ul style="list-style-type: none"> <li>● No clear definition of PEPs under the legal framework.</li> <li>● Lack of requirements for exchange companies, insurance companies, exchange organizations, and brokerage companies with respect to PEPs.</li> <li>● Lack of requirements for banks and investment companies to perform CDD measures or to put in place appropriate risk management systems to determine whether a potential customer, a customer, or a beneficial owner is a PEP.</li> <li>● Lack of requirements for banks and investment companies to obtain senior management approval to continue a business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP.</li> <li>● Lack of requirement for banks and investment companies to take reasonable measures to establish the source of wealth of customers and the source of wealth and the source of funds of beneficial owners identified as PEPs.</li> </ul>   |

|     | Rating | Summary of factors underlying rating  |
|-----|--------|---|
|     |        | <ul style="list-style-type: none"> <li>Lack of requirement for banks and investment companies to conduct enhanced ongoing monitoring when they are in a business relationship with a PEP.</li> <li>Limited effectiveness in the implementation of the measures undertaken by FIs with regard to PEPs.</li> </ul>  |
| R.7 | PC     | <ul style="list-style-type: none"> <li>Lack of requirements for banks, exchange companies, and investment companies to gather sufficient information about the respondent institutions in order to be able to fully understand the nature of the respondents' business and to determine from publicly available information the reputation of the institution or the quality of supervision, including whether the institution has been subject to ML investigation or regulatory action.</li> <li>Lack of requirements for banks, exchange companies, and investment companies to document the respective AML/CFT responsibilities of each institution.</li> </ul> |
| R.8 | NC     | <ul style="list-style-type: none"> <li>No requirements for exchange companies, insurance companies, exchange organizations, or brokerage companies regarding the misuse of new technologies.</li> <li>No requirements for FIs to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions.</li> <li>Limited effectiveness in the implementation of requirements related to modern technologies and non-face to face transactions.</li> </ul>   |

### 3.3 Third Parties and Introduced Business (R.9)

#### 3.3.1 Description and Analysis

##### Legal Framework:

##### Third parties and introduced business (R. 9):

545. The AML Law, Ministerial Resolution 9/2005, and the instructions and resolutions issued by the competent supervisory authorities do not address the issue of reliance on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business.

546. The authorities claim that under the current regime, there is an implied obligation on FIs to perform their own due diligence that the CDD obligation may not be delegated and therefore, that third party-introduced business is not permitted. It is worth noting that this is a view shared by the banks, investment companies, and exchange companies with which the assessment team met.

547. However, there is no explicit prohibition against the use of intermediaries. In addition, in practice, some FIs do rely on others to perform CDD measures, such as life insurance companies relying on insurance intermediaries, or entities in the securities sector with other third parties.

##### Banks, exchange companies and investment companies

548. The authorities are of the view that under the current regulations, banks, exchange companies and investment companies are responsible for performing their own due diligence for each customer and are not permitted to rely on intermediaries or other third parties to perform any of the elements of the CDD process. Meetings with banks, investment companies, and exchange companies showed that no intermediaries or other third parties are conducting elements of the CDD process at this time. All aspects of the CDD process are being performed directly by the bank, exchange companies, or investment companies establishing the business relationship.

## Brokerage companies

549. All of the customers of brokerage companies are introduced business. As explained in Section 1, all customers wishing to trade on the KSE must first open an account with the Kuwait Clearing Company. The KCC is an investment company registered with the CBK and bound by the laws, regulations, and instructions that apply to investment companies. The KCC assigns each customer an account number, which it can use at any of the brokerage companies. However, brokerage companies are bound by the requirements under the AML Law and Ministerial Resolution 9/2005. As such, the brokerage companies are required to conduct their own customer identification and verification.<sup>82</sup>

550. In addition, it is unclear if the KCC is required to provide copies of identification data and other relevant documentation relating to CDD requirements to the brokerage companies upon request.

551. There is no requirement that brokerage companies satisfy themselves that the KCC is regulated and supervised, and has measures in place to comply with CDD requirements. However, all brokerage companies are required to work with the KCC, and the KCC is a well-known actor in the domestic securities market.

## Insurance companies

552. Insurance companies in Kuwait can sell insurance products directly or through insurance brokers or agents. It is unclear how much business is obtained by the insurance sector through brokers or agents.

553. As with brokerage companies, insurance companies, agents, and brokers are bound by the requirements under the AML Law and Ministerial Resolution 9/2005. As such the insurance companies are also responsible for conducting their own customer identification and verification.<sup>83</sup>

554. However, the authorities did not provide any information about the requirements (or lack thereof) for insurance companies accepting business through insurance brokers or agents, so the nature of the relationship between the insurer and the broker or agent is unknown.

## Analysis of Effectiveness

555. Although there appears to be no provisions prohibiting FIs to rely on intermediaries or other third parties, the shared view by the CBK, banks, exchange companies, and investment companies is that such reliance is not permitted.

556. Meetings conducted with officials from banks, investment companies, and exchange companies revealed that all of the CDD is performed by them and that no intermediaries or other third parties are conducting elements of the CDD process.

557. However, for brokerage companies, all of the business is technically introduced business from the Kuwait Clearing Company. As brokerage companies are subject to the AML Law and Ministerial Resolution 9/2005, the ultimate responsibility for customer identification and verification remains with the brokerage company. The same implementation issues for brokerage companies regarding CDD described under Recommendation 5 apply.

558. Insurance companies accept business introduced by insurance brokers and agents. While insurance companies, brokers, and agents are all bound by the requirements of the AML Law and

<sup>82</sup> For more information on the adequacy of CDD requirements for brokerage companies, see the description and analysis of Recommendation 5.

<sup>83</sup> For more information on the adequacy of CDD requirements for insurance companies, see the description and analysis of Recommendation 5.



Ministerial Resolution 9/2005, the same implementation issues for the insurance sector regarding CDD described under Recommendation 5 apply. In addition, the nature of the relationship between the insurer and the broker or agent is unknown.

### 3.3.2 Recommendations and Comments

559. Taking into account that it is acknowledged that some FIs do rely on intermediaries or other third parties to perform some elements of the CDD process, the authorities are urged to:

- Introduce in law, regulation, or OEM the requirements set out in the FATF Recommendation 9, regulating the obligations that must be met by the third parties and the FI to allow such reliance.
- Require KCC to provide copies of identification data and other relevant documentation relating to CDD requirements without delay to the brokerage companies upon request.
- Introduce provisions for insurance companies in relation to business introduced by insurance brokers and agents, including requirements to:
  - Take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay; and
  - Satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD and record-keeping requirements.

### 3.3.3 Compliance with Recommendation 9

|     | Rating | Summary of factors underlying rating  |
|-----|--------|---|
| R.9 | NC     | <ul style="list-style-type: none"> <li>• While in practice some financial institutions do rely on third parties to perform some CDD measures, there is no requirement in law, regulation or OEM to regulate the conditions of this reliance.</li> </ul> |

## 3.4 Financial Institutions Secrecy or Confidentiality (R.4)

### 3.4.1 Description and Analysis

#### Legal Framework:

560. The Kuwaiti laws, regulations and resolutions setting forth the secrecy and confidentiality provisions that apply to financial institutions or competent authorities include the CBK Law, Law No. 24/1961, Resolution 9/2005, Resolution 252/2002, the Emiri Decree of August 14, 1983, Resolution 113/1992, Resolution 5/2005, the MOF Resolution issued April 1, 1969, Ministerial Resolution of 1987 and Ministerial Resolution of 1984.

#### Inhibition of Implementation of FATF Recommendations (c. 4.1):

##### Access to Information:

561. **CBK:** In light of Articles 78 and 82 of the CBK Law and Resolution 113/1992, the secrecy provision of Article 85b of the CBK Law does not inhibit the ability of the CBK to access information, including information pertaining to AML/CFT. Article 85b of the CBK Law states that, unless otherwise permitted by law, no director or employee of a bank may disclose any information regarding the affairs of the bank. Article 78(b) of the CBK Law authorizes the CBK to see all documents and to ask any director or

official of a covered institution for any information it deems necessary. In addition, Article 82, Item 3, of the CBK Law states that banks supervised by the CBK must submit to the CBK all information it requests. Articles 89 and 90 of Resolution 113/1992 also provide the CBK with the right to inspect the books and records of the investment funds it supervises.

562. In addition, Articles 16, 17 and 18 of Ministerial Resolution of 1987, provide additional authority for the CBK to examine investment companies and to ask for information, while Articles 15 and 16 of Ministerial Resolution of 1984, provide similar authority to the CBK with regard to exchange companies.

563. **MOCI:** In the light of absence of any secrecy or confidentiality provisions that apply to either the MOCI or the entities it supervises, there is no restriction on the MOCI's ability to obtain AML/CFT information from the institutions it supervises. Article 1, Paragraph 5, of Resolution 252/2002 allows the MOCI to view all documents related to transactions of the institutions it supervises.

564. **KSE:** For the securities industry, Article 15 (repeated) of the Emiri Decree of 1983, prohibits the disclosure of data and information related to traders' names and their trading volumes, except to "the market and specialized monitoring parties." This provision is related to market conduct and does not apply to AML/CFT. According to authorities, the term "the market and the specialized monitoring parties" refers to the KSE and to the KCC. Therefore, this provision does not prevent them from obtaining the information they deem necessary. In addition, Articles 14 and 18 of Resolution 5/2005 give the KSE the authority to obtain the information and records it requires from securities firms. In light of the absence of any secrecy or confidentiality provisions that apply to either the KSE, KCC or brokerage companies, there is no restriction on the KSE's or the KCC's ability to obtain AML/CFT information from brokerage companies.

565. **LEAs:** As set forth under Recommendation 28, the secrecy provisions of Kuwait do not interfere with the LEAs' ability to access information they require to properly perform their functions in combating ML and FT.

#### Sharing of information:

566. Pursuant to Article 28 of the CBK Law, the Minister of Finance, based on an opinion of the Board of Directors of the CBK, has the ability to determine what information can be disclosed. However, the authorities have stated that this authority has not been used. Furthermore, Article 4 of the MOF Resolution issued on April 1, 1969, provides the Governor of the CBK with the authority to provide any information or data requested by other domestic agencies. While the involvement of the Governor of the CBK in approving the release of information could be viewed as an inhibiting obstacle to the domestic sharing of information between competent authorities, the authorities provided the assessment team with statistics showing that the Governor provided information to all the requests received from local authorities.

567. In criminal cases, the CBK can go to the PPO on a case-by-case basis and ask for permission to share information. There are no written standards allowing for the determination of the Governor of the CBK with regard to the lifting of secrecy and there are no written standards or legal framework with regard to the determination of the PPO. The authorities indicate that the involvement of the PPO is merely a procedural safeguard and does not hinder the AML/CFT sharing of information with domestic counterparts, including supervisors. However, the assessors believe that the process of seeking authorization from the PPO on a case-by-case basis inhibits the ability of domestic regulatory authorities to share information.

568. The authorities also indicate that the CBK could potentially share confidential information directly with another competent authority for the purpose of joint supervision, such as when a bank has an

interest in an insurance company or vice versa. However, such a case has not yet arisen. The assessors are also unaware of the legal authority or framework for this sharing authority based on joint supervision.

569. The authorities assert that Article 78 of the CBK Law allows for coordination between the CBK and central banks of foreign countries. However, this article appears to be limited to the coordination of the examinations of foreign branches and subsidiaries in the context of consolidated supervision. It does not encompass the entire sharing regime envisioned necessary to implement the FATF recommendations.

570. However, Article 82(3) of the CBK Law does permit the Governor of the CBK to share information with the central banks of other countries within the context of consolidated supervision.

571. Outside of the context of consolidated supervision, there is no formal procedure for the CBK to share information with foreign counterparts. Such cases would include where a bank is involved in an international transaction or where there are cross-border relationships, including correspondent banking arrangements and cross-border transactions, including cross-border wires. Outside the context of consolidated supervision, it is necessary for the CBK to go through the PPO in order to provide information, but, again, this avenue is limited to criminal matters.

572. As mentioned in Section 1 under recommendation 26, the KFIU, was formed within the CBK as part of the on-site supervision section. According to the authorities, the confidential information maintained by the KFIU can be shared domestically, as all members of the KFIU, including the CBK, the PPO, the MOCI, the MOI and the Customs authorities, have full access to STRs and other information received by the KFIU.

573. As set forth under Recommendation 26, with regard to the LEAs, the PPO and the KFIU enter into an MOU to share information on a case-by-case basis with regard to each particular STR, but this sharing agreement pertains only to the individual STR.

574. Internationally, the KFIU has an extremely limited ability to share information with its foreign counterparts, because it lacks independent powers and can only act under instruction from the PPO. Any request for information received from a foreign FIU must be channeled through the PPO and can only be satisfied if approved by the PPO. For additional information, see recommendation 26.

575. Internationally, the LEAs can share through the use of Mutual Legal Assistance Treaties (MLATs), but this is a cumbersome and time-consuming process.

576. There are no secrecy provisions that would inhibit the MOCI or the KSE from sharing information domestically or internationally. However, the assessors are not aware of any framework for the MOCI or KSE to share information with other competent authorities.

577. The confidentiality provision contained in Article 85b of the CBK Law does not appear to assessors to inhibit the sharing of information by financial institutions when required by Recommendations 7 or 9 or Special Recommendation VII.

578. In the same way, the confidentiality provisions for the KSE and the MOCI do not appear to inhibit the sharing of information by brokerage companies, insurance companies and exchange organizations when required by R. 7, R. 9 or SR. VII.

### **Analysis of Effectiveness**

579. The financial secrecy provisions in law do not inhibit the ability of the competent authorities to access information from the FIs they supervise, which the authorities require to properly perform their

functions in combating ML and TF. In addition, existing secrecy provisions do not interfere with the ability of FIs to share information with one another as required by R.7, R.9 and SR.VII.

580. With regard to domestic sharing, Article 4 of the MOF Resolution issued on April 1, 1969, provides the Governor of the CBK with the authority to provide any information or data requested by other domestic agencies. However, as stated above, the involvement of the Governor of the CBK may be viewed as an inhibiting obstacle to the domestic sharing of information between competent authorities. In addition, there are no written standards for the Governor's determination.

581. The CBK is able to share information domestically, including in areas related to AML/CFT. The CBK is also able to share AML/CFT information internationally, but only in the context of consolidated supervision or with the approval of the PPO in connection with criminal matters. Outside the context of consolidated supervision or criminal matters, the secrecy provision of the CBK Law prevents appropriate sharing by the CBK.

582. The involvement of either (or both) the Minister of Finance or the PPO in the process of determining what information can be shared internationally outside the context of consolidated supervision is cumbersome and inhibits the ability to share. In addition, there are no written standards for either the MOF or the PPO and no legal framework for the PPO to lift the secrecy provisions of the CBK Law.

### 3.4.2 Recommendations and Comments

583. The authorities are recommended to:

- Permit sharing of information between CBK and foreign counterparts outside of the context of consolidated supervision and criminal cases.
- Provide for an efficient and effective mechanisms by which all domestic authorities can share, on a timely basis, the information necessary to perform their functions in combating ML and TF.

### 3.4.3 Compliance with Recommendation 4

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.4 | LC     | <ul style="list-style-type: none"> <li>• The financial secrecy law for the CBK impedes regulatory cooperation and sharing at the international level outside of the context of consolidated supervision and criminal cases.</li> </ul> |

## 3.5 Record-keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1 Description and Analysis

#### Legal Framework:

584. The record-keeping requirements can be found principally in the AML Law and Resolution 9/2005, which are primary and secondary legislation, respectively. Additional information on recordkeeping can be found in each of the individual Instructions to Banks, Exchange Companies, and Investment Companies issued by the CBK. Guidance has been provided to brokerage companies by the KSE in Resolution 31/2003 and to insurance companies and exchange organizations by the MOCI in Resolution 252/2002.

585. Wire transfers can only be conducted by banks or exchange companies, and are subject to the same requirements as all other financial transactions carried out by banks. Requirements for wire transfers

can be found in the AML Law, Resolution 9/2005, Instructions to Bank, and Instructions to Exchange Companies.

**Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):**

586. Article 3, item 3 of the AML Law requires covered institutions to maintain all documents relevant to domestic and international transactions, including photocopies of their clients' ID cards, for at least five years from the date of the completion of the transaction.

587. Article 3, part (c) of Resolution 9/2005 requires that all covered entities enter and record all financial and nonfinancial transactions in their official records according to a regular accountancy system and keep such records, documents, and papers relating to these transactions, whether domestic or foreign, including documents related to customer identification, as outlined in Article 3, part (b), for at least five years from the date such transactions occur.

588. In addition, each of the respective CBK Instructions to Banks, to Exchange Companies, and to Investment Companies provide additional information on record-keeping requirements. Each of these instructions state that records shall be maintained that include all documents and records of transactions made by a bank, exchange company, or investment company, whether domestically or internationally, including a copy of their clients' personal IDs and documents supporting transactions and correspondence, for a period of at least five years from the date of concluding the transaction.<sup>84</sup> The respective instructions add that these records shall include all basic data on a transaction, such as the amount of the transaction, associated currency or currencies, the concerned parties, the type and purpose of transaction, and any other data and information. The Instructions to Banks and to Investment Companies both include a provision that records pertaining to accounts that have been closed, terminated, or have reached maturity shall be maintained for five years from the date of closure, termination, or maturity. As mentioned at the beginning of Section 3, the respective Instructions to Banks, to Investment Companies, and to Exchange Companies issued by the CBK are OEM, therefore they do not satisfy the requirements of this criterion.

589. Article 1, part 3 of Resolution 252/2002, issued by the MOCI requires that covered institutions maintain original journals and inventory books in which a transaction is recorded for at least 10 years from the date on which the transaction is closed, and retain all correspondence, vouchers, and documents related to transactions executed by the company or institution, be it domestic or foreign, for five years after the completion of the transaction.

590. Resolution 31/2003 requires covered institutions to maintain records, including the names and addresses of their clients, the activities carried out on their behalf, and the names of the persons to whom the account balances were delivered, for a period of five years beginning from the date their accounts were closed.

591. As Resolution 252/2002 and Resolution 31/2003 are guidance, their requirements do not fulfill this criterion.

592. Article 77 of the Criminal Procedure Code allows investigators to view documents related to an investigation in the way he defines, and in the time and place he specifies in the request. It is the determination of the assessors that this authorizes criminal investigators to extend the record keeping requirement in specific cases.

<sup>84</sup> Item 7 of the Instructions for Banks; Item 15 of the Instructions for Investment Companies; and Item 8 of the Instructions for Exchange Companies.

593. However, assessors are unaware of any law, regulation, or instructions that grant other competent authorities, such as the financial sector supervisors, the authority to request a FI to extend the record-keeping requirement in specific cases.

594. The AML Law fulfills the criteria that all necessary records pertaining to transactions be maintained by covered FIs for at least five years from the date the transaction is completed.

595. As the document retention requirement covers all documents and papers related to a transaction, this should be sufficient to permit reconstruction of individual transactions or to provide evidence for prosecution of criminal activity. The PPO stated that the documents retained were sufficient to reconstruct the individual transaction and to provide evidence for prosecution.

**Record Keeping for Identification Data, Files, and Correspondence (c. 10.2):**

596. The record-keeping requirement included in the AML Law requires covered entities to maintain all documents and papers related to transactions, including copies of the customers' IDs for at least five years from the date of transaction completion. The record-keeping requirement of Resolution 9/2005 includes all documents, papers for transactions, and documents related to customer identification, and requires retention of such documents for at least five years from the date such transactions occur.

597. Authorities interpret Articles 31 and 32 of Decree Law No. 68 of 1980, promulgating the Law on Trade, to have additional record-keeping requirements, as the law applies to all businesses licensed by the MOCI, including all financial institutions. Article 31 requires a merchant to keep a copy of all correspondence and telegrams sent by the merchant, as well as all received correspondence and telegrams, invoices, and other documents related to his work. Article 32 requires a merchant to retain the original inventory book and the books for 10 years commencing from the date of closure, and requires him to save the correspondence, documents, and images, referred to in Article 31 for five years.

598. Each of the respective Instructions to Banks, to Investment Companies, and to Exchange Companies issued by the CBK states that the record-retention requirements include a copy of their clients' personal IDs and documents supporting their transactions and correspondences, and that these records shall include all basic data for these transactions, such as transaction amounts, currency/currencies related thereof, related parties, type of transaction, purpose of transaction, and other data and information<sup>85</sup>. The CBK Instructions to Banks and Instructions to Investment Companies both include a provision that records pertaining to accounts that have been closed, terminated, or reached maturity shall be maintained for five years from the date of closure, termination, or maturity. In addition, each of the three sets of CBK Instructions specifically makes reference to correspondence that is related to a transaction.

599. Resolution 252/2002 requires covered institutions to archive all correspondence and documents related to transactions for five years from the date of finalizing the transaction. There is no reference to the retention of account files.

600. Resolution 31/2003 requires covered institutions to maintain records, including the names and addresses of their clients, the activities carried out on their behalf, and the names of the persons to whom the account balances were delivered, for a period of five years beginning from the date their accounts were closed.

601. The Instructions to Banks, the Instructions to Investment Companies, and the Instructions to Exchange Companies issued by the CBK, Resolution 252/2002 and Resolution 31/2003 are not primary or secondary legislation. Therefore, they do not satisfy the requirements of the criterion.

<sup>85</sup> Item 7 of the Instructions for Banks; Item 15 of the Instructions for Investment Companies; and Item 8 of the Instructions for Exchange Companies.

602. The AML Law and Resolution 9/2005 are primary and secondary legislation, respectively. While neither references account files or business correspondence explicitly, Resolution 9/2005 refers to the retention of all documents. As the record-keeping requirement in Resolution 9/2005 applies to all documents, this is sufficient to apply to account files and business correspondence.

603. However, the record-keeping requirements outlined in Resolution 9/2005 are tied to the completion of the transaction, not the termination of an account or business relationship.

604. The requirement outlined in Law 68 of 1980 is ten years from the “date of closure” for the original inventory book and the books, and five years for correspondence and all other documents related to the work of the merchant. Assessors determined that the requirement was tied to the date of closure of the merchant’s shop or the date of the transaction, not the termination of an account or business relationship. More importantly, while Law 68 of 1980 is primary legislation its mandatory requirements do not have effective proportionate or dissuasive sanctions for non-compliance. In addition, it is unknown if any of the authorities are ensuring compliance with this requirement. Therefore, it has been determined by the assessors that the requirements of Law 68 of 1980 do not fulfill this criterion.

605. Article 77 of the Criminal Procedure Code allows investigators to view documents related to an investigation in the way he defines, and in the time and place he specifies in the request. It is the determination of the assessors that this authorizes criminal investigators to extend the record keeping requirement in specific cases.

606. In addition, assessors are unaware of any law, regulation, or instructions that grant other competent authorities, such as the financial sector supervisors, the authority to request a FI extend the record-keeping requirement in specific cases. The assessors are also unaware of any requirement that FIs extend the record-keeping requirement if requested by a competent authority in a specific case.

### **Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):**

607. There are no provisions in the AML Law or Resolution 9/2005 that require financial institutions to ensure that competent authorities have access to all customer and transactions records and information in a timely basis.

608. For banks, investment companies, and exchange companies, the only reference to access to documents by a competent authority is in the CBK Law. Article 82, Item 3, of the CBK Law requires that FIs subject to CBK supervision submit to the CBK all data, information, and statistics it requests, in accordance with the system the CBK establishes for this purpose. Assessors note that the phrasing of Article 82, Item 3 denotes that this access to information is related to regulatory and prudential requirements, not to AML/CFT. Nevertheless, as it refers to all information, assessors determined that this would require the FIs subject to CBK supervision to provide all records requested by the CBK.

609. Article 82, Item 2 of the CBK Law states that the nature of the information and documents, as well as their form and period during which they should be submitted, shall be specified by the CBK. Article 82, Item 3 states that the exchange of data and information between the institution and the CBK shall be in accordance with the arrangements agreed on between the CBK and the concerned bank or banking supervision authorities.

610. There is no mention in the CBK Law or the Instructions to the Banks, to Investment Companies, or to Exchange Companies issued by the CBK determining the period for production. Authorities report that the period for the production of customer and transaction records and information is determined on a case-by-case basis, but the period for production of these records by a bank, investment company or exchange company is usually 2 business days. The period for the production of other categories of records can be longer, but is generally not more than 10 business days. Authorities provided statistics that showed

the CBK has applied sanctions to the FIs they supervise for not providing data within the period specified by the CBK. Therefore, assessors determined that this fulfills the requirement that the information be made available to the CBK on a timely basis.

611. The provisions in the CBK Law are also covered in ministerial resolutions for investment companies and exchange companies. Article 18 of the Ministerial Resolution issued on August 1, 1987 on CBK supervision of investment companies requires that investment companies shall provide the CBK with information and statements and statistic data required by the CBK. Article 16 of the Resolution of March 19, 1984 stipulates that the CBK, based on the provisions of Article 82 of the CBK Law, may require from exchange companies statements, tables, and statistical information it deems necessary to execute its tasks in supervising these companies.

612. Article 1, part 5 of Resolution 252/2002 enables the MOCI to view commercial books, correspondence, vouchers, and documents related to transactions of covered institutions. However, as discussed at the beginning of Section 3, Resolution 252/2002 is guidance not primary or secondary legislation, and, thus, the requirements of Resolution 252/2002, do not satisfy this criterion. Therefore, there is no requirement for insurance companies or exchange organizations to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

613. For brokerage companies, Article 27 of the KSE by-laws, requires that brokers furnish the Stock Exchange Administration with all data, information and statistics required in the form and dates specified by the Stock Exchange Administration. However, this requirement applies to the provision of documents related to market conduct, not AML/CFT, and the sanctions for non-compliance are not effective, proportionate, or dissuasive. Therefore, it has been determined by the assessors that these requirements do not fulfill this criterion.

#### **Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):**

614. Pursuant to the CBK Law, only banks and exchange companies are permitted to engage in wire transfer activities. The legal requirement for FIs to obtain and maintain information on the originator of a wire transfer transaction is the same as the information that is required for any other transaction carried out by banks and exchange companies, as covered by the AML Law and Resolution 9/2005, described below.

615. Article 3, item 2, of the AML Law requires that both banks and exchange companies properly identify their clients according to official documents issued by the competent state authorities.

616. Article 3, part (b) of Resolution 9/2005 requires that, prior to processing a transaction of more than KD 3 000 (USD 10 600) or the equivalent thereof in foreign currency; the covered FIs (banks and exchange companies) first identify and verify the identity and capacity of the client and the actual beneficiary. For natural persons, the client's identity should be determined and verified through a review of a Civil ID card for citizens and noncitizen residents, provided the card is valid, or a passport or travel document for persons not residing in Kuwait. For legal entities or arrangements, the bank or exchange company should review the commercial license issued by the MOCI for companies and institutions; the documents, papers, instruments, and judicial rulings proving that a person has been appointed to represent the concerned company, institution, or person; or the official documents for other nonlocal entities, and documents issued or approved by the competent authorities in the state to which nonresident companies, institutions, and companies are located.

617. The Instructions to Banks and Instructions to Exchange Companies issued by the CBK both expand on the customer identification requirements for electronic transfers, and eliminate the KD, 3 000



(USD 10 600) threshold for customer identification set forth in Resolution 9/2005.<sup>86</sup> These Instructions state, for both domestic and external electronic transfers, that the transfer documents must include the following data: the name and identity number of the person<sup>87</sup> or entity requesting the transfer; the amount; the name, and address of the beneficiary and his account number (if the transfer is made to an account); the country to which the transfer is to be made; and the name of the intermediary correspondent. If the aforesaid data is not provided, the bank or exchange company must refrain from conducting the requested transfer.

618. For citizens, residents, and foreigners, the Civil ID provides the name of the originator, a unique reference number in line with the FATF definition and the originator's address. For nonresidents of Kuwait, a passport provides a unique reference number. For legal persons, the commercial license issued by the MOCI provides for the name and address of the company or institution, expiration date, date of issuance, and license number.

#### **Inclusion of Originator Information in Cross-Border/Domestic Wire Transfers (c. VII.2, VII.3):**

619. The Instructions to Banks and Instructions to Exchange Companies require that transfer documents incorporate the full originator information, including the name and the identity number of the person or entity requesting the transfer<sup>88</sup>. In the absence of the originator information required by the Instructions, the institutions should not finalize the transfer (*i.e.*, process the outgoing transactions or accept an incoming transaction). This requirement applies to both cross-border and domestic wire transfers.

#### **Maintenance of Originator Information ("Travel Rule") (c.VII.4):**

620. According to the CBK Instructions to Banks and the Instructions to Exchange Companies, full originator information should be included in the transfer documents<sup>89</sup>. In the absence of the originator information required by these Instructions, the institutions should not finalize the transfer. Based on these requirements, the FI in the payment chain would be required to ensure that all originator information that accompanies the transfer from a Kuwaiti bank or exchange house is transmitted with the transfer. This requirement applies to both cross-border and domestic wire transfers.

#### **Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):**

621. According to the Instructions to Banks and the Instructions to Exchange Companies, issued by the CBK, full originator information should be included in the transfer documents. In the absence of the originator information required by these Instructions, the FI should not finalize the transfer. As this is the only requirement for handling wire transfers that are not accompanied by complete originator information, there is no requirement for a risk-based procedure for dealing with wire transfers that lack complete originator information. In addition, no distinction is made in the CBK Instructions between situations where the bank or exchange company is the originating or beneficiary institution.

622. While the Instructions from the CBK provide additional guidance with respect to extraordinary or unusual transactions, this guidance pertains to all transactions, not just wire transfers. Item 10 of the Instructions to Banks requires that banks should accord special and exceptional attention to large and complex transactions and all types of unusual transaction. Item 6 of the Instructions to Exchange Companies requires that exchange companies make special, exceptional efforts regarding complex, large, and unusual transactions. No guidance is provided to suggest that the lack of complete originator

<sup>86</sup> The Instructions to Banks, item 8; the Instructions to Exchange Companies, item 4.

<sup>87</sup> The Instructions to Banks require that all electronic transfers and transfer documents include the account number (if transferring from an account) or ID number (if not transferring from an account).

<sup>88</sup> The Instructions to Banks, item 8; the Instructions to Exchange Companies, item 4.

<sup>89</sup> *Idem*.

information may be considered as a factor in assessing whether a wire transfer or related transactions are suspicious or may be required to be reported to the PPO as a suspicious transaction.

#### **Monitoring of Implementation (c. VII.6):**

623. As mentioned above, both banks and exchange companies are subject to inspection by the CBK. Therefore, the CBK monitors the compliance of FIs with regulations and instructions issued by the CBK, such as the Instructions to Banks and the Instructions to Exchange Companies. According to the CBK, the review of wire transfer transactions is part of the CBK supervisory inspections for both banks and exchange companies. Supervision for wire transfer transactions will have the same deficiencies as those for AML/CFT supervision of banks and exchange companies (See Section 3, Recommendation 23).

#### **Application of Sanctions (c. VII.7: applying c.17.1 – 17.4):**

624. The requirements with respect to handling wire transfers are described in the Instructions to Banks and the Instructions to Exchange Companies issued by the CBK. Therefore, the administrative penalties outlined in Article 85 of the CBK Law would apply to violations of the requirements regarding wire transfers<sup>90</sup>. The CBK reported that it has imposed penalties on both banks and exchange companies in relation to violations of the requirements in these Instructions, but did not specify if any of these penalties were related to violations in the conducting of wire transfers. No further information was provided with regard to the types of violation or the penalty involved, so assessors could not determine if the penalties are effective, proportionate, and dissuasive.

625. Further analysis of the applicability and implementation of sanctions is covered in detail in Section 3.11 of this report under Recommendation 17.

626. Further information on the supervisory powers and effectiveness of the CBK will be covered in Section 3.10 of this report under Recommendation 29.

#### **Additional elements: elimination of thresholds (c. VII.8 and c. VII.9):**

627. According to the Instructions to Banks and the Instructions to Exchange Companies, issued by the CBK, full originator information should be included in wire transfer documents. In the absence of the originator information required by these Instructions, the FI should not finalize the transfer. No distinction is made between cross-border or domestic wire transfers, or whether the bank or exchange house is the originating or beneficiary institution.

#### **Analysis of Effectiveness**

628. FIs supervised by the CBK appeared to be cognizant of the record-keeping requirements. Banks, investment companies, and exchange companies stated that they keep the required scope of documents for at least five years. The assessment team found that, in practice, some FIs go beyond the record-keeping requirements for scope and term of document retention. Some institutions reported that they retain documents for up to ten years, others reported they retain electronic documents indefinitely.

629. The brokerage companies with whom the assessment team met were aware of the requirement to maintain records of their trades and reported that these records were maintained beyond the five year minimum requirement.

630. Both insurance companies and exchange organizations appear to be aware of the record-keeping requirement and stated that they keep photocopies of Civil IDs and transactional records for at least five years. However, as a result of the visits during the onsite, assessors found that the exchange organizations

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<sup>90</sup> See Recommendation 17 for additional information on the adequacy of the sanctions in the CBK Law, Article 85.

are not implementing the requirement to check IDs for all transactions or to make photocopies of identification for large transactions. In addition, there is no indication that implementation is effective overall since there is no systematic monitoring of compliance through the supervisory system for insurance companies and exchange organizations.

631. For wire transfers, officials from banks visited stated that their customer identification requirements for wire transfers were the same as for establishing a business relationship or opening an account. Exchange companies reported that they request ID for all transactions and make a record of the Civil ID or passport number for all transactions; for transactions above KD 300 (USD 1,600), they make a photocopy of the identification. If any of the required information is not available, they will not perform the transfer. According to the CBK, compliance with the Instruction to Banks and the Instructions to Exchange Companies with respect to wire transfers is part of the overall supervisory process conducted by the CBK, and penalties have been issued regarding violations of the requirements. However, effectiveness of the wire transfer requirements could not be determined in the absence of additional information regarding the types of violation or the penalty involved. Further information on the supervisory powers and effectiveness of the CBK is covered in Section 3.10 of this report under Recommendation 29.

### 3.5.2 Recommendations and Comments

#### Recommendation 10: Record keeping

632. The authorities are recommended to:

- Establish, by law or regulation, the requirement to maintain records of the identification data, account files, and business correspondence for at least five years following the termination of an account or business relationship.
- Require FIs to extend the record-keeping requirement if requested by any competent authority in specific cases upon proper authority.
- Require brokerage companies, insurance companies and exchange organizations to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

|        | Rating | Summary of factors underlying rating   |
|--------|--------|--|
| R.10   | LC     | <ul style="list-style-type: none"> <li>• The requirement to maintain records of identification data, account file and business correspondence is tied to a transaction, not to the termination of an account or business relationship.</li> <li>• There is no requirement for brokerage companies, insurance companies or exchange organizations to provide information on a timely basis to domestic competent authorities with appropriate authority.</li> <li>• FIs are only required to extend the record-keeping requirement if requested by a criminal investigator in specific cases upon proper authority. This requirement does not extend to a request by other competent authorities, such as financial supervisors.</li> </ul> |
| SR.VII | LC     | <ul style="list-style-type: none"> <li>• The shortcomings identified under Recommendations 17 (sanctions) and 23 (monitoring and supervision) have a negative impact on this Special Recommendation.</li> </ul>  |

### 3.6 Monitoring of Transactions and Relationships (R.11 & 21)

#### 3.6.1 Description and Analysis

##### **Legal Framework:**

633. The Kuwaiti regulations and instructions requiring FIs to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose, include Resolution 252/2002, the Instructions for Banks, the Instructions for Investment Companies, the Instructions for Exchange Companies, and Resolution 31/2003.

634. The Kuwaiti regulations and instructions requiring FIs to pay special attention to business relationships from countries which do not, or which insufficiently apply the FATF Recommendations, include Resolution 252/2002, the Instructions for Banks, the Instructions for Investment Companies, and the Instructions for Exchange Companies.

##### **Special Attention to Complex, Unusual Large Transactions (c. 11.1):**

635. Article 10 of the Instructions for Banks requires banks to “accord special and exceptional attention to large and complex transactions and all types of unusual transactions which have no clear economic or legal purpose, are not commensurate with the client’s business or the average sums in his accounts or which arouse suspicions about their nature, purpose or source.” Article 12 extends this requirement to all transactions a bank suspects may involve ML or TF, regardless of the size of the transaction.

636. Article 7 in the Instructions to Investment Companies requires investment companies to “accord special and exceptional attention to large and complex transactions and to all unusual types of transactions which have no clear economic or legal purpose or goal, regardless of the size of the amounts associated with these transactions.”

637. Article 6 of the Instructions to Exchange Companies requires exchange companies to “make special, exceptional efforts regarding complex, large, and irregular transactions, transactions lacking clear legal or economic purposes, and transactions suspected of being ML or TF operations, irrespective of the sums associated with the transaction.”

638. In the securities industry, Article 9 of Resolution 31/2003 requires a broker to notify the KCC and the KSE if there is a transaction that is inconsistent with a person’s previous transactions in terms of size or value, that involves sums in excess of what appears to be feasible, or that is inconsistent with prevailing market condition. However, there is no specific requirement for brokers to monitor for complex, unusual large transactions, or unusual patterns of transactions.

639. Pursuant to Article 1 of Resolution 252/2002, insurance companies and exchange organizations are required to notify the PPO of any suspicious transactions related to ML or TF that come to their attention. However, there is no specific requirement for insurance companies or exchange organizations to monitor for complex, unusual large transactions, or unusual patterns of transactions.

##### **Examination of Complex & Unusual Transactions (c. 11.2):**

640. Pursuant to Article 10 of the Instructions for Banks, banks are required to carry out an investigation and inquiry of any unusual or suspicious transaction and to collect information about the transaction. The banks’ findings are required to be in writing. Similar requirements for investment companies are set forth in Article 8 of the Instructions for Investment Companies and, for exchange companies, in Article 6 of the Instructions for Exchange Companies.

641. As mentioned in criteria 11.1, there is no specific requirement for brokerage companies, insurance companies or exchange organizations to monitor for complex, unusual large transactions, or unusual patterns of transactions. Similarly, there is no requirement for them to examine or to make written findings with regard to any such complex or unusual transaction.

**Record-Keeping of Findings of Examination (c. 11.3):**

642. Pursuant to Article 10 of the Instructions for Banks, banks must prepare a report, including full details of the transaction and the grounds on which they made the decision to drop the matter or to refer it to the PPO. The report must be retained for a minimum of five years and must be made available to competent authorities.

643. Similar requirements for investment companies are set forth in Article 8 of the Instructions for Investment Companies and, for exchange companies, in Article 6 of the Instructions for Exchange Companies.

644. There are no such requirements for brokerage firms, insurance companies, or exchange organizations.

**Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):**

645. Pursuant to Article 18 of the Instructions for Banks, banks are required to give special and exceptional attention to any transaction with a person or body from countries not bound by international resolutions and recommendations “adopted in this regard.” Authorities stated that the term “adopted in this regard” means adopted in connection with AML/CFT. This Article also requires banks to ascertain that their overseas branches and subsidiaries are complying with the Instructions for Banks and provides that a bank’s board should issue written policies setting forth precautionary measures in this area.

646. Similar requirements for investment companies are set forth in Article 19 of the Instructions for Investment Companies. As with banks, investment companies are required to apply the Instructions to all of its operations, especially if they operate in noncompliant countries or countries which have weak AML regimes. Further, this Article requires investment companies to ascertain that their overseas subsidiaries are complying with the Instructions for Investment Companies and provides that the investment company’s board should issue written policies setting forth precautionary measures in this area.

647. The Instructions for Exchange Companies do not include a specific requirement for exchange companies to take special measures or to pay special attention with regard to transactions or parties from countries which do not or which insufficiently apply the FATF recommendations.

648. Resolution 252/2002, which applies to insurance companies and exchange organizations, does not set forth a requirement to pay special attention to noncompliant countries or countries with weak AML regimes. It only requires insurance companies and exchange organizations to file an STR if a suspicious transaction related to ML or TF come to their attention.

649. Moreover, there are no other instructions or requirements for insurance companies, exchange organizations, or brokerage companies to give special attention to business relationships or transactions from countries which do not, or which insufficiently, apply the FATF recommendations.

650. Article 19 of the Instructions for Investment Companies advises investment companies to look at “lists issued by concerned international institutions” for “identifying States which are non-compliant with international requirements for combating ML and FT.” However, there appears to be no effective measures to advise investment companies or other FIs of concerns about countries which do not, or which insufficiently, apply the FATF Recommendations. Specifically, the assessment team is not aware of any

guidance provided by the CBK to banks, investment companies, or exchange companies with regard to “countries not bound by international resolutions and recommendations adopted” with regard to AML/CFT. The Kuwaiti authorities have informed the assessment team that Kuwait issued guidance with regard to Iran based on a UN issuance, however, this guidance was not provided. In addition, one such issuance does not out-weigh the fact that there have been no other issuances and that there is no apparent established and effective means within Kuwait for identifying such countries, analyzing the necessary criteria and issuing appropriate guidance.

**Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):**

651. Article 18 of the Instructions for Banks requires banks to pay special attention to any transaction involving countries not bound by international resolutions and recommendations “to ascertain the soundness of such transactions.” This Article also requires banks to prepare written policies approved by their boards on how to deal with such transactions and to develop precautionary measures. Similar requirements for investment companies are set forth in Article 19 of the Instructions for Investment Companies. However, neither of these sections includes a specific requirement to examine such transactions and to develop written findings.

652. As noted above, the Instructions for Exchange Companies do not include a specific requirement for exchange companies to take special measures or to pay special attention with regard to transactions or parties from countries which do not, or which insufficiently, apply the FATF recommendations. Similarly, there is no requirement for exchange companies to examine or make written findings with regard to such transactions.

653. As mentioned under Recommendations 11 and 13, Article 10 of the Instructions for Banks, Article 7 of the Instructions for Investment Companies and Article 6 of the Instructions for Exchange Companies each includes a requirement that these entities examine large or complex transactions and all types of unusual transactions which have no clear economic or legal purpose or goal, regardless of the size of the amounts associated with these transactions. These articles require that these entities should prepare written findings that are maintained for at least five years and made available to competent authorities. However, there is no such requirement under these articles or other articles requiring the examination or the making of written findings with regard to transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF recommendations.

654. As noted above, there are no instructions or requirements for insurance companies, exchange organizations, or brokerage companies to give special attention to business relationships or transactions from countries which do not, or which insufficiently, apply the FATF recommendations. Similarly, there is no requirement for these entities to examine or to make written findings with regard to such transactions.

**Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):**

655. Kuwait does not apply appropriate countermeasures. With the exception of the possible issuance with regard to Iran mentioned above, the assessment team is not aware of any instance where Kuwait has issued countermeasures with regard to a country that continues not to apply or insufficiently applies the FATF Recommendations. The assessment team is not aware of Kuwait having issued any advisories, warnings, or guidance in this area.

## Analysis of Effectiveness

### *Recommendation 11*

656. The banks, investment companies, and exchange companies seem to have a clear understanding of what constitutes unusual activity, and have created systems to monitor large, complex, and usual transactions. However, insurance companies, exchange organizations, and brokers do not appear to be engaged in monitoring for large, complex, or unusual transactions.

657. Most of the banks, investment companies and exchange companies met by the assessment team have monitoring systems in place which are designed to identify anomalies or unusual activity in a customer's account. These entities regularly review unusual and suspicious transactions and the alerts that are raised by the automated IT systems they have in place. The review is often based on a CDD process that is designed to establish a benchmark of normal patterns for each customer. In addition, most of these entities reported that they review customers' activities on a periodic and random basis.

658. Despite of the obligation imposed on brokerage companies set forth in Article 9 of Resolution 31/2003 mentioned above, brokerage companies do not appear to be monitoring their customers' accounts. Instead, they rely on the KSE's Surveillance Unit to monitor all improper trades. The KSE reports that the Surveillance Unit is monitoring the activities of brokers with respect to securities trading, but not for AML issues. The KSE relies on the KCC to have and implement AML controls and to monitor the accounts of customers. However, the KCC only performs an account opening KYC function and does not undertake any ongoing monitoring of large or unusual transactions.

### *Recommendation 21*

659. Meetings with representatives from FIs with an international presence indicated that this part of the private sector is very attentive to geographic risks and monitors that risk diligently. However, there was inconsistency in the awareness among the different types of FIs as to how to determine if a country does not apply, or insufficiently applies, the FATF Recommendations.

## 3.6.2 Recommendations and Comments

### *Recommendation 11*

660. The authorities are recommended to:

- Extend the requirements of Recommendations 11 to insurance companies, exchange organizations, and brokerage companies.

### *Recommendation 21*

661. The authorities are recommended to:

- Fully extend the requirements of Recommendations 21 to exchange companies, insurance companies, exchange organizations and brokerage companies.
- Establish effective measures to ensure that FIs are advised of concerns about the weaknesses of the AML/CFT systems of other countries.
- Require FIs to examine transactions involving noncompliant countries that have no apparent economic or visible lawful purpose.

- Apply appropriate counter measures to countries that continue not to apply or continue to insufficiently apply the FATF Recommendations.

### 3.6.3 Compliance with Recommendations 11 & 21

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.11 | PC     | <ul style="list-style-type: none"> <li>• There are no requirements for insurance companies, exchange organizations, or brokerage companies regarding unusual transactions.</li> </ul>   |
| R.21 | NC     | <ul style="list-style-type: none"> <li>• There are no requirements for exchange companies, insurance companies, exchange organizations, or brokerage companies regarding business relationships and transactions with persons from or in countries which do not, or which insufficiently, apply the FATF recommendations.</li> <li>• There are no effective measures to ensure that FIs are advised of concerns about the weaknesses of the AML/CFT systems of other countries.</li> <li>• There are no requirements for banks or investment companies to examine and prepare written findings with regard to transactions involving noncompliant countries that have no apparent economic or visible lawful purpose.</li> <li>• Kuwait has not applied appropriate counter measures to countries that continue not to apply to insufficiently apply the FATF Recommendations.</li> </ul> |

## 3.7 Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1 Description and Analysis

#### Legal Framework:

662. The legal requirements related to suspicious transaction reporting (STR) and the protection for STR reporting/tipping off are in the AML Law and Resolution 9/2005. The Instructions to Banks, the Instructions to Exchange Companies, the Instructions to Investment Companies, Resolution 31/2003, and Resolution 252/2002 each provide additional requirements or guidance on STR reporting. Requirements for reporting currency transactions are found in the Instructions to Banks.

#### Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):

663. Article 3, item 4, of the AML Law establishes a broad requirement on all accountable financial institutions to report any suspicious transaction that may come to their knowledge, but does not specify where accountable institutions file STRs. Article 5 of the AML Law states that the PPO shall determine the competent authority within the PPO to receive reports on cases where there is a suspicion of money laundering.

664. Article 3, part (e), of Resolution 9/2005 requires covered institutions to establish internal control systems to allow them to detect suspicious transactions as soon as they occur and to report them to ensure compliance with domestic AML requirements. Resolution 9/2005 does not specify where FIs should file STRs.

665. While the AML Law and Resolution 9/2005 both required FIs to report suspicious transaction reports, pursuant to the AML Law, the requirement is to file STRs with the PPO. Despite the requirement to report, there is no requirement in law or regulation to report suspicious transactions to the FIU.

666. Each of the respective Instructions to Banks, to Investment Companies, and to Exchange Companies issued by the CBK provide additional clarification on the suspicious transactions reporting requirement. These Instructions require that special and exceptional attention be accorded to large and complex transactions and to all unusual types of transaction which have no clear economic or legal purpose



or goal, regardless of the size of the amounts associated with these transactions.<sup>91</sup> As mentioned at the beginning of Section 3, the respective Instructions to banks, investment companies, and to exchange companies issued by the CBK are OEM, therefore their requirements do not satisfy the requirements of this criterion.

667. Section 10 of the Instructions to Banks amplifies this requirement for banks by requiring them to accord special and exceptional attention to large and complex transactions and all types of unusual transaction which are not commensurate with a client's business or the average sums in his accounts receivable and accounts payable or which arouse suspicions about their nature, purpose, or source. In particular, this provision refers to large or frequent cash amounts which their owners attempt to exchange or transfer domestically or internationally.

668. In cases where suspicious transactions are found, all three sets of instructions require a covered FI to carry out investigations and enquiries, and to collect information on the suspicious transactions and the parties connected to the transaction. The findings of the FI's investigations should be recorded in writing. If the results of the FI's investigations and inquiries carried out confirm the FI's suspicions about the transaction and funds, the FI should inform the PPO of the details of the suspicious transaction. In all cases, the FI must prepare a report of the investigation, including the full details of the transaction and the grounds on which it made the decision to drop the matter or refer it to the PPO with an STR. The report should be retained for at least five years and should be made available to the competent authorities.<sup>92</sup>

669. The requirements in all three sets of CBK Instructions oblige covered institutions to investigate the seriousness of their suspicions. Upon completion of an investigation, the covered institutions decide whether to refer the matter to the PPO with an STR, not the FIU. Subsequent to the transaction being referred to the PPO, the Instructions require the banks, investment companies, and exchange companies to keep a record of their investigation.

670. Additional guidance is provided by the KSE and the MOCI. Resolution 31/2003, issued by the KSE, contains two separate provisions with regard to brokers involving suspicious or unusual activities. Article 7 requires brokers to immediately notify the KSE if they discover that documents submitted to them by an account holder are improper or suspicious. Article 9 states that if a broker has reasonable evidence that an account holder or manager has requested a contract for a transaction that is not consistent with his previous transactions in terms of size or value, that involves large sums, or that is inconsistent with prevailing market conditions, the brokers shall notify the clearinghouse and the KSE. Alternatively, the Office of the Attorney General may be informed of the incident. However, there is no mention of a suspicious transaction report that would be filed with the PPO or the FIU. As Resolution 31/2003 is considered guidance, this does not fulfill the requirements of this criterion.

671. Article 1, item 4, of Resolution 252/2002, issued by the MOCI, requires covered FIs (insurance companies and exchange organizations) to report to the PPO any suspicious transaction related to ML or TF that comes to the knowledge of covered institutions. However, Article 3, item 5, of Resolution 83/2005, stipulates that the MOCI's Department for Combating ML should receive reports about suspicious transactions and directs this unit to "prepare reports about any violations seized about entities and companies and provide all notices thereupon." It is unclear what is intended by Resolution 83/2005 in directing MOCI's Department for Combating ML to prepare reports and provide notices. However, the contradiction between Resolution 252/2002 and Resolution 83/2005 affects the understanding of the reporting requirement by covered institutions. In either case, the MOCI has not provided any guidance on

<sup>91</sup> Section 10 of the Instructions to Banks, Section 7 of the Instructions to Investment Companies; and Section 6 of the Instructions to Exchange Companies.

<sup>92</sup> Sections 10–12 of the Instructions to Banks; Sections 7–9 of the Instruction to Investment Companies; and Sections 6–7 of the Instructions to Exchange Companies.

STRs or what should be considered suspicious. In addition, as neither resolution is primary or secondary legislation, they could not fulfill the requirements of this criterion.

### **STRs Related to Terrorism and their Financing (c. 13.2):**

672. As stated previously, the AML Law sets forth a broad requirement to report suspicious transactions, and states that the PPO shall determine the competent authority within his office to receive reports on cases where there is a suspicion of ML. While Resolution 9/2005 requires that entities report suspicious transactions in or to comply with domestic money laundering obligations, it does not require them to report TF. As explained in Section 2 of this report, based on the definition of ML in the AML Law, and the lack of an autonomous TF offense, there is no requirement in law or regulation obligating FIs to file an STR where there are reasonable grounds to suspect that funds are related to TF.

673. Each of the three sets of the CBK Instructions to Banks, to Investment Companies, and to Exchange Companies requires covered entities to report a suspicion of TF to the PPO in the same manner as a suspicion of money laundering.<sup>93</sup> As with a suspicion of money laundering, these Instructions require covered institutions to investigate the seriousness of their suspicion of TF. However, as the CBK Instructions are OEM, and not primary or secondary legislation, this does not fulfill the requirements of this criterion.

674. In addition, Resolution 252/2002 requires that covered institutions (insurance companies and exchange organizations) report suspicious activity related to TF to the PPO, not to the KFIU. There is no explicit requirement for brokerage companies to report suspicious activity related to TF. As Resolution 252/2002 is considered guidance, this does not fulfill the requirements of this criterion.

### **No Reporting Threshold for STRs (c. 13.3 and c.IV.2):**

675. The STR requirement in the AML Law and Resolution 9/2005 applies regardless of the amount of the transaction. However, there is no requirement to report attempted transactions suspected of being related to funds that are proceeds of criminal activity or TF or transactions to be used for terrorism.

### **Making STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):**

676. The STR requirement in the AML Law applies to any suspicious transaction. Resolution 9/2005 requires covered institutions to establish internal control systems to allow them to detect suspicious transactions as soon as they occur and to report them to ensure compliance with domestic AML requirements, and 252/2002 requires FIs to make suspicious transaction reports on money laundering. Therefore, the obligations in the AML Law and Resolution 9/2005 would apply to the filing of an STR, regardless of possible involvement of tax matters.

### **Additional Element—Reporting of All Criminal Acts (c. 13.5):**

677. According to the provisions of the AML Law, covered institutions are required to report all suspicious transactions. Resolution 9/2005, the three sets of Instructions issued by the CBK, and Resolution 252/2002 require covered institutions to report to the PPO when they suspect that funds are the proceeds of any of the criminal acts that would constitute a predicate offense for ML domestically.

678. However, as stated earlier, there is no requirement in law, regulation, or Instructions that any of the reporting entities report suspicious transactions to the KFIU.

<sup>93</sup> Section 12 of the Instructions to Banks; Section 9 of the Instruction to Investment Companies; and Section 6 of the Instructions to Exchange Companies.

**Protection for Making STRs (c. 14.1):**

679. Article 14 of the AML Law states that natural persons or corporations which, in good faith, report information according to the provision of the AML Law, will be protected from any criminal, civil or administrative liability even if the subject of the report is not convicted and the transactions are found to be lawful. This protection applies directly to FIs as corporations and to FIs' directors, officers, and employees as natural persons.

680. This protection is extended in the Instructions to Banks, the Instructions to Investment Companies, and the Instructions to Exchange Companies issued by the CBK, which stipulate that, pursuant to Article 14 of the AML Law, the CBK affirms that it will not take any measures against employees who provide information in good faith, even if the reported transaction is subsequently found to be sound.<sup>94</sup>

681. The KSE also extended this protection in Article 14 of Resolution 31/2003, which states that no punitive action shall be taken and no administrative penalty shall be imposed on any employee of the KSE, brokerage firms, portfolio management companies, or the clearing house, as a result of the employee's reporting in good faith any activities he suspected of being related to ML or TF, even in the event his suspicious are proven to be groundless.

**Prohibition Against Tipping Off (c. 14.2):**

682. Article 85(b) of the CBK Law prohibits, except for cases allowed by the law, any member of a bank's Board of Directors, bank manager, or employee from disclosing any information—during the period of his employment or after leaving work at the bank—regarding the affairs of the bank or its customers, or other banks' affairs, which he may have become aware of in his position. This would prohibit the release of information regarding STR filings by Board of Directors, managers, or employees of banks, investment companies, and exchange companies. However, Article 85(b) only applies to a natural person, and would not apply to the FI itself.

683. Section 11 of the Instructions for Banks states that, if a transaction occurs that requires a bank to investigate to ascertain the seriousness of a suspicion, and if documentation or evidence is provided to support such suspicion and the matter requires that the related client remains unaware of the bank's investigations and inquiries *until they conclude*, bank officials and staff must not warn the client or related parties about the bank's actions. Assessors believe that the use of the phrase "until they conclude" implies that the prohibition to disclose the investigation or filing of an STR ends upon completion of the investigation. CBK officials stated that while the Instructions to Banks do include this phrase, it is not intended to contradict the prohibition of Article 85(b) of the CBK Law or to permit the disclosure of the investigation or the filing of an STR at any time.

684. Section 9 of the Instructions to Investment Companies prohibits employees of an investment company from warning or tipping off a client during the investment company's investigation of suspicious transactions. If the company believes that an investigation might result in the client becoming aware of the matter, the company should not pursue the investigation, but should consider it sufficient to notify the PPO of the details of the suspicious transaction. Officers of investment companies shall make sure that its employees are aware of these issues during the investigation of the client.

685. Section 7 of the Instructions to Exchange Companies prohibits the officials and employees of an exchange company from warning or signaling to the related clients during the exchange company's investigation to substantiate suspicions. Should the company believe that the investigation might result in the related client's becoming aware of the suspicions, the company must stop the investigation and provide

<sup>94</sup> Section 17 of the Instructions to Banks; Section 11 of the Instructions to Investment Companies; and Section 10 of the Instructions to Exchange Companies.

a detailed report about the suspicious transaction to the PPO. Moreover, the officials of the company shall make sure that its personnel have full knowledge of these procedures.

686. Article 11 of the AML Law stipulates that “any person who, according to the provisions of paragraph 4 of Article (3) [of the AML Law], have to report a suspicious financial transaction that comes to his/her knowledge and fails to do so, discloses information regarding one of the crimes stated in Article (2) [of the AML Law], that came to his knowledge through his position, or damages or conceals documents or instruments relevant to such crimes, shall be punished....” This prohibits the disclosure of information regarding any one of the crimes set forth in Article 2, which includes the offense of money laundering. It makes no reference to Article 3, which contains the requirement to report suspicious transactions, or the provision regarding the filing of STRs. Therefore, the assessors determined that there is no prohibition against insurance companies, exchange organizations, or brokerage firms, their directors, officers, or employees from disclosing the fact that an STR or related information was reported or provided to the FIU or PPO.

#### **Additional Element—Confidentiality of Reporting Staff (c. 14.3):**

687. The authorities believe that the information received by the KFIU staff is subject to the provisions on the protection of information provided by various laws, such as Article 11 of the AML Law and the provisions of confidentiality in the civil service law. However, as mentioned above, Article 11 does not ensure the confidentiality of the names and personal details of the staff of financial institutions that file an STR. As mentioned under criteria 26.6 and 26.7, there is some uncertainty surrounding this provision and whether this provision is sufficient to protect the information held by the KFIU.

688. Article 28 of the CBK Law prohibits, unless otherwise permitted by law, all members of the Board of Directors, managers, officials, and employees of the CBK from disclosing any information which relates to the affairs of the CBK or banks subject to the supervision of the CBK and to which he has access by reason of the duties of his office. This prohibition would apply to the members of the KFIU because they are also staff of the CBK.

689. No information was available regarding the confidentiality requirements on the PPO and its staff. This is especially relevant as the AML Law requires that STRs be reported to the PPO.

#### **Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):**

690. Section 20 of Instruction to Banks requires banks to provide to the CBK, through an online system and on a daily basis, data on the following transactions: (i) all cash transactions equal to or in excess of KD 3 000 (USD 10 600) or the equivalent in foreign currency by one client in one day according to the large cash transaction (LCT) system; and (ii) all foreign currency transactions (FCT) equal to or in excess of KD 3 000 (USD 10 600) by one client in one day according to the FCT system.

691. Section 12 of Instruction to Investment Companies stipulates that investment companies, including all their domestic branches, shall not accept cash from any client which in one day is more than KD 3 000 (USD 10 600) or the equivalent thereof in foreign currency, in settlement of his obligations to the company, for managing his funds, subscribing to securities issues, providing a service to him, or conducting a transaction with him. Payment in excess of this amount must be made using other, noncash payment methods, such as bank checks and the K-Net service.

692. Section 13 of Instructions to Exchange Companies requires exchange companies to weekly provide the CBK, over an online system, with all the transactions which they executed [during the week], including currency purchases and sales, domestic and foreign transfers, the sale and purchase of traveler’s checks and precious metals, and other transactions valued at KD 3 000 (USD 10 600) or more for one client in one day in accordance with FCT system, through an exchange company transactions (EXT) report. All

data related to all domestic government ministries and departments shall be excluded from the reporting requirement.

693. Only banks can accept cash above KD 3 000 (USD 10 600); all other FIs are prohibited from cash transactions above KD 3 000.<sup>95</sup>

**Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):**

694. The authorities state that cash transaction reports received from banks and exchange companies to the CBK are maintained in a computer database. That data is used by the FIU (which is part of the CBK) for analysis and research as part of STR investigations.

**Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):**

695. According to the authorities, the reports on cash transactions are subject to the control of the CBK and are subject to the safeguards in place for information in the possession of the CBK. In addition, LCT filings are kept on a secure computer system, where the data is encrypted. The data is password protected, with only designated individuals having access to the data.

**Feedback and Guidelines for FIs with respect to STR and other reporting (c. 25.2):**

696. The CBK issued *Guidelines for the Identification of Suspicious Transaction Patterns* as part of the Instructions issued to banks, investment companies, and exchange companies. These guidelines on STRs give examples of suspicious transaction patterns in seven broad areas: 1) ML using cash transactions; 2) ML using bank accounts; 3) ML using investment-related transactions; 4) ML by offshore international activities; 5) ML involving FI employees and agents; 6) ML by secured and unsecured lending; and 7) ML through electronic payment means. Despite the issuance of these guidelines, there is still inconsistency among banks, investment companies, and exchange companies as to what activity or level of suspicion requires the filing of an STR.

697. No guidelines have been issued for brokerage companies, insurance companies, or exchange organizations.

**Feedback to FIs with respect to STR and other reporting (c. 25.2):**

698. The PPO has been designated to receive STRs, but has not issued any feedback on the STRs it has received. According to the authorities, the KFIU does not have the authority to give feedback to reporting institutions on STRs. In addition, the CBK does not provide feedback on STRs during onsite inspections of banks, investment companies or exchange companies. Therefore, no feedback has been provided with respect to STRs.

699. Banks, investment companies, and exchange companies stated that they receive regular feedback from the CBK on the LCT, FCT, and EXT reports filed. The CBK will contact an institution if its report has not been received when required, and will contact institutions for additional information or with questions about the reports received by the CBK.

<sup>95</sup> Section 3 of the Instructions to Exchange Companies prohibits exchange companies from accepting, during a single day, cash exceeding KD 3,000 or the equivalent thereof in any foreign currency from any client in exchange for any service. All cash exceeding that sum shall be paid from the client's bank accounts using bank checks, points of sale and other noncash instruments permitted by the CBK.

**Statistics (R.32):**

700. The chart below demonstrates the growth in the number of STRs overall from 2005 to 2009. From a view of the chart below, the growth in STR filed appears to be accounted for entirely by an increase in the number of STRs filed by the FIs.

**Table 15 - Suspicious Transaction Reports by Sector (2005-2009)**

| Sector             | 2005 | 2006 | 2007 | 2008 | 2009 |
|--------------------|------|------|------|------|------|
| FIs                | 9    | 9    | 24   | 19   | 30   |
| Non-FIs            | 1    | 2    | 0    | 1    | 1    |
| Other <sup>1</sup> | 3    | 5    | 2    | 4    | 5    |
| TOTAL              | 13   | 16   | 26   | 24   | 36   |

**Table note:**

1. "Other" refers to government agencies or non-government organizations.

701. There was a notable increase in the number of FCTs reported by exchange companies from 2007 to 2008, which fell again in 2009.

**Table 16 - Total Foreign Currency Transaction Reports (2007–2009)**

|                    | 2007    | 2008    | 2009    |
|--------------------|---------|---------|---------|
| Banks              | 261 052 | 262 529 | 224 772 |
| Exchange Companies | 164 848 | 200 060 | 183 926 |
| TOTAL              | 425 900 | 462 589 | 408 698 |

702. The quantity of funds reported by banks via LCT reports has been decreasing since 2007. This can be contrasted against the rapid increase in the quantity of funds reported by exchange companies under the EXT system.

**Table 17 - Large Cash Transaction Reports by Banks (2007–2009)**

| Year | Number of LCT reports | Total Value of LCTs filed (Billion KD) | Total Value of LCTs filed (Billion USD) |
|------|-----------------------|--|---|
| 2007 | 660 430               | 22.443                                 | 79.251                                  |
| 2008 | 624 190               | 17.275                                 | 61.001                                  |
| 2009 | 613 353               | 11.851                                 | 41.848                                  |

**Table 18 - Exchange Company Transaction (EXT) Reports (2007–2009)**

| Year | Number of EXT reports | Total Value of EXTs filed (Billion KD) | Total Value (of EXTs filed (Billion USD) |
|------|-----------------------|--|--|
| 2007 | 164 848               | 3.040                                  | 10.735                                   |
| 2008 | 200 060               | 6.021                                  | 21.261                                   |
| 2009 | 183 926               | 6.832                                  | 42.021                                   |

## Analysis of Effectiveness

703. The lack of a requirement to report attempted transactions is of great concern. FIs repeatedly stated that when an FI had unanswered questions regarding a client or a transaction, it would refuse the client or the transaction and/or close the account. However, the FI would not file an STR in any of the cases mentioned, as it was not required and/or the FI did not think it had enough information, as required by the three sets of CBK instructions, to file an STR. This left the assessors with the impression that suspicious activity is often detected before it can be completed, and without it being reported, the authorities are unaware of potential illicit activity.

704. The assessment team found that FIs supervised by the CBK were all well-informed of the requirement to report suspicious activity to the PPO. Most of these institutions appear to have automated systems to detect unusual or suspicious transactions, in addition to conducting periodic reviews of records. In some cases, the filing of an STR required approval by senior management.

705. There were major discrepancies among FIs as to the definition of the term “suspicious” and the level of investigation required prior to the filing of an STR. Some of the FIs supervised by the CBK believed that only a minimum investigation was required, and that only a reason to suspect was necessary to file an STR. Others stated that activity was only suspicious if it was repeated or in very large amounts. In other cases, because the STR was to be filed with the PPO, it was seen as making a formal accusation. As such, the investigation needed to be thorough and needed to prove that illicit activity had in fact occurred. A number of the FIs the assessors met with expressed the view that the STR requirements were overly burdensome, due to the level of investigation and proof required for filing. The assessors believe that this discrepancy has resulted in a lack of effective implementation of the requirement to file suspicious transactions. This discrepancy in the level of investigation required to file an STR denies the KFIU and law enforcement authorities a broader intelligence base that would likely come from a more consistent perception of the evidentiary threshold of reporting. This is further evidenced by the low level of STRs reported, and that the total 19 STRs reported in 2008 and 30 STRs reported in 2009 were filed by the same bank.<sup>96</sup>

706. The discrepancy in the level of investigation required prior to the filing of an STR could be clarified by guidance on: 1) the level of suspicion required for filing and STR; and 2) the level of investigation required by the Instructions to Banks, the Instructions to Investment Companies, and the Instructions to Exchange Companies.

707. In all cases, the filing institutions seemed to be unaware of what happens to the STR after it has been filed with the PPO, were unaware that there was an FIU in Kuwait, or that the KFIU reviewed the STRs. While some had been contacted for additional information, all requests came from the PPO.

708. There was also a concern about the confidentiality pertaining to having filed an STR, as well as the information in the report. Filing institutions are often called to the PPO to provide documents or for questioning, at times with the related client present. Once a case had been filed, institutions explained that it was inevitable that the related client would know that the FI had filed an STR regarding the client, as the questions asked of the client during the course of the PPO investigation revealed information that only the FI could have provided.

709. Assessors determined that among brokerage companies, there was a sense that the detection of suspicious transactions was the responsibility of the KSE and the KCC. While it was possible for the brokerage companies to review accounts for this purpose, it was the view of the brokerage companies that because the KSE and KCC reviews and have access to all financial and trading information on customers, it would be best if the review was done by the KSE, and the KCC, not the brokerage companies.

<sup>96</sup> For additional information and statistics, see Section 2, Recommendation 26.

710. Insurance companies and exchange organizations were either unaware of the filing requirement or were unclear as to whom they should report. In the absence of further guidance, the conflict between Resolution 252/2002 and Resolution 83/2005 may result in continued confusion.

711. It should be noted that there is no income tax in Kuwait, and tax matters are not covered as a predicate offense for money laundering in Kuwait. This does not affect the scope of the requirement to file an STR, as the AML Law’s broad STR requirement would apply regardless of whether the matter is thought to involve taxes, but may have an effect on the implementation of STR filing with respect to tax matters, as the Kuwaiti financial system could be used in tax evasion from another country.

### 3.7.2 Recommendations and Comments

#### *Recommendation 13 and SR.IV: STR Reporting*

712. The authorities are recommended to:

- Establish in law or regulation that STRs be filed with the FIU.
- Extend the requirement in law or regulation to file an STR with the FIU when the funds are suspected or have reasonable ground to be suspected to be linked or to be related to, or to be used for terrorism, terrorist acts, or by a terrorist organization or those who finance terrorism.
- Extend the requirement in law or regulation to file an STR with the FIU to explicitly apply to attempted transactions.
- Issue additional guidance on STR reporting.

#### *Recommendation 14: Protection for STR reporting/Tipping off*

713. The authorities are recommended to:

- Prohibit brokerage companies, insurance companies, and exchange organizations from disclosing the fact that an STR or related information is being, or has been, provided to the competent authorities. The prohibition against the release of information regarding STR filings by the Board of Directors, managers, or employees of banks, investment companies, and exchange companies should be extended to include the FI itself.

#### *Recommendation 25: Feedback and Guidelines for FIs with respect to STR and other reporting*

714. The authorities are recommended to:

- Issue clear guidance on STR reporting, and provide both specific and general feedback on STRs.

### 3.7.3 Compliance with Recommendations 13, 14, 19, and 25 (criterion 25.2), and Special Recommendation IV

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.13 | NC     | <ul style="list-style-type: none"> <li>• There is no requirement in law or regulation that STRs be filed with the FIU.</li> <li>• Due to the lack of an autonomous TF offense, there is no obligation in law or regulation to make an STR when there are reasonable grounds to suspect that funds are related to TF.</li> <li>• There is no requirement in law or regulation to report attempted transactions.</li> </ul> |



|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
|       |        | <ul style="list-style-type: none"> <li>Lack of effective implementation of the requirement to report suspicious transactions.</li> </ul>   |
| R.14  | PC     | <ul style="list-style-type: none"> <li>There is no prohibition against banks, investment companies, or exchange companies from disclosing the fact that an STR or related information was reported or provided to the FIU or PPO.</li> <li>There is no prohibition against brokerage companies, insurance companies, and exchange organizations, their directors, officers, or employees from disclosing the fact that an STR or related information was reported or provided to the FIU or PPO.</li> </ul>  |
| R.19  | C      | <ul style="list-style-type: none"> <li>This recommendation is fully observed.</li> </ul>   |
| R.25  | NC     | <ul style="list-style-type: none"> <li>Lack of guidelines for brokerage companies, insurance companies or exchange organizations.</li> <li>Limited guidelines on STR reporting provided by the CBK to relevant institutions.</li> <li>Lack of adequate and appropriate feedback from competent authorities</li> </ul>  |
| SR.IV | NC     | <ul style="list-style-type: none"> <li>Due to the lack of an autonomous TF offense, there is no obligation in law or regulation for FIs to report to the FIU when they suspect or have reasonable grounds to suspect funds are related to, or are being used for, terrorism, terrorist acts, or by terrorist organizations or those who finance terrorism.</li> <li>There is no requirement in law or regulation for FIs to report attempted transactions, regardless of amount, when there are reasonable grounds to suspect those funds are related to, or are being used for, terrorism, terrorist acts, or by terrorist organizations or those who finance terrorism.</li> </ul> |

### **Internal controls and other measures**

## **3.8 Internal Controls, Compliance, Audit, and Foreign Branches (R.15 & 22)**

### **3.8.1 Description and Analysis**

#### **Legal Framework:**

715. The Kuwaiti law, regulations, and instructions requiring FIs to establish and maintain internal controls, compliance management arrangements, audits, employee training, and employee screening include the AML Law, Resolution 9/2005, Resolution 252/2002, Instructions to Banks, Instructions to Investment Companies, Instructions to Exchange Companies, Resolution 31/2003, and Resolution 113/1992.

716. The Kuwaiti instructions requiring FIs to apply FATF recommendations to foreign branches and subsidiaries include the Instructions to Banks and the Instructions to Investment Companies.

#### **Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1):**

717. The —Article 3, parts 5 and 6 of the AML Law requires covered FIs to adopt: (i) a training program for their executives and employees to ensure their continuous recognition of new developments in the field of combating ML operations; and (ii) appropriate internal supervisory procedures and regulations that enable them to immediately detect such operations and prevent them from being used to execute suspicious operations. While the AML law does require FIs to establish internal procedures to prevent money laundering, this does not apply to TF. In addition, there is no requirement that the internal procedures be communicated to their employees, or that the controls cover, at a minimum, CDD, recordkeeping, the detection of unusual transactions or the reporting obligation.

718. Article 3, paragraph (e) of Resolution 9/2005 requires covered FIs to set and promote internal control systems for financial companies and institutions to allow them to detect suspicious transactions as soon as they occur and to report them to ensure compliance with domestic anti-money laundering requirements. Paragraph (d) requires covered institutions to train personnel and concerned officers periodically in advances in the field of detecting and combating ML and to inform such personnel and officers of the requirements of the law and ministerial resolutions issued to implement the law. While Resolution 9/2005 requires an internal control system for the detection of suspicious transactions, it does not require FIs to establish or maintain internal procedures, policies, or controls to prevent ML or TF or to communicate these to their employees.

719. Article 14.1 of the Instructions to Banks and Article 16.1 of the Instructions to Investment companies require banks and investment companies, respectively, to prepare a clear and precise policy and procedures approved by the board of directors, including a bank policy on combating ML and TF in accordance with local legislation, relevant ministerial resolutions, and the instructions of the CBK. These policies and procedures are required to include a clear definition of the various forms of ML and TF and ways of detecting and tracking them, in addition to the minimum measures which the concerned officials must take upon discovering any suspicious operation. The Instructions to Investment Companies notes that it is important to update policies and procedures periodically. Neither of these Instructions includes a requirement for banks or investment companies to inform their personnel for the internal policies and procedures.

720. Article 17.4 of the CBK Instructions to Investment Companies issued by the CBK requires investment companies to inform all officers and staff of all domestic and international requirements in the field of AML/CFT, including domestic legislation, supervisory instructions and related sanctions, and to inform them of the measures to be followed in the event of detecting any suspicious transaction linked to money laundering or the financing of terrorism. The Instructions note that it is important for investment companies to document the measures they take to make all workers familiar this legislation, instructions and measures, and to obtain the signatures of employees acknowledging they have received this training. The requirement that personnel be aware of domestic AML/CFT requirements, however, is not the same as the requirement to know the investment company's internal policies and procedures, which should contain more than the local or international AML/CFT requirements. Therefore, there is no explicit requirement that investment companies inform its personnel of the internal policy and procedures.

721. Article 11 of the Instructions to Exchange Companies states that owners and employees of exchange companies should: (i) be fully knowledgeable of the risks of ML and TF operations; (ii) adopt policies and procedures, including a policy on ML and TF to protect the exchange company from ML and TF transactions; and (iii) be fully acquainted with all domestic requirements for combating such operations, including all domestic legislation, supervisory instructions, related penalties, and the procedures to be followed if any transaction suspected of being related to ML or TF is detected. The requirement that personnel be aware of domestic AML/CFT requirements is not the same as requirement to know the exchange company's internal policies and procedures, which should contain more than the local AML/CFT requirements. Therefore, there is no explicit requirement that the exchange companies inform its personnel of the internal policy and procedures.

722. In addition, Article 12.1 of the Instructions to Exchange Companies requires that, to strengthen their internal control systems, exchange companies should prepare clear, precise written policies and procedures, including a policy on ML and TF, which are approved by their management, and which are consistent with domestic legislation, relevant ministerial decrees, and the CBK's Instructions. It is noted in the Instructions that it is important to update these policies periodically and to clearly define ML and TF transactions, the various patterns of such transaction, and methods for the company's concerned employees to detect, track and to report such transactions.

723. In sum, the CBK Instructions to Banks, Instructions to Investment Companies, and Instructions to Exchange Companies require these FIs to establish internal procedures and policies consistent with local legislations, regulations and instructions, including a process for detecting suspicious transactions. Also, Resolution 9/2005 requires that the internal control system allow FIs to detect suspicious transactions in order to ensure compliance with domestic AML obligations. However, while there is a requirement to establish an internal procedure, and there are training requirements, there is no specific requirement to communicate the procedure and policies to their employees. In addition, while the AML Law, Resolution 9/2005, and each of the respective CBK Instructions contain requirements on CDD, record retention, and the detection of unusual transactions, none of these documents includes an explicit requirement that the internal control procedures and policies cover these issues.

724. Article 13 of Resolution 31/2003 requires brokerage companies to adopt the necessary policies to improve the performance of their employees in the area of discovering activities related to ML and TF, within the framework of the relevant laws and resolutions. However, this does not require that brokerage companies establish procedures, policies, or internal controls to prevent ML and TF, or that the policies described above be communicated to employees.

725. Article 2 of Resolution 252/2002 requires insurance companies and exchange organizations to develop special programs relating to work procedures and proper control systems to combat ML and TF. Part (a) of Article 2 states that this program should include the training of employees and the establishment of internal control systems to halt incidents involving attempted ML or TF before they occur. Part (b) of Article 2 states that the control systems should include the review and development of internal policies and procedures and rules to combat ML and TF.

726. However, there is no requirement to communicate the internal control system to employees.

727. While the AML Law, Resolution 9/2005, and Resolution 252/2002 contain requirements on CDD, record retention, the detection of unusual transactions, and the STR reporting obligations, there is no explicit requirement that the covered entities address these issues in their internal policies, procedures and controls.

#### **Develop appropriate compliance management arrangements (c. 15.1.1):**

728. Article 15 of the Instructions to Banks requires banks to establish a full-time, independent unit or department which reports directly to the chairman of the board, and which is staffed with individuals with a high level of experience in fields related to AML/CFT. The unit/department's task is to ascertain the bank's compliance with laws, ministerial resolutions, and supervisory instructions and to establish the policies, rules, and procedures set by the bank concerning ML and TF.

729. Article 20 of the Instructions to Investment Companies similarly requires the establishment of a compliance unit or officer reporting directly to the chairman of the board, and having the main tasks of: (i) ascertaining the extent of the bank's compliance with laws, ministerial resolutions, and supervisory instructions related to combating ML and TF; and (ii) monitoring the extent to which the policies, rules, and procedures adopted by the company comply with domestic laws, resolutions, and policies. The staff of this unit/the compliance officer shall possess the necessary expertise and experience in fields relevant to AML and CFT.

730. However, there is no specific requirement in the Instructions to Banks or the Instructions to Investment Companies that the head of the unit or the compliance officer be at management level.

731. There is no requirement that exchange companies, brokerage companies, insurance companies, or exchange organizations develop appropriate compliance management arrangements, including, at a minimum, the designation of an AML/CFT compliance officer at the management level.

**Access to data by compliance staff (c. 15.1.2):**

732. There is no requirement for banks or investment companies that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transactions records, and other relevant information.

733. As set forth above, there is no requirement that exchange companies, brokerage companies, insurance companies, or exchange organizations designate an AML/CFT compliance officer.

**Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):**

734. Article 13 of the Instructions to Banks requires banks to have an annual internal audit to review the adequacy of internal procedures and compliance with AML/CFT requirements and instructions. The audit report, including the findings of the audit, is required to be submitted to the senior management of the bank so management can take whatever measures are necessary. No clarity is provided to define whether “senior management” refers to the Board of Directors of its designee. In addition, Article 14.2 of the Instructions requires a report to be completed by an external auditor. According to Article 14 paragraph 2. the report by the external auditor reviews the internal audit system and contains a clear opinion about the extent of the bank’s compliance with domestic laws, ministerial resolutions, and instructions related to AML/CFT, in addition to the extent of compliance with bank policies and rules in this regard.

735. Article 16.2 of the Instructions for Investment Companies requires an annual internal audit plan that must review the adequacy of the procedures of the investment company and its compliance with the Instructions of the CBK regarding AML/CFT. The audit report, including the findings of the inspection, is required to be submitted to the company board so they can take any measures required. There is no requirement that investment companies have an external audit.

736. Article 12.4 of the Instructions for Exchange Companies requires exchange companies to ensure that the report of the external auditor regarding the final financial statements of the exchange company include a statement as to the degree to which the company complies with domestic legislation, ministerial decrees, and the CBK’s Instructions on combating ML and TF. There is no requirement that exchange companies have an internal audit.

737. There is no specific requirement that the required audits of FIs be adequately resourced and independent. In addition, the varying requirements for internal/external audits make it unclear as to what particular FIs (covered by the different instructions) are required to implement for audit purposes. For example, it is unclear if any of the audits require sample testing of procedures, policies, and controls.

738. There is no requirement for brokerage firms, exchange organizations or insurance companies to have an adequately resourced and independent audit requirement with respect to AML/CFT compliance.

**Ongoing Employee Training on AML/CFT Matters (c. 15.3):**

739. Article 3, part 5, of the AML Law requires covered institutions to adopt a training program for their executives and employees to ensure their continuous recognition of the new developments in the field of combating ML operations.

740. Article 3, paragraph (d), of Resolution 9/2005 requires covered institutions to train personnel and concerned officers periodically in advances in the field of combating and detecting ML and to inform such personnel and officers of the requirements of the law and ministerial resolutions issued to implement the law. Additional requirements exist for banks, investment companies and exchange companies pursuant to CBK instructions, and guidance for insurance companies and exchange organizations pursuant to Resolution 252/2002.

741. Articles 16.3 and 16.5 of the Instructions to Banks require that all officers and staff of the bank, including the chief executive officer, his deputies, assistants, department directors, and all newly-appointed concerned employees be informed of all matters related to ML and TF, including domestic legislation, supervisory instructions, related sanctions, and the measures to be followed in the event of detecting any suspicious transaction linked to ML or TF. Article 16.4 states that the training programs should be continued on a regular basis to make concerned employees aware of all new developments in the field of ML and TF and ways of combating these, and to improve their capacities and skills in detecting, tracking, and countering these operations.

742. Article 17 of the Instructions to Investment Companies requires that investment companies develop training programs on ML and TF. The training program must (i) ensure that the chairman and members of the board are fully aware of the risks of ML and TF, and adopt policies, rules, and procedures designed to enable the investment company to avoid being used to transact such operations; (ii) require newly-appointed company employees to be trained in all matters relating to ML and TF and ways to prevent them; and (iii) ensure the continuation of the training programs on a regular basis to make concerned employees aware of all new developments in the field of ML and TF and ways of combating these, and to improve their capacities and skills in detecting, tracking, and countering these operations.

743. Article 9 of the Instructions to Exchange Companies requires that concerned employees of exchange companies participate in training programs designed to teach them to identify the patterns of ML and TF which may occur in exchange companies and how to detect and combat them. While Article 11 does not specifically mention training, it states that owners and employees of exchange companies should (i) be fully knowledgeable of the risks of ML and TF operations; (ii) adopt policies and procedures that protect the exchange company from being exploited by ML and TF transactions; and (iii) be fully acquainted with all domestic requirements for combating such operations including all domestic legislation, supervisory instructions, related penalties, and the procedures to be followed if any transaction suspected of being related to ML or TF is detected.

744. Article 2 of the Resolution 252/2002 requires insurance companies and exchange organizations to develop special programs relating to work procedures and proper control systems to combat ML and TF. Part (a) of Article 2 states that this program should include the training of employees and the establishment of internal control systems to halt incidents involving attempted ML or TF before they occur.

#### **Employee Screening Procedures (c. 15.4):**

745. Article 14.3 of the Instructions to Banks states that banks shall establish a minimum level of appropriate qualifications for the appointment of employees and shall investigate new applicants for employment to prevent the appointment of a new employee about whom there is a suspicion and who may expose the bank to the risk of ML or TF. It is the view of the assessors that this is not the equivalent to a requirement for a bank to put in place a screening procedure to ensure high standards when hiring new employees.

746. Article 12.2 of the Instructions to Exchange Companies requires exchange companies to establish a minimum suitable requirement for hiring new personnel. All candidates are required to be investigated to avoid hiring any person who is under any suspicion of ML or TF or who might expose the exchange company to ML or TF. It is the view of the assessors that this is not the equivalent to a requirement for an exchange company put in place a screening procedure to ensure high standards when hiring new employees.

747. Article 16.3 of the Instructions to Investment Companies requires investment companies to take measures to prevent the appointment of a new employee about whom there is a suspicion or who may expose the investment company to the risk of ML or TF. There is an explicit requirement for investment companies to review the criminal record of new employees. It is the view of the assessors this is not the

equivalent of a requirement for an investment company to put in place a screening procedure to ensure high standards when hiring new employees.

748. There is no requirement for brokerage companies, insurance companies, or exchange organizations to put in place screening procedures to ensure high standards when hiring employees.

**Additional Element—Independence of Compliance Officer (c. 15.5):**

749. Article 15 of the Instructions to Banks requires that the AML unit or department be independent and that it report directly to the chairman of the board. Article 10 of the Instructions to Investment Companies requires the AML unit or officer report directly to the chairman of the board, but does not require that the unit/officer be able to act independently.

750. There is no requirement for exchange companies, exchange organizations, insurance companies, or brokerage companies to appoint an AML compliance officer.

**Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1):**

751. Article 18 of the Instructions to Banks states that the Instructions shall apply to all domestic and external (foreign) branches and subsidiary companies of the bank, especially if they operate in countries not bound by international resolutions and recommendations adopted in this regard. Banks are also required to ascertain the compliance of their foreign branches and companies with these Instructions according to an appropriate procedure. No guidance is provided by the CBK to define the appropriate procedure to determine compliance. In the event of failure to apply these instructions, however, the bank is only required to notify the CBK.

752. Article 19 of the Instructions to Investment Companies states that the Instructions shall apply to investment companies and their subsidiary banking and finance companies, especially if they operate in countries not bound by international resolutions and recommendations adopted in this regard. Further, investment companies are required to ascertain the compliance of their foreign subsidiary companies with these instructions according to an appropriate procedure. No guidance is provided by the CBK to define the appropriate procedure to determine compliance.

753. Authorities state that the original Arabic word for “ascertain,” as used in Article 18 of the Instructions to Banks and Article 19 of the Instructions to Investment Companies, is stronger than the English word, and imposes enforcement responsibility on financial institutions. After a review of the Arabic version of the text, assessors determined that the requirement to ascertain the compliance by foreign branches and subsidiaries is not the same as the requirement to ensure their compliance with requirements. In addition, the CBK does not define or provide guidance on the “appropriate procedure” to determine if foreign branches or subsidiaries are in compliance with CBK Instructions. Therefore, the appropriate procedure is left to the discretion of the bank or investment company.

754. As a result, assessors determined that banks and investment companies are not specifically required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF recommendations. If a bank or investment company determines that a foreign bank or subsidiary is not complying with the CBK Instructions, no action is required on behalf of an investment company, and banks are only required to notify the CBK. There is no requirement to take action to rectify the situation. There is no requirement that exchange companies, brokerage firms, insurance companies, or exchange organizations ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local laws and regulations permit. However, according to the authorities, exchange companies, insurance companies and exchange organizations do not have foreign branches or subsidiaries. In addition, CBK authorities state that they must approve the establishment of a branch and subsidiary of Kuwaiti

exchange companies in a foreign jurisdiction, and they do not intend to approve the establishment of foreign branches and subsidiaries of exchange companies.

**Particular attention to branches & subsidiaries in certain countries (c. 22.1.1):**

755. Article 18 of the Instructions to Banks and Article 19 of the Instructions to Investment Companies state that the CBK Instructions shall apply to all foreign branches and subsidiaries of the bank or investment company, especially if they operate in countries not bound by international resolutions and recommendations “adopted in this regard.” According to the authorities, “adopted in this regard” means adopted in relation to AML/CFT. In addition, as stated above, these banks and investments companies are also required to ascertain the compliance of their branches and companies with these Instructions.

756. There is no requirement that exchange companies, brokerage firms, insurance companies or exchange organizations ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations. However, exchange companies, brokerage firms, insurance companies, and exchange organizations do not have foreign subsidiaries or branches at this time.

**Differences in AML/CFT requirements between home and host country (c. 22.1.2):**

757. There is no requirement to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ. According to authorities, all branches and subsidiaries of Kuwaiti banks and investment companies are operating in countries where the AML/CFT requirements are more stringent than those of Kuwait.

**Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):**

758. Article 18 of the Instructions to Banks requires banks to ascertain the compliance of their foreign branches and companies with these Instructions. In the event of failure to apply these Instructions, banks are required to notify the CBK.

759. Article 19 of the Instructions to Investment Companies requires investment companies to ascertain the compliance of their foreign branches and companies with these Instructions. However, there is no requirement to notify the CBK of noncompliance.

760. There is no requirement that exchange companies, brokerage firms, insurance companies, or exchange organizations inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. However, according to the authorities, none of these entities have foreign branches or subsidiaries.

**Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):**

761. Based on meetings with the private sector representatives, the assessment team determined that consistent CDD measures are applied at the group level by FIs with an international presence. Overall, assessors were left with the impression that AML/CFT requirements and training are established at headquarters, applying the highest relevant AML/CFT standard. The policies and procedures are then disseminated to all domestic and foreign branches and are adapted as necessary to host country requirements.

## Analysis of Effectiveness

### *Recommendation 15*

762. Assessors determined that, in practice, banks, investment companies, and exchange companies are complying with the requirements regarding internal controls, compliance, and audit. All the entities the assessment team met with had procedures, policies, and controls that covered, at a minimum, CDD, record retention, the detection of unusual and suspicious transactions, and the reporting obligation. These policies and procedures were conveyed to employees when they were hired and through periodic training. The cycle of training varied between institutions, but was, at a minimum, once every one to two years or when new requirements were issued. While an annual cycle is likely to be effective, assessors determined it is not adequate to have a training cycle of once every two year, or potentially longer if no new requirements have been issued.

763. The compliance officers and units at the banks, investment companies, and exchange companies with whom assessors met were knowledgeable of AML/CFT and had access to the customer and transaction data necessary to perform their duties. In most cases, the compliance officer or unit was responsible for developing internal AML/CFT procedures, training, and testing for compliance with the internal controls by using sample testing.

764. The ability of the compliance officer/unit to act independently varied between FIs. Meetings with the private sector revealed that the policies regarding whether the compliance officer/unit is able to act independently depends on the institution. In all institutions, the compliance officer was able to report to senior management above the next reporting level. However, in many cases, the compliance officer required the approval of the legal department or the Chairman of the Board of Directors before taking certain actions, such as filing an STR.

765. During the on-site mission, the assessment team was informed by the CBK and private sector banks, investment companies, and exchange companies that the CBK reviews the internal and external audits during both on-site and off-site inspections. In addition, all banks, investment companies and exchange companies are required to hire a reputable auditing firm recommended by the CBK to conduct an Internal Control Review (ICR). The ICR occurs annually and constitutes a review of the FIs' internal audit that is sent directly to the CBK by the auditing firm.

766. In contrast, brokerage firms, insurance companies, and exchange organizations either did not have AML/CFT procedures, policies, or controls or were not implementing their procedures, policies, or controls effectively. In one case, while the entity had AML/CFT policies and procedures, the long-time employees with whom the assessment team met had been unaware of the policies and procedures until their initial training the week before the visit of the assessment team. In addition, exchange companies, brokerage firms, insurance companies, and exchange organizations do not have designated AML compliance officers or units.

767. There was also little or no implementation by brokerage firms, insurance companies, and exchange organizations of the employee training requirements, depending on the individual firm or company visited by the assessors.

### *Recommendation 22*

768. The CBK reported that it performs an on-site examination of each of the foreign branches of its FIs at least once every two years. In that examination process, the CBK reviews for compliance with Kuwaiti AML standards.



769. There is a requirement that banks and investment companies apply CBK Instructions to foreign branches and subsidiaries, especially if they operate in countries not bound by international resolutions and recommendations regarding AML/CFT. During meetings with the private sector, the assessment team found that, while banks and investment companies have internal policies and procedures to implement this requirement, they were not effective. In the absence of guidance issued by the CBK, few of the institutions knew how to determine which countries do not or insufficiently apply the FATF Recommendations.

770. The CBK stated that it has never encountered a situation where the host country did not permit the observance of AML/CFT measures consistent with Kuwait's requirements. In addition, the CBK approves the establishment of each foreign branch and subsidiary and states that it has not and will not grant approval until it has been assured that there are no concerns regarding the implementation of AML/CFT obligations. As a result, all branches and subsidiaries of Kuwaiti banks and investment companies are operating in countries where the AML/CFT requirements are more stringent than the requirements in Kuwait.

### 3.8.2 Recommendations and Comments

#### *Recommendation 15: Internal policies and controls/screening, training, audit*

771. The authorities are recommended to:

- Require FIs to communicate their internal procedures, policies, and controls to their employees. It should be required that the internal procedures, policies, and controls contain requirements on CDD, record retention, the detection of unusual transactions, and the STR reporting obligations.
- Extend the requirement to establish internal procedures to brokerage companies.
- Require banks and investment companies to ensure that the compliance officer or head of the compliance unit be at the management level.
- Require exchange companies, brokerage companies, insurance companies, and exchange organizations to develop appropriate compliance management arrangements, including, at a minimum, the designation of an AML/CFT compliance officer at the management level.
- Require all FIs to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transactions records, and other relevant information.
- Require that the audit function of banks, investment companies, and exchange companies be adequately resourced and independent and perform sample testing.
- Ensure that the varying requirements for banks, investment companies, and exchange companies for internal/external audits qualify as an adequately resourced and independent audit function to test for compliance with internal procedures, policies, and controls.
- Require the brokerage companies, insurance companies, and exchange organizations to maintain an adequately resourced and independent audit function to test for compliance with laws, regulations and internal procedures, policies and controls with regard to AML/CFT.
- Require the banks, investment companies, brokerage companies, insurance companies, and exchange organizations to put in place screening procedures to ensure high standards when hiring new employees.

- Ensure that brokerage companies, insurance companies, and exchange organizations are implementing the requirements of the AML Law and Resolution 9/2005 regarding employee training. Such training should not only focus on understanding the laws, regulations and instructions in place, but should also focus on how various systems, sectors, and individual entities can be exploited for the purposes of ML and TF.
- Ensure effective implementation by brokerage companies, insurance companies, and exchange organizations of requirements to:
  - Establish and maintain internal procedures, policies and controls to prevent ML and TF; and
  - Establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.

*Recommendation 22: Application of AML/CFT measures to foreign branches and subsidiaries.*

772. The authorities are recommended to:

- Fully extend the requirements of Recommendation 22 to exchange companies, insurance companies, exchange organizations, and brokerage companies.
- Require banks and investment companies to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Kuwaiti requirements and the FATF Recommendations, to the extent that host country laws and regulations permit.
- Require the branches and subsidiaries in host countries to apply the higher standards where the minimum AML/CFT requirements of the home and host countries differ.
- Require investment companies to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because it is prohibited by host country laws, regulations, or other measures.

### 3.8.3 Compliance with Recommendations 15 & 22

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.15 | PC     | <ul style="list-style-type: none"> <li>• Brokerage companies are not required to establish and maintain internal procedures, policies, and controls to the prevention of TF.</li> <li>• FIs are not specifically required to communicate their internal procedures, policies, and controls to their employees and are not specifically required to contain requirements on CDD, record retention, the detection of unusual transactions, and the STR reporting obligations.</li> <li>• There is no requirement for banks or investment companies that the compliance officer or the head of the compliance unit be at the management level.</li> <li>• There is no requirement for exchange companies, brokerage companies, insurance companies, or exchange organizations to develop appropriate compliance management arrangements, including, at a minimum, the designation of an AML/CFT compliance officer at the management level.</li> <li>• There is no requirement that FIs ensure that compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information,</li> </ul> |

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
|      |        | <p>transactions records, and other relevant information.</p> <ul style="list-style-type: none"> <li>• For banks, investment companies, and exchange companies: <ul style="list-style-type: none"> <li>○ There is no requirement that audits be adequately resourced and independent to test for compliance with internal procedures, policies, and controls.</li> <li>○ It is unclear whether audits are required to perform sample testing of procedures, policies, and controls.</li> <li>○ There is no requirement that brokerage companies, insurance companies, or exchange organizations maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.</li> <li>○ There is no requirement that banks, investment companies, exchange companies, brokerage companies, insurance companies, or exchange organizations put in place a screening procedure to ensure high standards when hiring new employees.</li> </ul> </li> <li>• There is a lack of effective implementation by brokerage companies, insurance companies, and exchange organizations of requirements to: <ul style="list-style-type: none"> <li>○ Establish and maintain internal procedures, policies and controls to prevent ML and TF;</li> <li>○ Establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and, in particular, the requirements concerning CDD and suspicious transaction reporting.</li> </ul> </li> </ul> |
| R.22 | NC     | <ul style="list-style-type: none"> <li>• There are no requirements for FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (<i>i.e.</i>, host country) laws and regulations permit.</li> <li>• There is no requirement that, where the minimum AML/CFT requirements of the home and host countries differ, the branches and subsidiaries in host countries apply the higher standard.</li> <li>• There is no requirement that investment companies, exchange companies, brokerage companies, insurance companies, or exchange organizations inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.</li> </ul>   |

### 3.9 Shell Banks (R.18)

#### 3.9.1 Description and Analysis

##### Legal Framework:

##### Prohibition of Establishment Shell Banks (c. 18.1):

773. There is no explicit prohibition in primary, secondary legislation or other enforceable means that would explicitly prohibit the establishment of shell banks in Kuwait.

774. The CBK Law 32/1968 defines banks under Article 54 as “*institutions whose basic and usual functions involve the receipt of deposits for use in banking operations, such as: the discount, purchase and sale of commercial papers, granting of loans and advances, issuing and collecting cheques placing of*

*public and private loans, dealing in foreign exchange and precious metals, and any other credit operations or operations considered by the Law of Commerce or by custom as banking operations. For the purposes of implementation of the provisions of this Law, and unless otherwise provided, the branches of any bank operating in the State of Kuwait shall be considered as one bank.”*

775. Article 59 of the CBK Law stipulates that no banking institution is allowed to start operation until it has been registered in the Register of Banks at the CBK. In addition, it provides that no institutions, other than those registered in the Register of Banks, are allowed to practice banking business or use in their business addresses, publications or advertisements the terms: “bank, banker, bank owner” or any other wording the usage of which may mislead the public as to the nature of the institution. No institutions other than those registered in the Central Bank Register of Banks or Register of Investment Companies are allowed to receive money for investment from third parties.

776. Article 60 states that registration or refusal of registration of banks shall be affected by a decision of the Minister of Finance on the recommendation of the Board of Directors of the CBK. However, the CBK Law does not require that a bank have a physical presence in Kuwait to receive a license.

777. The authorities indicated that “*Ministerial Decree 39 sets out the requirements for Kuwaiti banks to have a domestic address, which confirms that shells banks cannot be established or operate from or in Kuwait.*” The CBK also stated that “*according to the CBK bank register, the bank has to register its physical address in Kuwait. Moreover, part of the bank registry information is the commercial license number issued by MOCI, which includes a physical address.*”

778. Article 1 of Ministerial Decree 39 states the following: “There is a register of Banks in CBK which includes the following data: 1) name of bank, 2) register number and its date, 3) the legal structure of the bank, 4) date of establishment, 5) capital allowed, paid, dedicated for work in Kuwait, 6) securities allowed to be issued, 7) reserves: legal, optional, reserves devoted for working in Kuwait, other branches, 8) the address of the major branch, or the address of the center supervising work in Kuwait for branches of foreign banks, 9) branches: in Kuwait, abroad, 10) the names of the chairman and the members of the board as well as the head of the executive system, 11) names of auditors, number and date of the decree of the Ministry of Finance approving registration, 12) and other data that is deemed necessary to be registered by CBK.

779. The assessment team is of the view that the requirement set forth under Paragraph 8, Article 1, of Ministerial Decree 39 “obligation to provide the address of the major branch, or the address of the center supervising work in Kuwait” is not entirely sufficient to protect Kuwait from the establishment of shell banks. The requirement in place does not properly reflect the aspect of “meaningful mind and management” according to the FATF definition. The single reference to provide an address of the major bank is not sufficient and does not reflect the need to have physical presence in the country in which it is incorporated or licensed.

#### **Prohibition of Correspondent Banking with Shell Banks (c. 18.2):**

780. Article 6.1 of CBK Instructions for Banks (2/BS/92/2002) stipulates that banks, “*in executing these transactions, shall only deal with correspondents licensed to execute these transactions by competent official bodies in the countries where these correspondents are located; there shall be no dealings with any shell banks.*”

781. Article 13 of CBK Instructions for Investment Companies (2/IS-IIS/180/2005) states that “*investment companies shall not enter into any relation with shell banks or companies or continue dealing with them.*”

782. Article 5.1 of the Instructions for Exchange Companies states that “*transactions should be executed only with correspondents licensed by the competent official authorities in the countries in which the correspondents are located. Exchange companies must not transact with shell banks*”. However, this does not prohibit exchange companies from entering into, or continuing correspondent relationships with shell banks as required by criteria 18.2.

783. As such, banks and investment companies are not permitted to enter into, or continue, correspondent banking relationships with shell banks, but exchange companies are only prohibited to conduct transactions with shell banks.

### **Requirement to Satisfy Respondent FIs Prohibit of Use of Accounts by Shell Banks (c. 18.3):**

784. Article 6.3 of the Instructions for Banks, Article 6.3 of the Instructions for Investment Companies, and Article 5.3 of the Instructions for Exchange Companies state that, upon executing their transactions, whether for themselves or their clients’ interests, through correspondents in other countries, FIs shall ensure that sufficient information is available and that there shall be no dealings with correspondents or entities dealing with or allowing their accounts to be used by shell banks.

### **Analysis of Effectiveness**

785. The CBK indicated that there are no shell banks operating in Kuwait. In addition, banks, investment companies and exchange companies also informed the assessment team that none of these FIs have correspondent relationships with shell banks. The CBK officials report that they review all agreements regarding correspondent banking relationships during their on-site inspections of banks, investment companies and exchange companies. Both CBK officials and exchange companies reported that it is the practice of the CBK to review proposed agreements and documentation prior to the exchange company entering into a new correspondent relationship.

### **3.9.2 Recommendations and Comments**

786. The authorities are recommended to:

- Amend the CBK licensing requirements with a view to clearly prevent the establishment of shell banks in Kuwait.
- Require that banks seeking a license have and maintain a physical presence in the country in accordance to the FATF standard.
- Prohibit exchange companies from entering into, or continue, correspondent relationships with shell banks.

### **3.9.3 Compliance with Recommendation 18**

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
|-------------|---------------|---|
| <b>R.18</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• There are not sufficient legal provisions preventing the establishment or continued operation of shell banks. There is no requirement that banks seeking a license have or maintain a physical presence in Kuwait in accordance to the FATF standard.</li> <li>• There is no prohibition on exchange companies from entering into, or continuing, correspondent banking relationships with shell banks.</li> </ul> |

**Regulation, supervision, guidance, monitoring and sanctions**

**3.10 The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, 17 & 25)**

**3.10.1 Description and Analysis**

**Competent authorities—powers and resources: Designation of Competent Authority (c. 23.2); Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Adequacy of Resources – Supervisory Authorities (R.30)**

787. The three primary supervisory authorities in the financial sector in Kuwait are: the Central Bank of Kuwait (CBK), the Market Committee/Kuwait Stock Exchange (MC/KSE), and the Ministry of Commerce and Industry (MOCI).

788. The CBK is responsible for the supervision of banks, investment companies and exchange companies.

789. The insurance sector and the exchange organizations fall under the supervision of the MOCI. In addition, supervision of the securities sector rests with the Market Committee/Kuwait Stock Exchange.

790. Under the AML Law, there is no designation of competent authorities with responsibility for ensuring that FIs adequately comply with the requirements to combat ML and TF. The Law does not identify the authorities that are responsible for AML/CFT supervision, either by naming a specific authority or by referring to the relevant supervisory authorities that have supervisory responsibility over a certain category of reporting entities.

791. Article 3 of the AML Law provides that banks, investment companies, money exchange agencies and corporations, insurance companies and other financial institutions, and individuals determined by a resolution issued by the Minister of Finance, shall “*strictly abide by the Ministerial instructions and resolutions issued by supervisory authorities regarding the aforementioned articles and also any other Ministerial instructions and resolutions related to money laundering operations*”. The list of financial institutions is complemented by a Ministerial Resolution issued on October 7, 2005 by the MOF pursuant to Article 19 of the AML Law.

792. Article 2 of Resolution 9/2005 extends the provisions of the AML Law to other financial companies and institutions, covering all of the financial activities defined by the FATF.

793. Despite the lack of designation of the CBK, the MOCI and the MC/KSE as entities responsible for ensuring that FIs comply with the AML/CFT requirements, these authorities, under their respective statutory powers, have assumed responsibility with regard to AML matters and have enacted AML regulations or instructions for those financial entities subject to their control.

794. The supervisory authorities consider that the last provision under Article 3 of the AML Law,<sup>97</sup> as well as the authority granted under the specific sectoral laws, give the CBK, the MC/KSE and the MOCI the authority to supervise FIs and ensure that they comply with the requirements to combat money laundering and terrorist financing. Authorities also stated that even though the AML Law does not specify the supervisors’ competence, such authority is determined in an indirect way.

<sup>97</sup> Financial institutions and individuals determined by a resolution issued by the Minister of Finance, shall strictly abide by the Ministerial instructions and resolutions issued by supervisory authorities regarding the aforementioned articles and also any other Ministerial instructions and resolutions related to ML operations.

795. Notwithstanding the requirement set forth under Article 3 of the AML Law, the assessors believe that this requirement still does not appear to be clear and would deserve further clarification. Although the supervisors have assumed in practice such responsibility, the assessors consider that there should be a designation of the competent authorities with responsibility for ensuring that FIs comply with the AML/CFT requirements either under the AML Law or Ministerial Resolution 9/2005.

**Table 19 - Competence to regulate and supervise by sector**

| Type of Financial Institution            | Number of Institutions | As % of financial sector | Competent Supervisory Authority   |
|--|------------------------|--------------------------|---|
| <u>Commercial Banks :</u>                | 21                     | 70.68                    | Central Bank of Kuwait  |
| Conventional                             | 15                     | 50.62                    |   |
| Specialized Banks <sup>1</sup>           | 1                      | 1.15                     |   |
| Islamic Banks                            | 6                      | 18.92                    |   |
| Investment Companies                     | 46                     | 13.89                    | Central Bank of Kuwait  |
| Islamic and Conventional                 | 54                     | 12.60                    |   |
| Exchange Companies                       | 38                     | 0.19                     | Central Bank of Kuwait<br>Central Bank of Kuwait (90 % of the investment funds are managed by banks and investment companies). They are subject to the requirements set forth under the CBK Instruction for banks and investment companies. |
| Investment Funds                         | 112                    | 2.64                     |   |
| Exchange Organizations                   | 159                    | N/A                      | Ministry of Commerce and Industry (MOCI)  |
| Insurance Companies                      | 32                     | N/A                      | Ministry of Commerce and Industry (MOCI)  |
| Brokerage Companies (securities brokers) | 14                     | N/A                      | Market Committee/Kuwait Stock Exchange (KSE)  |

**Table note:**

1. Due to their nature, specialized banks are not included in the total number of conventional banks or total assets of commercial banks.

**Central Bank of Kuwait (CBK)**

796. The CBK was empowered as the bank supervisory authority in Kuwait by Law No. 32/1968. Under the law, the CBK is responsible for the supervision, regulation and registration of deposit and non-deposit taking financial institutions in Kuwait.

797. Article 15 of the CBK Law sets out the objectives of the CBK as follows: *“to exercise the privilege of the issue of currency on behalf of the State, to endeavor to secure the stability of the Kuwaiti currency and its free convertibility into foreign currencies, to endeavor to direct credit policy in such a manner as to assist the social and economic progress and the growth of national income, to control the banking system in the State of Kuwait, to serve as Banker to the Government and to render financial advice to the Government.”*

798. Law No. 32/1968 grants the CBK broad general powers related to the supervision of banks, along with the authority to *“...issue to the banks such instructions as it deems necessary to realize its credit or monetary policy or to ensure the sound progress of the banking business”* (Article 71). The CBK Law has provisions which in general give the CBK a broad range of traditional prudential regulatory tools.

799. Currently, the CBK has supervisory jurisdiction over banks, investment companies, exchange companies and investment funds. Those powers are vested under the CBK Law, Ministerial Resolution

from 1984 and 1987, Law No. 31/1990 and Ministerial Resolution 113/1992, which allow the supervisor to monitor these FIs entities in order to verify the safety of their business.

800. Additionally, the CBK supervises those banks and investment companies which operate under the principles of the Islamic Law. The CBK indicated that the AML obligations that apply to conventional FIs apply in the same way to those FIs subject to Islamic principles.

801. Chapter III, Section 2 of the CBK Law provides the framework for the registration of banks and the deletion of such registration. While in practice, bank supervisory actions are currently taken by the CBK, within the law there is some sharing of authority over certain aspects of supervision with the Minister of Finance (MOF), such as the licensing and closure of banks.

802. The CBK Law provides the CBK with responsibility primarily for the banking sector. However, Article 55 states that the Board of Directors of the CBK may—upon approval of the Minister of Finance—subject all or some of the institutions and companies referred to in the same Article, including financial and investment companies, to all or some of the provisions of Chapter III (Organization of the banking business), or to any rules which the Board of Directors may draw up for purposes of supervision and which are in harmony with the nature of the activities of such institutions and companies.

803. The authorities indicated that the CBK Law, especially Chapter III (Organization of banking business), the provisions related to supervision (Section 5), and the powers to monitor and inspect also extend to AML/CFT matters.

804. The MOF based on Articles 55, 59, and 90 of Law No. 32/1968 has empowered the CBK with the supervision of exchange companies, investment companies and investment funds. Ministerial Resolution issued on March 10, 1984 grants the CBK with control over exchange companies and subsequently Ministerial Resolution issued on January 8, 1987 grants the CBK with control over investment companies.

805. The CBK is empowered to supervise investment funds in accordance to Law No. 31/1990 and Ministerial Resolution 113/1992.

806. Approximately 90 percent of investment funds are managed by entities already subject to the supervision of the CBK (banks and investment companies) and the authorities have stated that in terms of AML/CFT compliance, they are subject to the requirements set forth under CBK Instruction for banks and investment companies.

807. The CBK has issued specific instructions related to AML, as follows: Instruction (2/BS/92/2002) for banks, Instruction (2/ES/95/2003) for exchange companies, and Instruction (2/IS-IIS/180/2005) for investment companies.

808. The CBK has broad statutory powers of inspection over banks, exchange companies and investment companies. Articles 78, 79 and 81–84 of Law No. 32/1968 also provide for the collection of all necessary information from the FIs in the form and frequency that the CBK considers necessary to execute its tasks.

809. The CBK has the legal right to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance, based on Articles 78 and 82 of the CBK Law.

810. Article 78, paragraph (a), provides that the CBK may, at any time, inspect banks and financial companies and institutions subject to its supervision, in addition to branches, companies and banks that operate abroad and are subsidiaries of Kuwait banks. Coordination shall be carried out in this regard with the central banks or banking supervision authorities in the concerned countries.



811. Article 78, paragraph (b) provides that the CBK staff authorized to conduct inspection shall have the right to see the accounts, books, records, instruments and all documents they deem necessary for inspection. They may ask any member of the board of directors, or any official of the bank or institution, to submit and give such data and information they deem necessary for the purposes of inspection. Review of books, records and instruments shall be carried out within the premises of the bank or institution inspected.

812. In addition, paragraph (c) states that the CBK shall make a comprehensive report on the findings of the inspection made in any bank or institution and that such report shall incorporate recommendations on the measures the CBK deems useful for rectifying any unsound position discovered through inspection.

813. Article 82 also states that the CBK may ask the banks to submit such statements, information and statistical data as the Bank considers necessary to carry out its functions. It also states that banks must submit to the CBK all data, information and statistics it requests, in accordance with the system the CBK lays down for this purpose.

814. Similarly, as for exchange companies and investment companies, Articles 13 and 16 of Ministerial Resolution issued in 1984 and Ministerial Resolution issued in 1987, respectively, provide that pursuant to the provision of Article 71 from the CBK Law, the CBK shall provide exchange companies and investment companies with instructions it deems necessary to regulate their business and to achieve cash or credit policy adopted by the CBK.

815. Article 14 of Ministerial Resolution of 1984 for exchange companies, and Article 17 of Ministerial Resolution of 1987 for investment companies, state that pursuant to the provisions of Article 78 from its law, the CBK “*shall set a system to inspect exchange companies/investment companies to verify the safety of their business and financial status, and to verify the validity of information and data sent to the CBK and other issues that the CBK deems necessary to control.*”

816. As for exchange companies, Article 16 of Ministerial Resolution of 1984, in accordance with Article 82 of Law No. 32/1968, states that “*the CBK may require from exchange companies statements, tables, and statistical information it deems necessary to execute its tasks in supervising these companies.*” The same requirement is imposed to investment companies under Article 18 of Ministerial Resolution (1987).

817. As for investment funds, Article 89 of Ministerial Resolution 113/1992 states that the CBK “*shall have the right to control and inspect investment funds and systems of these funds and any other instruction issued by the supervisory authority.*” Article 90 provides “*that control and inspection personnel shall have the right to view fund books, records, and any other documents or statements required to be viewed upon control and inspections works. Fund managers or custodian or their subordinates may not withhold from control and inspection personnel any books, records, documents, papers, or statements for any reason whatsoever.*”

818. The supervisor’s power to compel production of or to obtain access for supervisory purposes is not predicated on the need to obtain a court order.

### **Ministry of Commerce and Industry**

819. The MOCI is responsible for the supervision of the insurance sector and the exchange organizations in Kuwait as well as of other non-financial business and professions, such as the real estate sector and dealers in precious metals and stones. Pursuant to Article 1 of Law No. 32/1969, the MOCI is also granted with the power to license all commercial businesses in Kuwait.

820. Article 2 of the Emiri Decree of 12 August 1986, states that the MOCI shall be responsible for supervising commercial companies, performing the functions of the commercial register and

establishments in accordance with the provisions of the laws and by-laws. Assessors were not provided with the legal definition of “commercial companies.” As stated earlier in Section 3, assessors could not determine from the information provided the extent of the supervision that was granted to the MOCI under the Emiri Decree. Therefore, assessors determined that the documentation provided did not grant the MOCI with explicit authority to supervise and regulate insurance companies and exchange organizations.

821. In addition, there is no provision under the sector legislation (*e.g.* Insurance Law/or other sector law) that grants authority to the MOCI over the insurance sector and the exchange organizations.

822. The MOCI acts as the *de facto* supervisor. In the absence of a clear legal basis for the MOCI’s supervisory role, the measures are not enforceable.

823. The MOCI has enacted Resolution 252/2002 which imposes AML obligations on the FIs and non-FIs subject to its control. With regard to FIs, the requirements apply to insurance companies, insurance agents and exchange organizations.

824. Article 1 allows the MOCI to monitor the activities performed by the insurance companies and the exchange organizations in order to ensure compliance with its requirements.

825. Resolution 252/2002 enables the MOCI to have access to documents and data regarding transactions. In this regard, Article 1, paragraph 5 allows the MOCI to “*view commercial books, correspondence, vouchers, and documents related to transactions.*”

826. Resolution 313/2004 and Resolution 221/2007 state that “*the judicial officer has the right to inspect shops and commercial companies to verify the application of legal provisions and resolutions with the right to view records, documents and commercial books.*” They also provide for the authority to close the shops and commercial companies for failure to comply with the requirements. The resolutions also state that “*the capacity of the inspector is granted to any officer having spent at least 2 calendar working years at the specialized unit for combating ML or having followed specialized courses in the field.*”

827. Notwithstanding the requirements set forth under Resolutions 252/2002, 313/2004 and 221/2007, in light of the lack of clear basis for the MOCI to supervise the insurance sector and the exchange organizations, these resolutions are not enforceable.

### **Market Committee/Kuwait Stock Exchange**

828. Kuwait securities market is governed by several laws and regulated by more than one regulatory authority, leading to a significant fragmentation of responsibilities. The main legislation governing the industry is the Emiri Decree of 1983 (ED of 1983) and its Ministerial Resolution 35/1983.

829. The securities market in Kuwait is regulated by the Market Committee/Kuwait Stock Exchange, the CBK and the MOCI. The MC and the KSE were established by Decree Law passed in 1983, with the objective of protecting investors in securities and organizing and developing the securities market. The MC/KSE, as well as the CBK and the MOCI, are responsible for regulating and supervising the securities market, securities issuers, intermediaries and other institutions.

830. The MOCI is responsible basically for granting commercial licenses (Law 32/1969). The CBK is responsible for the supervision of collective investment schemes and the KSE is generally responsible for supervision and regulation of securities trading and the prudential regulation of trading and for part of the market intermediaries (brokerage companies and the Kuwait Clearing Company, as KSE’s Central Clearing and Settlement Agent).

831. Currently, there are 14 brokerage companies under the supervision of the KSE.

832. The authority granted to the KSE over the brokerage companies and the Kuwait Clearing Company (KCC) is contained under the relevant provisions of the sector legislation, Emiri Decree of 1983. The KCC acts as KSE's Central Clearing and Settlement Agent and also as the Securities Depository and Registry.

833. The current responsibilities of the MC, which is the market commission, are not clearly defined. The Market Committee and the Kuwait Stock Exchange are almost one body under the same management with one organizational structure and with dual functions and responsibilities. Although the KSE exercises some functions of an SRO, effective self-regulation is not practiced.

834. In Kuwait, traders have to open an account with the KCC, and these accounts are also used to trade in the KSE trading system. The KCC is constituted as an investment company that falls under the umbrella of the KSE as its Central Clearing and Settlement Agent. However, since the institution is an investment company, in terms of AML, it is supervised by the CBK.

835. Articles 3 and 6 of the Emiri Decree define the responsibilities of the KSE and the Market Committee.

836. Article 3 of the Emiri Decree of 1983 gives the KSE the responsibility for the surveillance of the financial market emphasizing the following: *“i) organizing and protecting trading securities; ii) organizing the announcement of interests and issuing and dealing the financial reports; iii) specifying the methods of dealing with securities ensuring the soundness of information and protecting traders; iv) developing the financial market to serve the goals of the economic development; v) developing the market links with other regional and global markets to keep pace with the standards followed in those markets.”*

837. Article 6 of the Emiri Decree of 1983 states that the MC is responsible for setting the general rules and policies for the KSE within the goals mentioned under Article 3 of the same Decree.

838. Pursuant to the power granted by Article 16 of the Emiri Decree, the KSE issued Ministerial Resolution 35/1983, promulgating the KSE By-law. Article 21, paragraph (f) of Resolution 35/1983 states that brokerage companies shall satisfy the requirements of any further conditions laid down by the Stock Exchange Committee. In addition, Article 25 requires all brokers to abide by the provisions of the Emiri Decree, its by-laws, as well as all resolutions and instructions issued by the KSE.

839. The Emiri Decree as well as Ministerial Resolution 35/1983 are limited strictly to prudential supervision and are silent with regard to AML requirements within the securities industry.

840. However, as of the assessment date, the rules regarding inspection, and surveillance powers of the MC/KSE are not clear under the Emiri Decree. Market participants come under the supervision of different agencies and the Decree does not clearly provide for the power of the MC/KSE to monitor and ensure compliance with the laws and regulations by brokerage companies and the KCC.

841. The KSE has enacted Resolution 31/2003 where it provides a number of requirements which brokerage companies, portfolio management companies and clearing houses must comply with. However, for AML compliance, the authorities indicated that the KCC and portfolio managers are subject to the supervision of the CBK because KCC is an investment company and portfolio managements are operated by investment companies and banks.

842. Article 21, paragraph (f) of Resolution 35/1983 states that brokerage companies shall satisfy the requirements of any further conditions laid down by the Stock Exchange Committee. Article 25 requires that all brokers, operating at brokerage companies, abide by the provisions of the Emiri Decree and its by-laws, as well as all resolutions and instructions issued by the KSE.

843. Article 27 of Resolution 35/1983 sets forth the obligation for brokers to “*provide the KSE with data, information, and statistics in the form and dates specified by the Administration*” and that the Stock Exchange shall have the right to ascertain the authenticity and accuracy of such statements and information in any manner it deems appropriate. This power is not predicated on the need to obtain a court order’.

844. There are no rules either under the Emiri Decree or under Resolution 35/1983 regarding comprehensive inspections and investigations.

845. Resolution 31/2003 is also silent with regard to the power of the MC/KSE to monitor the activities performed by brokerage companies to ensure compliance with the AML Laws and regulations.

846. The KSE inspects brokerage companies and the Clearing House for market conduct related matters and with regard to violations of trading rules, as well as clearing, settlement and depositary rules. No regular/routine inspection is conducted to ensure compliance with the AML Law, regulations or Ministerial Resolution 31/2003. The current organizational structure of the KSE does not include an AML Department/Unit.

847. A new Capital Market Law was passed by the National Assembly in March 2010. Law No. 7/2010 establishes the Financial Markets Authority and regulates trading in securities in Kuwait, but it is not in place. In September 2010, the Kuwait Cabinet approved a decree for the appointment of the members of the Council.

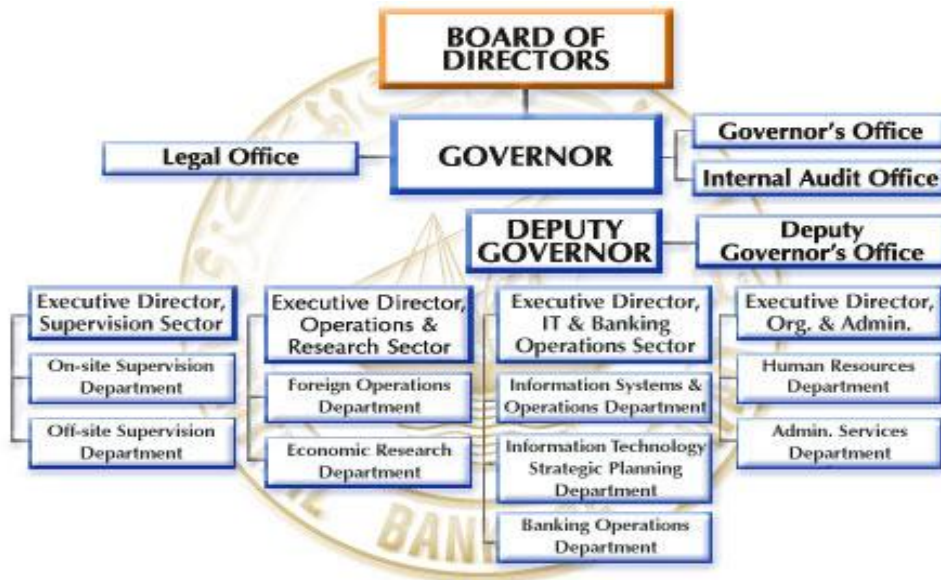
848. As of the assessment date, the Law was under a transitional period in which the Authority had to issue the executive by-laws in respect of such law within six months of the issuance of the decree naming members of the Council. Some of the details will be contained in the executive by-laws and until these are issued, it will not be possible to know the full extent of the regulatory regime that lies ahead. According to Article 163, after the transitional period mentioned in such law, the Emiri Decree, as well as other regulations, shall be cancelled. The authorities expect to have such law in place in April/May 2011.

849. The enactment of the Capital Market Law and the creation of the Capital Market Authority was an important step toward the creation of a single, independent and accountable supervisor for the securities industry, which should improve the functioning of the KSE and strengthen the regulatory and supervisory framework for the securities industry.

## Adequacy of Resources – Supervisory Authorities (R.30)

### Central Bank of Kuwait

Figure 1 - The organizational structure of the CBK



850. The On-Site Supervision Department is responsible for supervising the activities of banks, investment companies, exchange companies and investment funds in prudential as well as AML related issues.

851. The On-Site Supervision Department comprises three Units: i) Compliance Unit; ii) Anti-Money Laundering Unit; and iii) Inspection Unit. The CBK can also rely on the Off-Site Department that in practice coordinates its activities in collaboration with the On-site Supervision Department.

852. The Inspection Unit assumes mainly the responsibility for conducting regular comprehensive inspections of banks, investment companies, exchange companies and mutual funds in order to ascertain the soundness of their financial positions as well as the extent of their adherence to the provisions of their articles of association and relevant laws, resolutions and instructions. It also assesses the adequacy of the internal control systems, prepares and executes the inspection plans, follows up on the rectification of remarks and violations revealed by inspections, while observing full coordination with the Off-Site Surveillance Section in such regard.

853. The Anti-Money Laundering Unit assumes, among others, the following responsibilities: 1) to propose the policies, regulations and instructions issued by the CBK with regard to combating ML/FT, counterfeiting, financial and banking fraud and issues related to security matters in FIs subject to the supervision of the CBK, and 2) to coordinate with the Inspection Section, the inspection of FIs subject to the supervision of the CBK to assess the extent of their compliance with the requirements to combat money laundering.

854. The Compliance Unit is mainly involved in the following: receiving and studying the complaints handed to the CBK by the customers of FIs that are under the supervision of the CBK, suggesting the enforcement of the required penalties on the FIs that are in violation and taking charge of enforcing those

penalties, cooperating with the inspection team and following up on the procedures that were taken as a result of those complaints.

855. As of the mission date, the On-Site Supervision Department had 59 staff, with the following breakdown: i) Compliance Unit (6 staff); ii) Anti-Money Laundering Unit (10 staff); and iii) Inspection Unit (43 staff).

856. The Off-site Supervision Department follows up on the off-site supervisory work conducted on banks, investment companies, exchange companies and mutual funds' activities, to ascertain the soundness and stability of the position of the banking and financial system units, along with studying applications for the foundation of new banking and FIs, the establishment of new investment funds, and the opening of branches for existing FIs.

857. The Department encompasses five units. As of the mission date, the Off-Site Supervision Department had a staff of 109, with the following breakdown: i) Policies and Technical Studies Section (7 staff), ii) Off-Site Supervision Section (45 staff), iii) Banking and Financial Units Affairs Section (16 staff), iv) the Banking and Financial Statistics Section (21 staff), and v) the Credit Section (20 staff).

858. The authorities indicated that AML supervision falls within the responsibility of the "Anti-Money Laundering Section" and the "Inspection Section".

859. The CBK stated to the assessment team that it has adequate structure funding and technical resources to perform its duties. It also informed the assessors that the salary scale is competitive with the private sector and that the turnover rate is low.

860. Pursuant to Article 14 of the CBK Law "*the CBK shall have a special budget which shall be prepared in a commercial pattern*"... It also states that "*...with the approval of the Minister of Finance, the Board of Directors shall lay down all rules and regulations concerning the administrative and financial affairs of the Bank, including staff and accounting matters, without being limited in all this by the provisions of the Public Tenders and Civil Service Laws.*"

### **Ministry of Commerce and Industry**

861. There is no organizational chart available for the MOCI. The insurance companies, as well as the exchange organizations, are supervised by two different departments, as follows: i) "Department for Insurance Companies" and ii) "Department for Exchange Organizations," which mainly monitor if insurance companies and exchange organizations respectively comply with the obligations established under the insurance law (Law 24/1961), as well as under the sectoral ministerial resolutions. However, the MOCI could not provide the relevant sectoral law/resolution that regulates the activities of exchange organizations.

862. In addition to this, there is an Anti-Money Laundering Unit within the MOCI that is in charge of supervising compliance with the AML Law and regulations by the insurance companies, the exchange organizations, the real estate agents and the dealers in precious metals and stones.

863. The authorities indicated that the Insurance and Exchange Organizations Departments request the Anti-Money Laundering Unit's opinion any time that a FI requires a new license or requests its license's renewal.

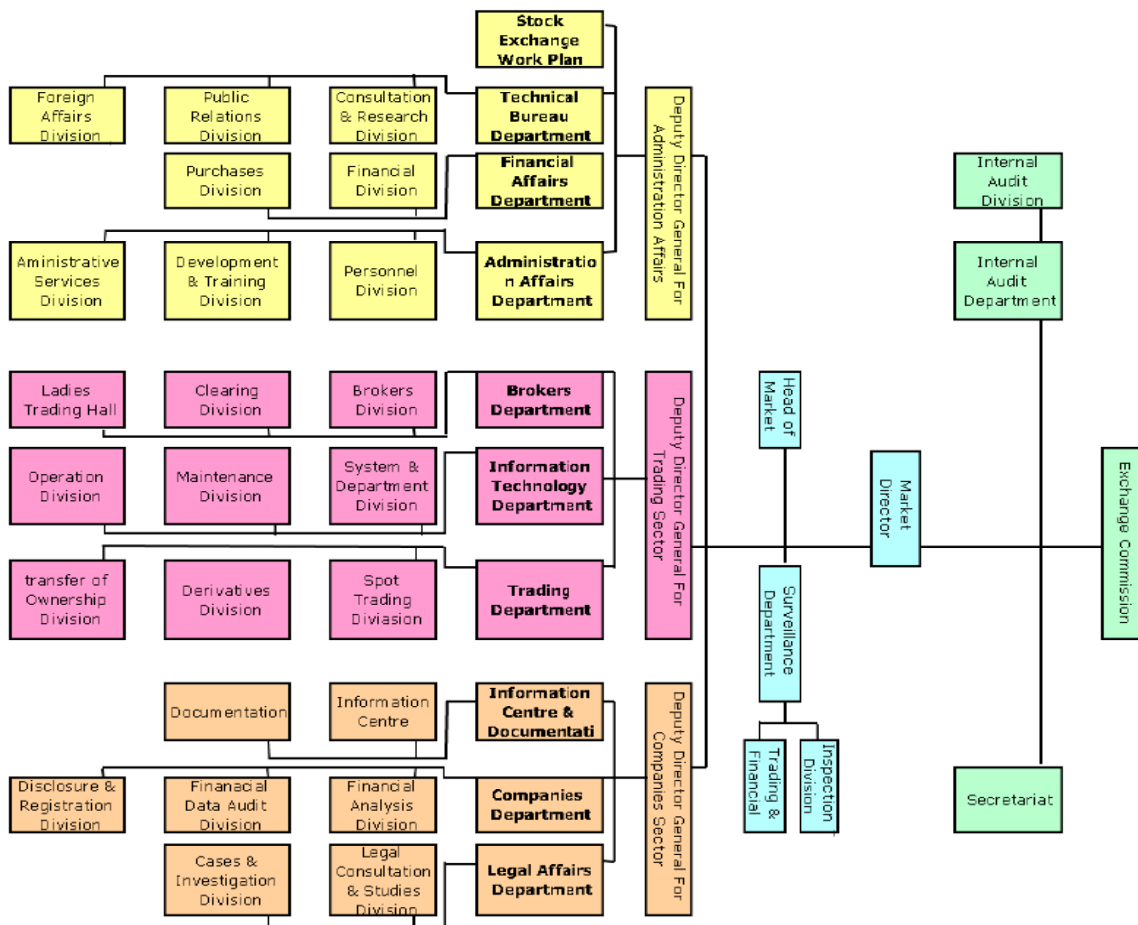
864. The MOCI's Unit for Combating Money Laundering has 25 staff for AML-related reviews (of whom 10 normally go on inspections), but is responsible for the insurance sector, exchange organizations, real estate agents and dealers in precious metals and stones. These sectors combined over 4 000 entities (32

insurance companies, 159 exchange organizations, as well as 3 000 real estate agents and 837 jewelry shops). As such, the MOCI is not appropriately staffed to effectively perform its functions.

865. Meetings with the private sector revealed that the MOCI has undertaken few AML-related inspections, and that it is unclear to those which have been visited, which section within the MOCI undertakes the inspection (*i.e.* the AML Unit or the Insurance/Exchange Organizations Department).

866. The lack of human resources, adequate funds and other necessary resources, coupled with the deficiencies related to supervision and sanctions, has an impact on the overall effectiveness of AML supervision.

**Figure 2: The organizational structure of the MC/KSE**



### Market Committee/Kuwait Stock Exchange

867. The organization of the MC does not permit it to fulfill its assigned duties and responsibilities. The regulator and the KSE are merged together in one body under one management and with one organizational structure. The MC has no technical staff and relies on the staff of the KSE to perform its functions.

868. The resources of the KSE are defined by the Emiri Decree, under Article 12. The KSE does not rely on the government for budget support. According to Article 12, the Stock Exchange revenues are derived from: 1) proceeds of the services rendered by the Stock Exchange, 2) the income of the funds invested by the Stock Exchange, 3) the proceeds of the penalties imposed in accordance with the

provisions of such Decree, 4) any fees or charges imposed or levied for the benefit of the Stock Exchange, and 5) any other revenues approved by the Stock Exchange Committee.

869. There is no specific Unit devoted to AML issues. The KSE does not undertake inspections within the securities industry for ensuring that brokerage companies adequately comply with the requirements to combat money laundering and terrorist financing.

870. As of the mission date, the MC as a regulator does not have the adequate powers and resources to perform its functions. The level of responsibility of the MC is beyond its capacity and power. Similarly, the KSE lacks adequate powers and resources.

871. Law No. 7/2010 establishing the Financial Markets Authority and regulating trading in securities was passed in March 2010, and will be in place in April/May 2011. According to the authorities, the new Capital Markets Law will provide the securities industry with a new structure and resources that will allow the supervisor to perform its functions efficiently.

### **Integrity of Competent Authorities (30.2)**

872. Article 28 of the CBK Law provides for the confidentiality requirements for the banking sector. In this regard, it states that *“unless otherwise permitted by law, no member of the Board of Directors, manager, official, or employee of the CBK shall disclose any information which relates to the affairs of the CBK or its customers or the affairs of other banks subject to the control of the CBK and to which he has access by reason of the duties of his office.”*

873. The staff of the CBK is composed of civil servants who are subject to the Civil Service Law, which according to the CBK provides for high integrity standards. As civil servants, all employees must observe certain standards such as confidentiality and good conduct, among others. All new employees have to undergo background checks and a security clearance which includes criminal record checks and interviews in order to maintain integrity standards.

874. In this regard, Section 2 of the Civil Service Law requires the person to be appointed to any position to have a good reputation as well as never having been sanctioned criminally.

875. The CBK also stated that they have an internal procedure for hiring employees that provides for additional integrity standards.

876. The staff from the MOCI and the MC/KSE is also subject to the Civil Service Law and should observe the same integrity standards.

877. The confidentiality requirements for the securities industry are provided by Article 15 of the Emiri Decree, which states that data and information related to traders' names and their trading volumes shall not be announced or disclosed to other than the market and the specialized monitoring parties, except upon a judicial judgment. However, the requirements are very broad and do not indicate whether these requirements apply equally to the Board, managers and the staff, or to some of them. The MOCI could not provide the assessors with the standards concerning confidentiality.

### **Training for competent authorities (30.3):**

878. The CBK appears to be the only supervisory authority providing some training in connection with AML requirements.

879. The CBK informed the assessment team that it conduct training programs on AML matters for its staff on an ongoing basis. The CBK also stated that employees are trained with counterparts and participate



in “in-house trainings” with external consultants. There is also an Institute of Banking Studies (IBS) where employees are trained. In addition to these training sessions, the staff of the CBK also attended external workshops and training on AML/CFT, organized, amongst others, by the Federal Reserve System, MENAFATF, Cambridge University, the American Embassy and Foreign Ministry and US Treasury Department.

880. From 2005 to 2010, 53 staff members of the CBK were provided with AML/CFT training by means of workshops or seminars.

881. The training programs for the staff of the MOCI from 2005 to 2009 included eight training sessions. The assessment team was unable to assess the quality and depth of these courses.

882. No information was provided with regard to the provision of training to the staff of the MC/KSE.

### **Recommendation 30**

883. The CBK as a whole seems adequately funded and structured, and has sufficient technical and other resources to perform its duties.

884. The resources deployed to supervise insurance companies, exchange organizations and brokerage companies are inadequate. The MOCI and the KSE are not adequately structured, funded, staffed, or provided with sufficient technical staff and other resources to fully and effectively perform their functions.

885. The professional standards for the MOCI and the KSE, including standards concerning confidentiality cannot be regarded as appropriate.

886. They same applies with regard to the requirement to provide training on AML/CFT matters. The MOCI and the KSE are not adequately providing training to their staff for combating ML and FT as required under criteria 30.3.

### **Sanctions: Powers of Enforcement & Sanction (c. 29.4); Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2); Ability to Sanction Directors & Senior Management of FIs (c. 17.3); Range of Sanctions—Scope and Proportionality (c. 17.4)**

887. There are no provisions in the AML Law delegating adequate powers of enforcement and sanction to an authority or designating an authority to impose sanctions against FIs, their directors or senior management who fail to comply with or properly implement requirements to combat ML and TF, consistent with the FATF Recommendations.

888. Law No. 35/2002 stipulates the penalties for breaches of the AML requirements under Section III. It provides for a range of penalties for the offense of money laundering, for failing to report suspicious transactions, for the disclosure of information regarding one of the crimes stated in Article 2 and for damaging or concealing documents or instruments relevant to such crimes.

889. Pursuant to Article 11 of the AML Law, *“without prejudice to any stricter penalty stipulated by another law, any person who, according to the provisions of paragraph 4 of Article 3, have to report a suspicious financial transaction that comes to his/her knowledge and fails to do so, discloses information regarding one of the crimes stated in Article 2, that comes to his knowledge through his position, or damages or conceals documents or instruments relevant to such crimes, shall be punished by imprisonment of not more than three years and a fine of KD 5 000 at minimum and KD 20 000 at maximum or one of these two penalties in addition to dismissal from his job.”* It also states that *“without prejudice to the*

*provisions stated in the aforementioned paragraph any person, who is proved to be negligent in carrying out the obligations stipulated in Article 2, shall be punished by a fine not exceeding one million KD.”*

890. Article 4 of Ministerial Resolution 9/2005 states that failure of institutions, companies and persons mentioned in Article 2 to comply with the requirements stipulated in Article 3 (CDD, recordkeeping, training, internal control systems), shall be deemed a violation of the provisions of the law and shall be punished by the penalties set forth in Article 11 of the law, without prejudice to any more severe punishment provided by law.

891. The authorities indicated that the CBK, the MOCI and the KSE enforce AML compliance through the exercise of their general sanctioning powers under the sectoral Law/Decree/Resolution. As such, failure to comply with the AML measures that are contained in the AML Law, Ministerial Resolution 9/2005 and the instructions and resolutions issued by the supervisory bodies, is sanctioned on the basis of the powers granted to the supervisors under the CBK Law, Resolution 252/2002 and Emiri Decree of 1983.

892. The following table highlights the range of powers granted by the respective sector-specific laws/resolutions and the sanctions available to the competent authorities for failure to comply with or properly implement the requirements of such laws by FIs:

**Table 20 - Range of sanctions by sector**

| Sector                                | Legislation  | Applicable sanctions   |
|---------------------------------------|--|--|
| Banks (Traditional and Islamic Banks) | Law No. 32/1968<br>(Article 85)                    | <ul style="list-style-type: none"> <li>• Warning.</li> <li>• Financial penalty, commensurate with the graveness of the violation and not in excess of KD 50 000 (approximately USD180 000).</li> <li>• Temporarily suspend some or all operations usually carried out by the CBK with banks.</li> <li>• Prohibit the bank from carrying out certain operations, or imposing any other limitations on its business.</li> <li>• Request the removal or replacement of the employee responsible for the violation.</li> <li>• Consider the member of the bank's Board of Directors, who is responsible for the violation, unfit for board membership.</li> <li>• Appoint a temporary controller to supervise the progress of work at the bank.</li> <li>• Dissolve the bank's Board of Directors and appoint a commissioner to manage the bank until the election of a new Board.</li> <li>• Delete the bank from the Register of Banks.</li> </ul> |
| Exchange Companies                    | Article 17,<br>Ministerial<br>Resolution<br>(1984) | <ul style="list-style-type: none"> <li>• Same sanctions as for banks.</li> </ul>   |
| Investment Companies                  | Article 21,<br>Ministerial<br>Resolution<br>(1987) | <ul style="list-style-type: none"> <li>• Same sanctions as for banks.</li> </ul>   |
| Investment Funds                      | Article 92,<br>Ministerial                         | <ul style="list-style-type: none"> <li>• Warning.</li> </ul>   |

| Sector   | Legislation             | Applicable sanctions   |
|--|-------------------------|--|
|  | Resolution 113/1992     | <ul style="list-style-type: none"> <li>Discharging officers of fund money investment and management and obligating the fund manager to appoint other persons.</li> <li>Discharging custodian and obligating the fund manager to appoint another custodian.</li> <li>Discharging fund manager and appointing another manager instead of him.</li> <li>Fund liquidation.</li> </ul>  |
| Insurance Companies & Exchange Institutions (MOCI) | Resolution 204/2004     | <ul style="list-style-type: none"> <li>Warning.</li> <li>Closure.</li> <li>(The authorities could not provide the legal basis for applying sanctions)</li> </ul>   |
| Brokerage Companies                                | Emiri Decree Article 14 | <ul style="list-style-type: none"> <li>Notification.</li> <li>Warning.</li> <li>Suspension of the violator from work for a period set by the Market Committee and taking the appropriate procedures regarding the benefits he received.</li> <li>Confiscation of all the Bank Guarantee or part of it.</li> <li>Suspension of trading in securities issued by the violating companies or parties until the violation is eliminated or corrected.</li> <li>Cancelation of membership.</li> <li>Compulsory advance deposit of the underlying stock or money for the trader.</li> </ul> |

893. In the case of the Central Bank of Kuwait, its powers of enforcement are set out in Section 9 of the CBK Law.

894. Article 85 of Law No. 32/1968 provides for sanctions in the event that a bank “violates the provisions of such Law, or the decisions and instructions issued in pursuance thereof, or the provisions of its Article of Association, or fails to submit the documents, statements or information which it is required to submit to the Central Bank, or submits statements discrepant with the facts.”

895. Under Article 79 of the CBK Law, any person who refuses to submit information to the CBK, or who does so knowing that it is false, should be liable to imprisonment and fine.

896. Sanctions provided by Article 85 of Law No. 32/1968 can range from a simple formal warning to the removal of the bank from the bank register, or closure, along with other powers that can be used as necessary, depending on the issue and the severity of the problems. The sanctioning regime also allows the CBK to impose financial penalties. The maximum amount of financial penalty that can be imposed by the CBK is KD 50 000 (approximately USD180 000).

897. Under the current legal framework, the deletion from the register of banks shall be imposed by the decision of the Minister of Finance, after the approval of the Board of Directors of the Central Bank. Notwithstanding that it applies to one specific sanction, the involvement of the MOF in the CBK’s ability to revoke a FI’s license compromises the CBK’s independence as a supervisor over banks, investment companies and exchange companies and limits in this way its powers to enforce one of the sanctions set forth under the CBK Law.

898. In this regard, the assessors consider that the CBK should have the sole power to revoke licenses for those financial institutions that fall under its supervision.

899. Warnings and temporary suspension of operations usually carried out by the CBK with banks shall be imposed by a decision of the Governor. The rest of the penalties provided for in Article 85 of Law No. 32/1968 shall be imposed by a decision of the Board of Directors of the Central Bank.

900. The enforcement power extends to directors and senior management. In this regard, Article 85, paragraph 3 states that *“members of Board of Directors, the office in charge of the Executive Staff, General Managers, Deputies or Assistants thereof, Sector Managers, and Branch Managers of the violating bank shall—all within their respective competence—be responsible for deliberately committing any act that resulted in the bank’s violation of such Law and the decisions and instructions issued in pursuance thereof or the provisions of the bank’s Article of Association, or for failing to submit the documents, statements or information which it is required to submit to the Central Bank, or for submitting statements discrepant with facts.”*

901. Similarly, Article 17 of Ministerial Resolution (1984) and Article 21 of Ministerial Resolution (1987) state that the CBK may impose on exchange companies and investment companies the penalties set forth under Article 85 of the Banking Law when these FIs violate the provisions of their Articles of Association or instructions and resolutions issued by the CBK or do not provide the CBK with the required information.

902. With regard to the insurance sector, and the exchange organizations, Article 3 of Resolution 252/20002 states that *“all legal actions shall be taken against any violation to provisions of such resolution. The penalties established in Law No 35/2002 shall be imposed on any such violator.”* The authorities could not provide the assessment team with the provisions in law or regulation that grant the MOCI with the powers to regulate, supervise and apply sanctions against insurance companies and exchange organizations. In the absence of a clear basis for the MOCI’s supervisory role, the measures are not enforceable.

903. Resolution 204/2004 sets forth the range of sanctions that can be imposed by the MOCI on insurance companies and exchange organizations. However, the range of sanctions in place is insufficient, as the current legal framework only allows for the application of warnings and closures.

904. In light of the above comments, the MOCI does not have adequate powers of enforcement and sanction against insurance companies and exchange organizations.

905. The MOCI indicated that Ministerial Resolution 181/2003 provides the MOCI with the power to apply sanctions to the insurance companies, but were not able to provide documentation to support this.

906. As for the securities industry, the KSE is empowered to apply administrative sanctions on brokers as well as listed companies on the exchange (Emiri Decree, Article 14).

907. Article 14 gives the Disciplinary Board of the Stock Exchange the power to *“decide cases relating to stock brokers and the companies whose securities are listed in the market regarding any violation to the provisions of such Decree, as well as the rules and decisions organizing the KSE and any other violations affecting the good process of work, the discipline order of the KSE, and/or the rules and principles governing the ethics of the profession and its practice.”*

908. Article 60 of the KSE By-Laws mirrors Article 14 of the Emiri Decree. The range of sanctions for the securities brokers also provide for the withdrawal of license and restriction or suspension of the license, where applicable. Notwithstanding this range of sanctions, the MC/KSE does not have the legal authority to levy financial sanctions (e.g. fines).

909. Further, the enforcement power of the KSE is limited. It does not provide for the possibility to impose sanctions against directors and senior management. The MOCI and the MC/KSE need to be given the power to issue pecuniary sanctions and need to be provided with a larger spectrum of sanctions, which should be in accordance with the seriousness of the irregularities committed by market participants.

**Table 21 – Range of AML sanctions by the CBK (2006 -2009)**

| Year   | Unit    | Type of Violations           |                |                                       |                |                |                |                |                |                | Total |
|--|---------|------------------------------|----------------|---------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|-------|
|  |         | 1 <sup>1</sup>               | 2 <sup>2</sup> | 3 <sup>3</sup>                        | 4 <sup>4</sup> | 5 <sup>5</sup> | 6 <sup>6</sup> | 7 <sup>7</sup> | 8 <sup>8</sup> | 9 <sup>9</sup> |       |
| 2006   | B       |                              | 1              | 1                                     |                |                | 1              |                |                |                | 3     |
|  | I       |                              |                |                                       |                |                |                |                |                |                | -     |
|  | E       | 2                            | 1              |                                       | 1              |                |                |                | 1              |                | 5     |
| 2007   | B       |                              | 1              | 1                                     |                |                |                |                |                |                | 2     |
|  | I       |                              | 2              |                                       | 1              | 1              |                |                | 1              |                | 5     |
|  | E       | 3                            |                | 1                                     |                |                | 2              |                | 1              |                | 7     |
| 2008   | B       |                              |                |                                       |                |                |                |                |                | 1              | 1     |
|  | I       | 1                            | 1              |                                       | 1              |                | 1              |                |                |                | 4     |
|  | E       | 2                            | 1              | 1                                     |                | 1              | 2              | 2              | 2              |                | 11    |
| 2009   | B       |                              |                |                                       |                | 2              | 2              |                |                | 1              | 5     |
|  | I       | 1                            | 2              |                                       | 1              | 1              | 1              |                |                | 1              | 7     |
|  | E       | 3                            | 2              | 1                                     |                | 2              | 2              | 1              |                | 1              | 12    |
| B = Banks,<br>I = Investment<br>Companies ,<br>E = Exchange<br>Companies |         | Type of Penalties            |                |                                       |                |                |                |                |                |                |       |
| Year   | Warning | Financial Penalty<br>(Total) |                | Partial<br>Suspension for<br>Business |                | Ruling Out     |                | Total          |                |                |       |
| 2006   |         | 3<br>42 500 KD               |                |                                       |                |                |                | 3              |                |                |       |
|  |         | 4<br>22 500 KD               |                |                                       |                | 1              |                | 5              |                |                |       |
| 2007   |         | 2<br>50 000KD                |                |                                       |                |                |                | 2              |                |                |       |
|  |         | 5<br>87 000KD                |                |                                       |                |                |                | 5              |                |                |       |
|  |         | 7<br>45 500 KD               |                |                                       |                |                |                | 7              |                |                |       |
| 2008   |         | 1<br>37 500KD                |                |                                       |                |                |                | 1              |                |                |       |
|  | 2       | 2<br>35 000 KD               |                |                                       |                |                |                | 4              |                |                |       |
|  |         | 11<br>82 500 KD              |                |                                       |                |                |                | 11             |                |                |       |
| 2009   | 1       | 4<br>150 000 KD              |                |                                       |                |                |                | 5              |                |                |       |

|  |   |                |   |   |    |
|--|---|----------------|---|---|----|
|  | 2 | 5<br>87 500 KD |   |   | 7  |
|  |   | 9<br>60 000 KD | 2 | 1 | 12 |

**Table Notes:**

1. Failure to maintain a copy of the customer identification card.
2. Failure to provide an approved policy for the prevention of ML/FT.
3. False information required for the FCT and LCT system operations.
4. Failure to establish training programs for personnel.
5. Violating specific instructions regarding freezing assets by a delay notification about considering the names mentioned in the lists.
6. Collect copies of expired identification cards.
7. Failure to conclude contracts with correspondents.
8. Failure to collect the necessary legal documents required to prove the identity of those representing the service.
9. Others.

910. From 2006 to 2009, the CBK imposed 62 sanctions against FIs for non-compliance with the AML/CFT requirements: 11 against banks, 16 against investment companies and 35 against exchange companies. In total the CBK has imposed 5 warnings, 53 financial penalties, 2 partial suspension of business and 2 ruling out. It is worth noting that the value of fines imposed from 2006 to 2009 appear to range on average, between USD 25 000 and USD 50 000.

911. The CBK indicated that the most common violations which lead to sanctions were as follows: (i) failure to maintain copy of the customer identification card; (ii) failure to provide the AML policy; (iii) false information required for the FCT and LCT systems operations; (iv) failure to establish training programs for personnel; (v) violating specific instructions regarding the freezing of assets; and (vi) failure to conclude contract with correspondents, among others.

912. Although the CBK has provided data to show the range of sanctions that have been applied for failure to comply with the requirements of the CBK instructions, there are concerns that the sanctioning regime may not have been effectively implemented in all cases.

913. The CBK indicated that sanctions are determined mainly based on the following: primary violation, previous sanction, duration of the situation, situation remained the same after detecting it, impact on the customer.

914. The CBK provided the total number sanctions applied to banks, exchange companies and investment companies, from 2006-2009.<sup>98</sup> On this matter, the authorities indicated the total number of penalties, type of violations and the penalties that were applied, either warning, financial penalty, suspension or ruling out.

915. Notwithstanding the information provided, there was no further information with regard to the correlation between the specific violation and the penalty applied. To illustrate this, the information is as follows: 3 banks were sanctioned in 2006, based on the following violations: 1) failure to provide an approved AML policy, 2) false information required for the FCT and LCT system and 3) failure to collect copies of expired identification cards. In this regard, the available information is that the CBK imposed a total financial penalty of 42 500 KD for 3 different violations, without further information as to the specific amount that relates to each specific violation.

916. While in some cases it was possible to conclude that the total financial penalty was broad enough. In other cases, due to the lack of supporting information and the diversity of the violations, the assessors could not conclude whether the sanctions applied were dissuasive and proportionate to the severity of the specific situation and thus conclude that the sanctions have been effective in all cases.

<sup>98</sup> The CBK provided data with regard to all the sanctions applied to banks, investment companies and exchange companies in the last years. The available information was from 2006-2009.

917. In addition, the involvement of the MOF with regard to the licensing and revocation of licenses has a negative impact on the efficiency of the system, since the deletion from the register of banks must be imposed by a decision of the MOF, after the approval of the Board of Directors of the Central Bank.

918. In conclusion, despite this specific issue with the MOF, the CBK has a broad range of sanctions at its disposal under the CBK Law and has applied sanctions in practice against FIs for failure to comply with the AML/CFT requirements. Overall, the sanctions imposed by the CBK seem to be proportionate considering the broad range of sanctions available. However, as already stated, the sanctioning regime for the CBK although proportionate and dissuasive in writing, lacks effectiveness in practice in some cases.

919. The MOCI imposed two type of sanctions on insurance companies and exchange organizations, specifically, warnings and closure orders, as follows:

**Table 22 – Sanctions by MOCI against insurance companies and exchange organizations (2007-2009)**

|                               | Type of penalty | 2007 | 2008 | 2009 | Offense/non-compliance issue                  |
|-------------------------------|-----------------|------|------|------|---|
| <b>Exchange Organizations</b> | Warning         | 48   | 50   | 41   | Failure to check the identity of the customer |
|                               | Closure         | 3    | 17   | 8    |   |
| <b>Insurance Companies</b>    | Warning         | 20   | 26   | 31   | Failure to check the identity of the customer |
|                               | Closure         | 0    | 4    | 0    |   |

920. The range of sanctions for the MOCI is not broad. The MOCI has only two types of penalties at its disposal (warning and closure) and there is no monetary penalty. As such, the sanctions that can be imposed by the supervisor are not proportionate and dissuasive.

921. The MOCI did not provide the assessors with enough documentation supporting the most common violations that resulted in penalties to allow the assessors to validate the type of sanctions applied and determine whether these were effective, proportionate and dissuasive.

922. The MOCI indicated that one of the common violations was the lack of identification of the customer, but further information was not provided.

923. At the time of the on-site visit, the MC/KSE had not applied any sanctions for purely AML violations. In addition, the KSE does not have a broad range of sanctions over brokerage companies for failure to comply with the AML framework.

924. Overall, the statistical data provided by the authorities with respect to sanctions imposed against FIs suggests that the sanctions are not effectively implemented, especially by the MOCI and the KSE.

925. Further, the sanctions available to the MOCI and the KSE cannot be regarded as proportionate and dissuasive. As such, the sanctioning regime needs to be strengthened.

**Market entry: Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other FIs (c. 23.7):**

926. The competent supervisors in each sector are responsible for enforcing market entry requirements (CBK in respect of banks, exchange companies and investment companies, MOCI for insurance companies and exchange organizations, and KSE in respect of brokerage companies).

927. Pursuant to Article 1 of Law No. 32/1969 “Regulating Commercial Shop licenses” “no commercial entity may open an installation or office to do business or practice any profession without a license from the MOCI, unless practicing this profession is under special laws, decrees, or resolutions.” This requirement applies to all FIs operating in Kuwait.

928. According to Article 5 of Law No. 32/1969, “*license shall not be granted to an applicant that became bankrupt during the first year of practicing business, and so not for applicant convicted in a bankruptcy, forgery and commercial deceit crime, or robbery, swindling, treachery, forgery, or using forged document, any person fails to abide by the requirements shall be sentenced to sanctions set forth in article 28 from Commercial Law.*”

929. Registration of corporations is governed by the Commercial Code 68/1980 and pursuant to this Code legal persons must register within the Department of Corporation at the MOCI.

930. Chapter III, Section 1, of the CBK Law provides for the establishment of banks. Article 56 states that banking business may only be practiced by institutions set up in the form of joint-stock companies, the shares of which are placed for public subscription. It also states that before the formalities of incorporation are processed, the applications to establish banks should be presented to the Board of Directors of the CBK to issue the recommendations.

931. Article 59 of the Central Bank Law states that no banking institution is allowed to start operations until it has been registered in the Register of Banks at the Central Bank.

932. Article 60 provides that “registration or refusal of registration of banks shall be affected by a decision of the Minister of Finance on the recommendation of the Board of Directors of the CBK. The Minister of Finance shall, on the recommendation of the Board of Directors of the CBK, issue regulations for the registration of banks, including the rules, procedures and dates for registration, amendments, and publication of registration.”

933. According to Article 61 of the CBK Law, registered banks shall notify the CBK Bank of any amendments they intend to make to their Memorandum of Agreement or Articles of Association.

934. Article 68 states that to be a member of a bank’s Board of Directors, or in charge of the executive staff of a bank, or deputy or assistant, or to continue occupying any of these functions, the following requirements must be fulfilled:

- Not to have been adjudged guilty in an offense involving dishonesty or breach of trust;
- Not to have been declared bankrupt;
- No to have abstained from payment, even once;
- To be of good reputation;
- To have adequate experience in banking, financial or economic affairs in compliance with the rules and regulations laid down under a resolution of the Board of Directors of the Central Bank of Kuwait;
- Not to be a member of Board of Directors or staff in any of the other bank operating in the State of Kuwait.



935. Chairmen of banks' Boards of Directors shall notify the Central Bank of Kuwait of nominees to the membership of that Board thirty days prior to the date fixed for the meeting of the General Assembly expected to be held to elect the members of the Board of Directors.

936. The appointment of a member of a bank's board of directors is subject to the CBK's approval. According to Article 68 of Law No. 32/1968, the Board of Directors of the CBK shall have the right within 21 days from the date of its notification to object to the appointment of any such nominees under a resolution showing the relevant reason for failure to fulfill the required conditions.

937. In addition it states that such objection shall result in the exclusion of the nominee in question from candidacy for the Board of Directors or from occupying any such position, as the case may be.

938. Although the CBK has established criteria for the licensing of banks, including the minimum qualification required for directors and senior management, the licensing supervisory process is deficient with respect to ownership issues. There are currently no effective controls over the ownership structure of banks.

939. Article 57 of Law 32/1968 imposes limits on the ownership concentration in Kuwaiti banks by setting the maximum ratio of any individual ownership (direct or indirect) in a bank at 5 percent of the bank's capital, unless prior consent is obtained from the CBK. Should an individual ownership exceed this limit for any reason, the excess must be disposed off within the period specified by the CBK. However, this does not provide for the control of the ownership structure to prevent criminals or their associates from holding or being the beneficial owner of a significant controlling interest in the financial institutions.

940. The CBK has issued an "Application Form for Approval of Ownership Exceeding 5 percent of Bank Capital." This form requires that an applicant provide information such as practical experience, education qualifications and data concerning the financial position and reputation of the applicant. The data required includes whether the applicant has been convicted of a crime against honor or integrity, in Kuwait or abroad. However, if a criminal or their associate applies to hold 5 percent or more of a bank's capital, there is no policy preventing the CBK from approving the application.

941. Article 25 of Law 68/1980 states that any person who was convicted in one of the bankruptcy offenses, with fraud, deceit, theft, cheating, betrayal of trust, forgery, or use of fraudulent documents shall not engage in any commercial activity. The assessors have some concerns regarding this provision. First, no definition of commercial activity has been provided by the authorities. In addition, assessors could not determine from the information provided to what extent the Law 68/1980 applied beyond the requirements for the commercial license.<sup>99</sup> Last, even if this provision applied to financial institutions, there is only a limited number of criminal offenses that would prohibit an individual from engaging in a commercial activity.

942. Therefore, there are no legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc., in a financial institution.

943. The requirements in place do not provide for the implementation of "fit and proper" tests for shareholders and for rejection of acquisition by unsuitable parties.

944. In the same way, there are no controls over the ownership structure of investment companies and exchange companies. The CBK Law is silent on the licensing procedures for exchange companies and

<sup>99</sup> Assessors were not provided with a copy of the Law 68/1980 in its entirety, and therefore could not provide a full analysis of the legislation.

investment companies regulated by the CBK. There are no “fit and proper” tests for shareholders, directors or executive managers of investment companies or exchange companies.

945. Notwithstanding that many requirements set forth under the CBK Law have been extended to the exchange companies and the investment companies, and that the authorities indicated that in practice many of the practices and controls that apply to banks, are applied in the same way to exchange companies and investment companies, the legal framework under Ministerial Resolution of 1984 and 1987 does not contain the same provisions that apply to banks with regard to fit and proper requirements for directors and senior management.

946. Article 7 of Ministerial Resolution of 1984 and Article 6 of Ministerial Resolution of 1987 specify the requirements that exchange companies and investment companies must comply with in order to be registered by the CBK.

947. In this regard they require, among other things, the following information: registration date and number; company name and style; legal capacity of the company; incorporation date; capital; reserves; name of board members and general manager; names of associate partners if it is a general partnership or limited partnership company (as for exchange companies only); third party partners’ names in the case of non-Kuwaitis in the company, etc.

948. While the CBK has the right to object to the appointment of members of the board of directors in the banking sector, this does not extend to the exchange companies and the investment companies, also under the supervision of the CBK.

949. The Off-Site Supervision Department, through the Banking and Financial Units Affairs Section, is responsible for obtaining, evaluating and granting licenses to the FIs under the supervision of the CBK. According to the authorities, such Unit verifies the competence and integrity of the personnel in each of the FIs through rigorous and extensive checks, including criminal backgrounds, evidence of financial capacity, integrity, among other relevant aspects. However, no further information was provided to support how such measures and controls are being implemented.

### **Ministry of Commerce and Industry**

950. Article 23 of the Insurance Law (Law No. 24/1961) states that insurance agents shall fulfill the following requirements: i) to be Kuwaiti national of at least twenty-one years of age; good conduct and behavior; not convicted of any felony or misdemeanor that is dishonorable or affecting public morals and not declared bankrupt unless rehabilitated. It also states that he has to be registered in the Chamber of Commerce and the Commercial Register, or ii) to be a company established in Kuwait provided that no less than 51 percent of its capital is owned by Kuwaitis. In the case of a partnership, all conditions that are required for an individual agent shall also be fulfilled by all the partners.

951. Article 25 of Law No. 24/1961 also requires “*every insurance company or branch thereof to obtain a license from the President to perform insurance operations in Kuwait and may not exercise such activities before obtaining the said license. The registration of the Insurance Company in the commercial register is not in itself tantamount to a license for the exercise of insurance operations.*” However the requirements in place fall short of complying with Criteria 23.3 and 23.3.1. There are no controls over the ownership of FIs subject to the supervision of the MOCI.

952. There is no information available with regard to the licensing requirements for exchange organizations.

### **MC/Kuwait Stock Exchange**

953. Standards for market entry are minimal and are contained in the KSE bylaw.

954. Within the securities sector, the requirements to carry out the brokerage business are set out in Article 21 of Ministerial Resolution 35/1983. The requirements include, among others, the following: i) It shall be a Kuwaiti company and all partners shall be Kuwaiti nationals; ii) The brokers shall be Kuwaitis, having attained at a minimum secondary school educational qualifications, or having secured an adequate experience with satisfactory training to a level acceptable to the Committee. It also states that such brokers shall have a good reputation; iii) The director of the company, the partners authorized to perform management functions, or those acting as brokers should have not been declared bankrupt, whether in Kuwait or abroad, nor been convicted of any felony or imprisoned for any crime of immoral act or breach of trust, unless they are rehabilitated.

955. Article 21 states that the company shall satisfy the requirements of any further conditions laid down by the Stock Exchange Committee. Article 22 provides that all applications submitted for registration in the Broker's Register shall be considered by the Stock Exchange Committee whose decision in this respect shall be final.

956. Finally, according to Article 23, every such company shall appoint its own representative to conduct brokerage on its behalf in the Stock Exchange who shall, among other requirements, be of good conduct and behavior.

957. There are no controls over the ownership structure of market intermediaries in the securities markets. Overall standards for market entry are weak. The requirements for market entry in the securities industry are minimal and fall short of complying with Criteria 23.3 and 23.3.1.

958. In light of the above comments, the assessors concluded that FIs in Kuwait are not subject to appropriate licensing requirements. There are no prudential controls over the ownership of FIs and no application of fit and proper tests on directors and senior management of investment companies, exchange companies, insurance companies, exchange organizations or brokerage companies. The legal framework should include, at a minimum, the vetting of owners, directors, managers and the ability for the supervisor to evaluate them on the basis of fit and proper, including those relating to expertise and integrity.

959. With regard to criteria 23.5 and 23.7, it is worth noting that financial institutions providing money or value transfer services, or a money or currency changing service in Kuwait should be licensed and registered.

960. Money or currency changing services are being provided by banks, exchange companies and exchange organizations. Pursuant to Article 1 of Law No. 32/1969, these financial institutions must obtain a license from the MOCI.

961. Banks and exchange companies are the only FIs authorized to provide money or value transfer service in Kuwait, and they must be registered by the CBK.

962. According to Article 59 of the CBK Law, no banking institution is allowed to start operations until it has been registered in the Register of Banks at the CBK. A similar requirement is imposed on exchange companies under Article 7 of Ministerial Resolution of 1984.

963. Exchange organizations are licensed the MOCI for prudential and AML related matters. Further, other than Law 32/1969, the MOCI could not provide the assessors with the specific provision that applies to the registration of exchange organizations.

***Ongoing supervision: Regulation and Supervision of FIs (c. 23.1); Application of Prudential Regulations to AML/CFT (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML/CFT Supervision of other FIs (c. 23.7); Guidelines for FIs (c. 25.1):***

Central Bank of Kuwait

964. The CBK has the legal authority to undertake on-site inspections of all entities for which it is responsible. The powers of inspection and supervision are contained primarily in Section 5 of the CBK Law.

965. Banks, as well as exchange companies and investment companies are subject to ongoing supervision. This is performed on a day-to-day basis by the Supervision Department.

966. The Central Bank Law sets down a framework for the regulation of the banking industry, and Article 71 gives the CBK the authority to establish rules, regulations and instructions as it deems necessary to realize its credit or monetary policy or to ensure the sound progress of the banking industry. The legal framework was complemented by Ministerial Resolution of 1984, and 1987 and Ministerial Resolution 113/1992, which regulate exchange companies, investment companies and investment funds, respectively.

967. There are two departments within the CBK which have regulatory responsibilities for prudential and AML/CFT regulation. The Supervision Department encompasses the On-Site Supervision Department which consist of three sections and the Off-Site Supervision Department which consists of five sections.

968. The On-Site Supervision Department assumes the responsibility for the on-site supervision over the activities of banks, investment companies, exchange companies and investment funds. In addition, the Department has the responsibility to ensure that those FIs comply with the AML Laws and regulations.

969. The On-Site Supervision Department is composed of three units: the Compliance Unit; the Anti-Money Laundering Unit; and the Inspection Unit.

970. AML supervision falls within the responsibility of the AML Unit and the Inspection Unit. The AML Unit coordinates with the Inspection Unit the inspection of all the FIs subject to the control of the CBK.

971. The CBK has both comprehensive and targeted on-site inspections, which are planned in consultation with the Off-site Supervision Department and are conducted based on standardized written procedures which provide for a number of controls, such as: CDD (opening of account, scoring system, update of information, etc), AML policies, STR (quantity, number), Large Cash Transactions Reports (LCT), Foreign Cash Transactions (FCT), monitoring of transactions and training.

972. The authorities indicated that the Inspection Unit is in charge of conducting comprehensive inspections of banks, investment companies, exchange companies and investment funds and that the AML component is included as part of the global on-site inspection activities. All staff in the Inspection Unit is involved in supervising and monitoring AML compliance, as it forms an integral part of the CBK's routine prudential supervision program. The AML Unit performs targeted inspections.

973. Basically, three aspects are taken into account in order to determine whether to conduct a comprehensive inspection or a targeted one. The CBK relies on the following: i) input from the Off-Site Department (financial data and other review reports received from the Offsite Department), ii) reports from previous on-site examinations, and iii) a review of STR feedback (quality and quantity) in order to determine when and what type of on-site visit is necessary. The CBK uses standardized written procedures.

974. In addition, the CBK analyzes the Internal Report Systems. FIs should provide the CBK with reports on the adequacy of their internal control systems prepared by local audit firms. It is the responsibility of the “external auditors” to provide their opinions and remarks on whether the regulations and internal control systems of the bank are sufficient enough in quality and quantity to manage the risk that the financial institution faces in its day-to-day operations.

975. The authorities also stated that when conducting its general supervisory work, they use the tools at its disposal also for the supervision of AML obligations. The authorities indicated the checklist for prudential supervision covers similar aspects as the targeted inspection. However, the specific inspection conducted by the AML Unit is normally more focused on AML issues while the comprehensive one has a broader perspective. There is also an Off-Site Department in charge of receiving and analyzing the Internal Control Systems Reports submitted by FIs on an annual basis.

976. The cornerstone of the AML component is compliance with the different instructions issued by the CBK.

977. The examiners must follow a Manual which contains a list of matters to check, including customer identification, record keeping, reporting and internal audit, among others. The CBK Supervision Manual sets out specific procedures relating to AML supervision. The Manual requires the inspectors to take a sample of all opened accounts (*i.e.*, savings, checking, portfolio management) and check the following: 1) Existence of anonymous accounts; 2) Recordkeeping; 3) Occasional accounts; 4) KYC policy approved by the Board; 5) Representation; 6) Existence of the company/legal persons; 7) Intermediaries and specific requirements; 8) Purpose of the account/income of customer; 9) Online banking and transfers; 10) Correspondent banking relationships; 11) Shell banks; 12) STRs; 13) Training programs; 14) Manual for red flags; 15) UN Lists and software for including the lists; 16) PEPs; 17) NPOs; 18) Wire transfers; 19) Unusual and complex transactions; 20) Internal policies approved by the Board; and 21) External auditor report and content.

978. An examination report is drafted after the onsite visit outlining the findings and the corrective measures required. This report is sent to the management of the concerned financial institution.

979. The authorities shared with the assessors a sample of an inspection report, which provides for the following information: Part I- Secret and not disseminated information to the bank (main data of the bank, situation of the bank, summary and recommendations, financial centre of the bank, among other relevant information), and Part II-Shared with the bank (capital adequacy, nature and quality of assets, profits, liquidity, internal audit and policy, AML/CFT compliance, accuracy of the submitted documents, non-compliance and sanctions, IT systems, among other relevant information).

980. The CBK informed the assessment team that, although there is no risk-based approach with regard to supervision, they are already taking steps to move to a risk-based approach which is expected to be in place by the fourth quarter of 2011.

981. The authorities also stated that as part of the examination plan, mutual funds are part of the inspection on banks and investment companies and thus, they are not included as a stand-alone examination.

982. The authorities indicated that on average, the inspection team will consist of 3–5 inspectors from both the head office and branch levels.

983. With regard to frequency of inspections, the authorities indicated that their inspection program includes on-site visits to banks at least once a year; investment companies, once every two years; and exchange companies, at least once a year. The examination plan is approved by management and the frequency of inspections is determined by an internal policy. The authorities indicated that the onsite

inspections cover the main office and branches based on the size of total assets, number of branches and prior examination visits to main office and prior selected branches.

984. It is worth mentioning that the supervised sector includes 21 banks, (345 local branches and 16 foreign branches), 38 exchange companies (231 local branches), and 100 investment companies (30 branches).

985. Based on the information provided by the authorities (see table 23), the following inspections were conducted in the last three years: 2007 (13 banks, 60 investment companies, and 32 exchange companies); 2008 (14 banks, 40 investment companies, and 33 exchange companies); 2009 (12 banks, 49 investment companies and 31 exchange companies). The CBK also stated that the examination of any new FI takes place after two years after their registration by the CBK. However, based on such information, banks and to some extent exchange companies from 2007 to 2009 have not been subject to an onsite inspection once every year.

### **Ministry of Commerce and Industry**

986. The assessors could find no statutory provision giving the MOCI authority to supervise insurance companies or exchange organizations generally. Therefore, the MOCI's granting of supervisory responsibility to the Anti-Money Laundering Unit lacks the necessary statutory power.

987. The insurance companies as well as the exchange organizations are supervised by two different Departments: Department for Insurance Companies and Department for Exchange Organizations, which mainly monitor if these institutions comply with the obligations established under the Insurance Law as well as under the relevant ministerial resolutions.

988. It should be noted that the MOCI is supervising insurance companies and exchange organizations both generally and specifically for AML matters. However, the supervision appears to be limited and ineffective. Overall, the scope of the inspections over insurance companies and exchange organization is limited; according to the authorities they verify compliance with Resolution 252/2002, which is very broad in its content and does not provide for enough information.

989. In addition, it is worth noting that the MOCI's Anti-Money Laundering Unit has only 25 staff for AML related reviews (of whom 10 normally go on inspections), but is responsible for verifying compliance with the AML requirements not only by the insurance companies and the exchange organizations, but also by other non-designated financial businesses and professions, such as the real estate agents and the dealers in precious metals and stones. Combined, these sectors total nearly 4 000 entities.

990. The number of AML/CFT onsite examinations appear to be very low compared to the number of FIs which are under the supervision of the MOCI. The assessors also found the quality of on-site inspections to be unsatisfactory.

991. Meetings with the private sector revealed that the MOCI has undertaken few AML-related inspections, and that it is unclear to those FIs who have been visited which section within the MOCI undertakes the inspection (*i.e.* the AML Unit or the Insurance/Exchange Organizations Department).

992. Furthermore, the level and frequency of inspections related to AML has been minimal. There are frequent visits from the Insurance Department, but they mostly target prudential matters. The AML Department does not have standardized procedures. Meetings with the private sector suggest overall low awareness of the requirements to combat money laundering and terrorist financing.

### **MC/Kuwait Stock Exchange:**

993. The KSE carries out prudential supervision. They rely on auditors' reports for this purpose. No regular/periodic inspection plan is in place or was made available.

994. The authorities indicated that they do not undertake inspections of brokerage companies in order to ensure that FIs comply with the requirements to combat money laundering and terrorist financing. The authorities also stated that except for Resolution 31/2003, no guidance and feedback is being provided to the securities sector with respect to their AML obligations.

995. The following table provides details on the number of AML/CFT inspections performed by the supervisory bodies-CBK, MOCI, MC/KSE-on the FIs subject to their control over the period 2007–2009.

**Table 23 – Number of AML/CFT inspections by sector**

|                        | 2007 | 2008 | 2009 |
|------------------------|------|------|------|
| Banks                  | 13   | 14   | 12   |
| Investment Companies   | 60   | 40   | 49   |
| Exchange Companies     | 32   | 33   | 31   |
| Insurance Companies    | 23   | 41   | 87   |
| Exchange Organizations | 10   | 20   | 90   |
| Brokerage Companies    | 0    | 0    | 0    |

996. FIs under the regulation and supervision of the CBK, especially banks and investment companies, are also subject to prudential supervision and are required to have risk management systems, internal audit programs, adequate record-keeping requirements and independent audit function. These FIs are also required to have annual external audits which include elements of AML as part of the internal control. In practice, inspectors of the CBK rely on the real-time data they have as part of their prudential and market supervision.

997. The FIs subject to the supervision of the KSE are also subject to prudential supervision. However, there is a lack of an independent and accountable capital market regulatory authority for the securities industry and there are no clear prudential rules and regulations, especially with regard to licensing and structure, ongoing supervision and risk management systems.

998. A new Capital Markets Law, Law No. 7/2010 was passed in March 2010, and will be fully implemented by the end of 2011. According to the authorities, this Law is intended to solve many of the framework's existing weaknesses.

999. The insurance companies and brokers are supervised by the MOCI but regulation and supervision are based on an outdated law and many of the elements of a modern insurance supervisory regime are missing

1000. Overall, the regulatory and supervisory measures that apply for prudential purposes can also be applied for AML/CFT purposes.

1001. With regard to criteria 23.6, as was already mentioned, it is worth emphasizing that only banks and exchange companies are allowed to provide money or value transfer services and both FIs fall under the supervision of the CBK. Money or currency exchange services may be provided through banks, exchange companies and exchange organizations. All these FIs are subject to supervision for ensuring compliance with the national requirements to combat money laundering or terrorist financing, either by the CBK (for banks and exchange companies) and the MOCI (for exchange organizations). However, AML supervision of exchange organizations could not be regarded as effective.

1002. According to Article 2 of the AML Law and Article 2 of Ministerial Resolution 9/2003, banks, exchange companies and exchange organizations are all subject to the obligations of the AML Law.

1003. Banks must comply with Instruction 2/BS/92/2002, exchange companies must abide by Instruction 2/RS/95/2003, and exchange organizations must abide by Resolution 252/2002.

1004. Lastly, all financial institutions, other than those mentioned in Criterion 23.4 are required to be licensed and are subject to supervision or oversight for AML/CFT purposes. However, the level and effectiveness of supervision varies across sectors.

#### **Guidelines for FIs (c. 25.1)**

1005. The CBK issued *Guidelines for the Identification of Suspicious Transaction Patterns* as part of the Instructions issued to banks, investment companies and exchange companies. Despite the issuance of these guidelines, there is still inconsistency among banks, investment companies and exchange companies as to what activity or level of suspicion requires the filing of an STR.

1006. These guidelines are limited to the identification of suspicious transactions and patterns and do not address how FIs should implement and comply with their respective AML/CFT requirements.

1007. The MOCI has issued no guidelines for the entities under its supervision concerning AML/CFT requirements.

1008. The KSE has issued no guidelines for brokerage companies concerning AML/CFT requirements.

#### **Analysis of Effectiveness**

1009. Overall, the supervisory framework for the supervision of FIs in Kuwait gives rise to varying degrees of concern.

1010. With the exception to those FIs under the supervision of the CBK (banks, exchange companies and investment companies), the rest of the FIs are not being effectively supervised for AML/CFT purposes.

1011. The supervision of the insurance sector and the exchange organizations is being implemented to a much lesser extent than in the banking sector. The supervision that is being conducted by the MOCI with regard to the insurance companies and exchange organizations is limited and cannot be regarded as effective. In particular, the assessors could find no statutory provision giving the MOCI authority to supervise insurance companies or exchange organizations generally. Therefore, the MOCI's grant of supervisory responsibility regarding AML to the Department for Combating Money Laundering lacks the necessary statutory power. The objectives, functions, responsibilities and powers of the MOCI should be clearly defined by a comprehensive and unified law.

1012. The KSE has indicated that currently, they are not conducting AML supervision to verify whether brokerage companies comply with the AML requirements.

1013. The AML Law is silent with regard to the designation of competent authorities with responsibilities for ensuring that FIs comply with the AML requirements and the supervisory powers of the financial supervisors, especially the MOCI and the KSE, are unclear and limited.

1014. The lack of effective supervision and enforcement, in particular in relation to those entities under the supervision of the MOCI and the MC/KSE, undermine the effectiveness of the regime.

1015. The CBK appears to be knowledgeable with respect to AML/CFT legislation and the obligations of its supervised FIs. It is evident that the CBK has concentrated a great deal of effort and resources on



issuing new requirements and monitoring the implementation of these requirements by FIs under its supervision. In addition, the private sector consistently reported good communication with the CBK and expressed confidence in its competence. Overall the CBK has implemented a fairly comprehensive system for AML supervision.

1016. However, there are some areas that need improvement in order to enhance the level of supervision over banks, investment companies and exchange companies. Firstly, the CBK could enhance the supervisory systems by updating the supervisory tools like the examination manual and related examination procedures to incorporate a risk-based approach to supervision.

1017. The CBK relies on the work of the Off-site Department, reports from previous on-site examinations and STR feedback to determine when and what type of on-site visit should occur, using standardized written procedures. On-site inspections are largely focused on regulatory compliance. The assessors believe that the CBK could benefit from implementing a risk-based approach to supervision. The adoption of a risk-based approach to supervision will allow the CBK to allocate its resources more effectively, which is especially important given that, according to the CBK, the inspection reviews branches as part of the examination process and this constitutes a large volume of work for the 3–5 inspectors normally involved in the process.

1018. The CBK authorities are already taking steps to move to a risk-based approach, which they expect to be in place by the fourth quarter of 2011. They have also indicated that a consultation firm has been hired and steps are already underway to introduce new supervisory ratios and apply new risk matrices. This covers all supervisory aspects including AML/CFT, the related supervisory manuals and procedures will be subject to a risk-based approach.

1019. Secondly, the CBK should shorten its supervisory cycle. CBK authorities indicated that its inspection program includes on-site visits to banks at least once a year; investment companies, once every two years; and exchange companies at least once a year. However, the statistics provided by authorities indicate that banks and exchange companies have not been inspected once every year. In addition, meetings with FIs revealed inconsistencies in the frequency of the on-site inspections. While some institutions stated that they have had an on-site inspection on an annual basis, other FIs, especially some banks and exchange companies, reported they had gone two years between on-site inspections.

1020. In addition, the supervision that is being conducted by the MOCI with regard to the insurance companies and the exchange organizations is limited and cannot be regarded as effective.

1021. The resources granted to the MOCI and the KSE are inadequate and in some instances limited technical expertise has been provided. There is a need for human resources, particularly in the area of AML/CFT supervision within the insurance and securities sector as well as for the supervision of the exchange organizations.

1022. In the insurance sector, the human resources allocated to AML/CFT inspections seemed inadequate at the time of the on-site visit. The MOCI's Department for Combating ML has only 25 staff for AML-related reviews, but is responsible for insurance companies, exchange organizations, real estate and dealers in precious metals and stones. These sectors combined total nearly 4 000 entities.

1023. In addition, meetings with the private sector revealed that the MOCI has conducted few AML-related inspections, and that it is unclear to those who have been visited which section within the MOCI has undertaken the inspection (*i.e.*, AML Unit or the Insurance and Exchange Organizations Unit). It is worth mentioning that the last two units are in charge of prudential supervision.

1024. Meetings with insurance companies and exchange organizations suggest low awareness of AML obligations. For example, while all sectors were aware of the need to verify identification, individuals gave inconsistent answers regarding when a photocopy of the identification was required.

1025. The lack of clear responsibilities of the Market Committee, which is the designated regulator by law for the securities industry, affects its supervisory role and weakens the ability of the regulator to enforce the law in a consistent manner.

1026. The inspection powers of the KSE are not adequate and lack the power to supervise and inspect the key market participants. The supervisory power over the KCC and the brokerage companies is not adequate.

1027. The securities market is segmented in terms of enforcement and responsibilities. While a broker is subject to the licensing power of one regulator, it is subject to the enforcement power of a different agency. Compliance with the AML requirements by the KCC is supervised by the CBK although falling under the umbrella of the MC/KSE. The fragmented and uncoordinated effort among the different regulators within the securities market also affects the effective supervision over the sector.

1028. The KCC is a key player within the securities industry as it performs the CDD for the customers who want to trade in the market. However, the KCC is not subject to the regulator's inspection and is currently falling under the umbrella of the CBK for ensuring compliance with AML regulations. Brokerage companies had never undergone any form of inspection to ensure compliance with the requirements to combat money laundering and terrorist financing. There is no supervision with regard to AML compliance for the securities industry.

1029. Overall licensing requirements should be strengthened. The market entry requirements for FIs in Kuwait are insufficient. There are currently no effective controls over the ownership of regulated FIs. Banks are the only FIs that are required to have "certain market entry requirements," but the requirements in place are minimal.

1030. There is an absence of prudential controls over the ownership of FIs which poses a serious risk to the integrity of the financial system.

1031. There is an absence of effective guidelines issued by the competent authorities concerning other AML/CFT requirements.

### **Sanctions/Enforcement powers**

1032. The legal basis that provides the MOCI and the KSE with supervisory and sanction powers, currently limited to prudential matters, is unclear. As such, the sanctioning structure and enforceability of administrative fines imposed are questionable.

1033. Although the CBK has adequate powers to supervise banks, investment companies and exchange companies, the involvement of the Ministry of Finance for the closure of banks limits one of its powers of enforcement and sanction.

1034. Overall, the data on sanctions applied by the regulators for AML/CFT deficiencies, especially for the MOCI and the KSE, clearly indicate that the framework does not provide for effective, dissuasive, or proportionate measures.

1035. Notwithstanding the broad range of sanctions at the disposal of the CBK, certain actions -such as registration and de-registration of banks- must receive prior approval by the Minister of Finance. This detracts from the independence of the CBK's authority to establish and enforce broad prudential safety and

AML requirements. The involvement of the Minister of Finance in the CBK's decisions on licensing and closure of banks could also compromise the operational independence of the CBK in implementing its supervisory functions and issuing sanctions. It would be desirable to provide the CBK with the sole power to revoke the licenses of the FIs subject to its supervision.

1036. There is also a concern regarding the range of sanctions available to the MOCI for insurance companies and exchange organizations and the effectiveness of the corrective measures. It is worth noting that the range of sanctions only provides for the following: warnings and closure. In addition, the gap in the legal authority for the MOCI to supervise the insurance sector and exchange organizations, the low level of requirements, the lack of guidance on the requirements, and the lack of AML supervision has a negative impact on the ability of the MOCI to impose sanctions.

1037. The range of sanctions for the KSE is also insufficient and does not provide for the possibility to apply pecuniary sanctions.

1038. There are no sanctions for brokerage companies for noncompliance with the AML/CFT requirements. This is a result of the lack of supervision of the sector by the KSE with respect to AML/CFT.

1039. The spectrum of available sanctions for the securities industry, insurance sector, and exchange organizations should be proportionate with the seriousness of the irregularities committed by market participants.

1040. Overall the effectiveness of sanctions taken by the supervisors, especially the MOCI and the KSE could not be demonstrated.

### 3.10.2 Recommendations and Comments

1041. The authorities are recommended to:

- Designate under the AML Law or its implementing resolution, the competent authorities with responsibility for ensuring that FIs adequately comply with the AML/CFT requirements and provide them with adequate powers of enforcement and sanction.
- Provide for an adequate range of sanctions (MOCI, KSE).
- Provide the legal basis for the MOCI to apply sanctions for noncompliance by the insurance sector and the exchange organizations with the AML/CFT provisions.
- Establish sanctions for directors and senior management of insurance companies, exchange organizations and brokerage companies who fail to comply with the AML/CFT requirements.
- Provide the CBK with the sole power to revoke licenses for those FIs that fall under its supervision.
- Ensure that the supervisors, especially the MOCI and the KSE, use their sanctions powers effectively.
- Ensure that licensing requirements or other legal or regulatory measures prevent criminals or their associates from owning or controlling FIs and provide supervisory authorities with the ability to establish prudential controls over the ownership structure of all FIs.

- Establish explicit “fit and proper” measures for directors and management of investment companies, exchange companies, insurance companies, exchange organizations and brokerage companies.
- Provide the legal basis for the MOCI to ensure compliance by the insurance companies and the exchange organizations with the AML legal framework (supervisory powers to monitor and inspect)
- Provide the MOCI and the KSE with adequate powers to monitor and ensure compliance by FIs with the AML/CFT requirements.
- Ensure adequate and effective AML/CFT supervision of the securities sector, the exchange organizations and the insurance sector.
- Conduct AML/CFT inspections on FIs subject to the supervision of the KSE.
- Strengthen MOCI’s AML/CFT supervision, including thorough the development of standardized written procedures.
- Issue guidelines concerning AML/CFT requirements to all FIs. Such guidelines should be designed to assist FIs in implementing effective AML policies, procedures and controls and in complying with their respective AML/CFT requirements.

### 3.10.3 Compliance with Recommendations 17, 23, 25 & 29

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.17 | NC     | <ul style="list-style-type: none"> <li>• Lack of a clear designation of the authorities empowered to apply sanctions.</li> <li>• Absence of a clear basis for the MOCI to apply sanctions to insurance companies and exchange organizations for not complying with AML/CFT requirements.</li> <li>• Lack of a sanction regime with respect to directors and senior management of insurance companies, exchange organizations and brokerage companies.</li> <li>• Lack of a sufficient range of sanctions. Sanctions are not proportionate and dissuasive (MOCI, KSE).</li> <li>• The involvement of the Minister of Finance in applying one of the sanctions set forth under the CBK Law (deletion from CBK’s Register) undermines the effectiveness of the sanctioning regime.</li> <li>• Lack of penalties/sanctions in the securities sector despite the low level of compliance of the sector with AML/CFT provisions.</li> <li>• The sanctioning regime, especially for the MOCI and KSE, is not effective.</li> </ul> |
| R.23 | LC     | <ul style="list-style-type: none"> <li>• Lack of a clear basis for the MOCI to supervise the insurance sector and the exchange organizations to ensure compliance with AML/CFT requirements.</li> <li>• Lack of provisions related to the control by supervisory authorities of the ownership structure of FIs to prevent criminals and their associates from holding or being the beneficial owners of a significant controlling interest.</li> <li>• Lack of ability for the CBK, MOCI and KSE to apply fit and proper test on directors and senior management of investment companies, exchange companies, insurance companies, exchange organizations and brokerage companies.</li> <li>• No supervision of brokerage companies for compliance with AML/CFT obligations.</li> </ul>   |

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
|      |        | <ul style="list-style-type: none"> <li>The insurance sector and the exchange organizations are not effectively supervised for compliance with AML/CFT requirements.</li> <li>Low awareness by the FIs under the supervision of the MOCI of the AML/CFT requirements.</li> </ul>   |
| R.25 | NC     | <ul style="list-style-type: none"> <li>Lack of guidelines for brokerage companies, insurance companies and exchange organizations on how to implement and comply with their AML/CFT requirements.</li> <li>There is an insufficient amount of guidance by the CBK for FIs on how to implement and comply with their AML/CFT obligations.</li> </ul>   |
| R.29 | NC     | <ul style="list-style-type: none"> <li>Lack of a clear basis and supervisory authority/powers for the MOCI to ensure compliance by the insurance companies and the exchange organizations with AML/CFT requirements.</li> <li>Lack of powers to monitor compliance and conduct inspections of the FIs subject to the MOCI's control.</li> <li>The supervisory powers of the KSE to monitor and inspect are not adequate and lack a clear process.</li> <li>Lack of AML/CFT inspections of brokerage companies to monitor compliance.</li> <li>AML/CFT inspections on exchange organizations and insurance companies are limited in scope and are not effective.</li> <li>Lack of examinations procedures in place for the supervision of the insurance companies, exchange organizations and brokerage companies</li> <li>MOCI and KSE do not have adequate powers of enforcement and sanction against FIs, their directors, and senior management.</li> <li>The CBK's power with respect to the revocation of licenses is dependent on the decision of the Minister of Finance.</li> <li>Lack of effectiveness.</li> </ul> |

### 3.11 Money or Value Transfer Services (SR.VI)

#### 3.11.1 Description and Analysis (summary)

##### Legal Framework:

1042. The requirements regarding money or value transfer services can be found in the CBK Law.

##### Designation of Registration or Licensing Authority (c. VI.1-6):

1043. As described in Section 3.10 above, the CBK is responsible for licensing, regulating, and supervising MVT service operators in Kuwait. The only legal MVT service operators in Kuwait are banks and exchange companies. Article 59 of the CBK Law prohibits institutions other than those registered in the Register of Banks from practicing bank business or using in their business addresses, publications, or advertisements the terms: "bank, banker, bank owner" or any other wording the usage of which may mislead the public as to the nature of the institution.

1044. As both banks and exchange companies are covered by the AML Law, MVT service operators are covered by and are subject to the obligations imposed by the AML Law. Under the AML Law, Resolution 9/2005, and/or the Instructions to Banks or to Exchange Companies, MVTs are required to:

- identify their customers;
- report suspicious transactions;
- report cash transactions greater than KD 3 000 (USD 10 600) ;
- maintain records for five years;
- establish policies, procedures, and internal controls to prevent ML and TF; and
- pay attention to complex and large transactions.

1045. The full scope of the AML/CFT requirement and the regulatory regime for the authorized MVT sector is described in Sections 3.1–3.10. The CBK is the only authority designated to register and license legal persons that perform money or value transfer services. The CBK maintains a current list of the names and addresses of licensed and registered MVT service operators and is responsible for compliance with the licensing and registration requirements.<sup>100</sup>

1046. During the onsite mission, assessors were made aware that a small informal system seems to be directly related and used by the expatriate communities working in Kuwait. While a number of individuals reported the existence of an informal money/value transfer system in Kuwait, it should be noted that many of these individuals stated that the number of informal MVT providers has decreased over the last decade and is thought to be relatively small. Assessors believe that this is a result of the efforts by the Kuwaiti authorities to lower the commissions in the formal MVT sector in order to make it easier and cheaper to engage in MVTs.

1047. CBK officials indicated that they are not aware of any informal money/value transfer system or such activities occurring in Kuwait. Article 59, paragraph 4 of the CBK Law states that the CBK may ascertain by any means it deems fit that no particular company or individual firm violates the prohibition against institutions engaging in banking business without being registered in the Register of Banks. The CBK states that this allows them to take any steps necessary to determine if a business or individual is performing informal money/value transfer services. However, the CBK did not provide any examples when it had used this power to close an informal money/value transfer provider, as it was unaware of the existence of any such entities. The PPO has convicted an exchange company for conducting transfers illegally. No other evidence was provided regarding attempts to prevent the operation of informal MVT operations.

### 3.11.2 Recommendations and Comments

1048. The authorities are recommended to:

- Make efforts to determine the size and scope of the informal money/value transfer system operating in Kuwait and to effectively monitor this sector.
- Take action to address the deficiencies identified in relation to the implementation of the FATF Recommendations, as identified in sections 3.1 of this report in relation to MVTS providers.

<sup>100</sup> For more on the requirements that apply to banks and exchange companies, see Recommendations 4–11, 13–15, and Special Recommendation VII. For more information on CBK supervision of banks and exchange companies, please see Recommendations 21–23.

### 3.11.3 Compliance with Special Recommendation VI

|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
| SR.VI | PC     | <ul style="list-style-type: none"><li>• Lack of effective monitoring of a potential small informal money/value transfer system operating in Kuwait.</li><li>• The application of the FATF Recommendations to MVTs providers suffers from the same deficiencies identified in relation to the rest of the financial sector (see Sections 3.1 to 3.10 of this report).</li></ul> |

#### 4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

##### General

1049. As discussed in Section 1.4, “Overview of the DNFBP Sector,” only three of the businesses and professions designated by the FATF exist in Kuwait, including real estate agents, dealers in precious metals and stones, and lawyers.

1050. The remaining categories of DNFBP as defined by the FATF do not operate in Kuwait. Casinos are prohibited. Notaries are government officials working for the Ministry of Justice (MOJ) in the authentication department, and are responsible for authentication of real estate transactions, and, therefore, do not fall in the FATF definition of a DNFBP. Accountants are ‘internal’ employees of other types of businesses. Auditors are professionals engaged in the external audit of businesses and are prohibited from engaging in the financial activities by the FATF definition of a DNFBP.

1051. While TCSPs are not prohibited, they do not exist in Kuwait, and thus are not covered by the AML/CFT framework.

**Table 24 - FATF Designated Non-Financial Businesses and Professions in Kuwait**

| Sector                              | Covered by Resolution 9/2005                                | Registered | Supervised |
|-------------------------------------|---|------------|------------|
| Casinos                             | Not applicable (casinos are illegal)                        |            |            |
| Internet casinos                    | Not applicable (casinos are illegal)                        |            |            |
| Real estate agents                  | Yes   | MOCI       | MOCI       |
| Dealers in precious metals & stones | Yes   | MOCI       | MOCI       |
| Lawyers                             | Yes   | KLA        | KLA        |
| Notaries                            | Not applicable (a notary is a public office of the MOJ)     |            |            |
| Accountants                         | Not applicable (accountant is a position, not a profession) |            |            |
| Auditors                            | Not applicable (activities are prohibited)                  |            |            |
| Company Service Providers           | Not applicable (TCSPs do not exist in Kuwait)               |            |            |
| Trust Service Providers             | Not applicable (TCSPs do not exist in Kuwait)               |            |            |



1052. The AML Law does not include any DNFBPs in the list of covered institutions. However, Article 19 of the AML Law provides the Minister of Finance with the mandate and power to set out a resolution regarding the implementation procedures and regulation of such Law. The Minister of Finance issued Ministerial Resolution 9/2005 on Procedures and Rules Required Implementing the Provisions of Law No. 35/2002 (Resolution 9/2005). Resolution 9/2005 establishes the procedures and rules to execute the provisions of the AML Law.

1053. Article 2 of Resolution 9/2005 expands the AML Law to non-FIs, including auditors, real estate agents, lawyers, and sole-proprietor companies and institutions that trade in jewels, valuable stones and precious metals, and other valuable movable property. No explanation was provided by authorities as to why auditors were included in Resolution 9/2005, given that they are prohibited from engaging in the related activities.

1054. The provisions of Resolution 9/2005 apply equally to FIs and DNFBPs. AML requirements regarding CDD for transactions above KD 3 000 (USD 10 600), record keeping, the training of personnel in the field of AML, and the creation and enforcement of an internal auditing system for the detection of suspicious transactions are applicable to DNFBPs. For lawyers, the requirement to conduct preventive measures has not been restricted to activities of a lawyer according to the FATF definition.

1055. Article 11 of Resolution 9/2005 provides for fines against covered institutions who fail to comply with the requirements stipulated in Article 3 (CDD, record keeping, training, internal control systems). As Resolution 9/2005 is the implementing regulations for the AML Law and imposes mandatory requirements with sanctions for noncompliance, assessors determined that it serves as secondary legislation and falls within the definition of law or regulation.

1056. Neither the AML Law nor Resolution 9/2005 explicitly designates the competent authority responsible for ensuring compliance by the FIs with the requirements to combat ML and TF. According to authorities, despite the lack of designation, the MOCI has exercised its statutory powers and has assumed responsibility for supervision of real estate agents and dealers in precious metals and stones with regard to AML matters.

1057. Article 1 of Law No. 32/1969 states that no commercial entity may open an installation or office to do business or practice any profession without a license from the MOCI. This requirement applies to real estate agents and dealers in precious metals and stones operating in Kuwait.

1058. Resolutions 83/2005, 313/2004, 221/2007, and 51/2009 created the AML unit within the MOCI. Pursuant to these Resolutions, the AML unit within MOCI has the right to examine entities under the supervision of MOCI for AML compliance and to issue sanctions, including warnings and closing the businesses for 15–30 days. Pursuant to Resolution 51/2009, the unit can also refer an AML violation to the competent authority. However, other than Law No. 32/1969, authorities did not provide any further documentation vesting the MOCI with explicit authority to supervise and regulate real estate agents and dealers in precious metals and stones.

1059. The Minister of Commerce issued AML/CFT Decree No. 252 of 2002 (Resolution 252/2002). According to Article 1 of Resolution 252/2002 applies to dealers in precious metals and stones and other precious commodities. The MOCI did not provide an explanation why real estate agents, who they state are under their supervision and are covered by Resolution 9/2005, were not covered by Resolution 252/2002. Resolution 252/2002 requires that dealers in precious metals and stones identify their client and keep a copy of their identification, regardless of the size of the transaction.

1060. As Resolution 252/2002 is not a law, decree, or implementing regulation, assessors determined that it is not primary or secondary legislation. In addition, the assessors have not been provided with the documentation vesting the MOCI with explicit authority to supervise and regulate dealers in precious

metals and stones. Due to this gap in the legal authority for the MOCI to supervise and regulate dealers in precious metals and stones, the MOCI lacks the explicit authority to apply sanctions for noncompliance and, therefore, assessors determined that Resolution 252/2002 does not set out enforceable requirements

#### **4.1 Customer Due Diligence and Recordkeeping (R.12)**

##### **4.1.1 Description and Analysis**

###### **Legal Framework:**

1061. The legal framework for requirements for DNFBPs can be found in the AML Law, Resolutions 9/2005, and 252/2002.

###### **Measures for DNFBP in Set Circumstances:**

###### *Recommendation 5:*

1062. As mentioned above, the CDD requirements for DNFBPs, as provided for in Resolution 9/2005 and Resolution 252/2002, are the same as the requirements for FIs. The deficiencies in relation to Recommendation 5 have been described and analyzed in Section 3 of the report and apply equally to DNFBPs. Therefore, this Section will briefly outline the requirements, noting any changes or differences that may apply to DNFBPs.

1063. As discussed in Section 3 of this report, Article 3, item 1, of the AML Law prohibits the keeping of any unidentified account or account in false or symbolic names, or to open such accounts. In addition, Article 3, Paragraph (a) of Resolution 9/2005 prohibits the maintenance or opening of an account or the conducting of a transaction of any type under anonymous, false, or symbolic/numbered names. The term “transaction” expressly includes a transaction in jewels or valuable metals or any other valuable item.

1064. Article 3, item 2, of the AML Law requires the proper identification of clients according to official documents issued by the competent state authorities. Article 3, paragraph (b) of Resolution 9/2005 prohibits covered institutions from opening any account or executing any transaction worth more than KD 3 000 (USD 10 600) without first verifying the identity and capacity of the client and the beneficial owner, using reliable, independent source documents, data, or information. For dealers in precious metals and stones, the requirement for customer identification is expanded by Resolution 252/2002, which applies the customer verification requirement to all transactions in Article 1.

###### **Recommendations 6, 8, 9, 10 and 11:**

1065. The record-keeping requirements for DNFBPs, as provided for in Resolutions 9/2005 and 252/2002, are the same as the requirements for FIs. As the deficiencies in relation to Recommendations 6, 8, 9, and 10 have been described and analyzed in Section 3 of the report and apply equally to DNFBPs, therefore, this section will briefly outline the requirements, noting any changes or differences that may apply to DNFBPs.

1066. As discussed in Section 3 of this report, Article 3, item 3, of the AML Law requires the maintenance of all documents relevant to domestic and international transactions, including photocopies of their clients’ ID cards, for at least five years from the date of the completion of the transaction. Article 3, paragraph (c) of Resolution 9/2005 requires that all covered entities record all financial and nonfinancial transactions in their official records according to a regular accountancy system, keep such records and documents and papers for these transactions, whether domestic or foreign, including documents related to customer identification, as outlined in Article 3, paragraph (b) for at least five years from the date such transactions occur.

1067. For dealers in precious metals and stones, the requirement for record keeping is more explicitly covered in Resolution 252/2002. Article 1, part 3 of Resolution 252/2002 requires that covered institutions must maintain original journals and inventory books in which a transaction is recorded for at least 10 years from the date on which the transaction is closed, and retain all correspondence, vouchers, and documents related to transactions executed by the company or institution, be it domestic or foreign, for five years after the completion of the transaction.

1068. As neither Resolution 9/2005 nor Resolution 252/2002 address Recommendations 6, 8, 9, or 11, there are no provisions for DNFbps with regard to these recommendations.

### Analysis of Effectiveness

1069. Implementation of requirements varies between DNFbp sectors. Lawyers were unaware that the requirements of Resolution 9/2005 applied to their profession, so this profession has not implemented the requirements set forth in Resolution 9/2005.

1070. Real estate agents adequately implement requirements regarding the verification of identification, as this is materially required for the conduct of a sale at the Real Estate Registration and Authentication Department at the MOJ. Real estate agents are also retaining documents for more than five years.

1071. Real estate agents were unaware of the potential level of ML or TF risk within the sector.

1072. Dealers in precious metals and stones were aware of the requirement to verify the identification of customers and maintain records. Dealers believed there was requirement to take a photocopy of the ID only above a threshold, but what the threshold was varied between dealers. Dealers in precious metals and stones were unaware of the potential level of ML or TF risk within the sector.

#### 4.1.2 Recommendations and Comments

1073. The authorities are recommended to:

- Introduce requirements for DNFbps related to PEPs, payment technologies, introduced business and unusual transactions. The effective implementation of the AML/CFT provisions should be ensured.
- Address the shortcoming identified with respect to Recommendations 5 and 10 in Section 3 of this report, as they also apply to DNFbps. The effective implementation of the AML/CFT provisions should be ensured.

#### 4.1.3 Compliance with Recommendation 12

|      | Rating | Summary of factors relevant to s.4.1 underlying overall rating  |
|------|--------|---|
| R.12 | NC     | <p><i>Applying R.5:</i></p> <ul style="list-style-type: none"> <li>• Lack of explicit obligations imposed by law (primary or secondary legislation) for undertaking customer due diligence measures when: <ul style="list-style-type: none"> <li>○ Carrying out occasional transactions above the applicable designated threshold.</li> <li>○ There is suspicion of ML or TF, regardless of any exemptions or thresholds.</li> <li>○ The FI has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>○ Identifying and verifying the identity of all occasional customers.</li> <li>○ Identifying and verifying the identity of any person purporting to act on behalf of</li> </ul> </li> </ul> |

|  | Rating | Summary of factors relevant to s.4.1 underlying overall rating   |
|--|--------|--|
|  |        | <p>a legal person (not only for companies and institutions).</p> <ul style="list-style-type: none"> <li>○ Identifying all types of legal persons, using reliable, independent data or information.</li> <li>○ Taking reasonable measures to determine who are the natural persons that ultimately own or control the customer, and also those persons who exercise ultimate effective control over a legal person or arrangement.</li> <li>○ For lawyers, conducting ongoing due diligence on the business relationship.</li> </ul> <ul style="list-style-type: none"> <li>● Lack of measures in law, regulation or other enforceable means that require DNFBPs to: <ul style="list-style-type: none"> <li>○ Verify the legal status of all legal persons and legal arrangements (not only for companies and institutions).</li> <li>○ Understand the ownership and control structure of the customer.</li> <li>○ Perform enhanced due diligence for higher risk categories of customer, business relationships or transactions.</li> <li>○ Consider filing an STR when DNFBPs are unable to comply with criteria 5.3 to 5.5.</li> </ul> </li> <li>● Lack of measures in law, regulation or other enforceable means that require lawyers to: <ul style="list-style-type: none"> <li>○ Obtain information on the purpose and intended nature of the business relationship.</li> <li>○ Conduct ongoing due diligence and scrutinize transactions undertaken through the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of their customers, their business and risk profile, and where necessary, the source of funds.</li> <li>○ Ensure that documents, data and information collected under the CDD process is kept up-to-date, particularly for higher risk categories.</li> <li>○ Satisfactorily completing CDD or applying CDD measures to existing customers.</li> </ul> </li> <li>● Lack of or inadequate implementation by DNFBPs.</li> </ul> <p><i>Applying R.10:</i></p> <ul style="list-style-type: none"> <li>● The recordkeeping requirement in law and regulation is tied to the transaction, not to the termination of an account or business relationship.</li> <li>● There is no requirement for DNFBPs to provide information on a timely basis to domestic competent authorities with appropriate authority.</li> <li>● Lack of or inadequate implementation by DNFBPs.</li> </ul> <p><i>Applying R.6, 8-9, and 11:</i></p> <ul style="list-style-type: none"> <li>● No requirements for DNFBPs related to PEPs, payment technologies, introduced business and unusual transactions.</li> </ul> |

## 4.2. Suspicious Transaction Reporting (R.16)

### 4.2.1 Description and Analysis

#### Legal Framework:

1074. The legal framework for requirements for DNFBPs can be found in the AML Law, Resolutions 9/2005, and 252/2002.

**Applying Recommendation 13 to DNFBP (c. 16.1 – 16.2):**

1075. The suspicious transaction reporting requirements for DNFBPs, as provided for in Resolution 9/2005 and Resolution 252/2002, are the same as the requirements for FIs. As the deficiencies related to Recommendation 13 have been described and analyzed in Section 3 of the report and apply equally to DNFBPs, therefore, this section will briefly outline the requirements.

1076. Article 3, item 4 of the AML Law establishes a broad requirement to report suspicious transactions. Article 5 states that the PPO shall determine the competent authority within the PPO to receive reports on cases where there is a suspicion of money laundering. Article 3, part (e), of Resolution 9/2005 requires covered institutions to establish internal control systems to allow them to detect suspicious transactions as soon as they occur and to report them to ensure compliance with domestic AML requirements. These obligations apply to dealers in precious metals and stones, real estate agents, and lawyers. While Resolution 9/2005 requires DNFBPs to make suspicious transaction reports, there is no requirement in law or regulation that these reports be sent to the FIU.

1077. Article 1, item 4 of Resolution 252/2002 requires dealers in precious metals and stones to report to the PPO any suspicious transaction related to ML or TF that comes to the knowledge of the covered institution. However, Article 3, item 5, of Resolution 83/2005, which stipulates that the MOCI's Department for Combating ML should receive reports about suspicious transactions and directs this unit to "prepare reports about any violations seized about entities and companies and provide all notices thereupon." The contradiction between the two Resolutions affects the understanding of the reporting requirement by covered institutions. In either case, the MOCI has not provided any guidance on STRs or what should be considered suspicious.

1078. As mentioned above, the obligations with respect to Recommendation 13 for lawyers are the same as all other institution covered by resolution 9/2005. There is no reporting exemption for relevant information obtained in cases where they are subject to legal professional privilege. In addition, criterion 16.2 does not apply, as lawyers are required to submit STRs to the PPO.

**Applying Recommendations 14, 15 and 21 to DNFBP (c. 16.3):**

1079. Application of Recommendation 14: Article 14 of the AML Law stipulates that natural persons or corporations, who, with good faith, report information according to the provision of the AML Law, will be protected from any criminal, civil or administrative liability, even if the subject of the report is not convicted and the transactions are found to be lawful. This provision applies to the DNFBPs, who are brought under the AML Law by Resolution 9/2005.

1080. As covered in relation to Recommendation 14.2, there are no provisions in the AML Law or Resolution 9/2005 that prohibit tipping-off.<sup>101</sup>

1081. Application of Recommendation 15: Article 3, part (e) of Resolution 9/2005 requires that covered institutions set and promote internal control systems for financial companies and institutions to allow them to detect suspicious transactions as soon as they occur and to report them to ensure compliance with domestic anti-money laundering requirements. However, as this provision specifically mentions financial companies and institutions, assessors determined that this does not apply to DNFBPs.

<sup>101</sup> From 14.2: Article 11 of the AML Law stipulates that "any person who, according to the provisions of paragraph 4 of Article (3), therein, have to report a suspicious financial transaction that comes to his/her knowledge and fails to do so, discloses information regarding one of the crimes stated in Article (2) therein, that came to his knowledge through his position, or damages or conceals documents or instruments relevant to such crimes, shall be punished..." Article 11 prohibits the disclosure of information regarding one of the *crimes* stated in Article 2, which covers the offense of money laundering. It makes no reference to Article 3 or the provision regarding the filing of STR therein.

1082. Article 2 of Resolution 252/2002 requires dealers in precious metals and stones to develop special programs relating to work procedures and proper control systems to combat ML and TF. Article 2, part (a) states that this program should include the training of employees and the establishment of internal control systems to halt incidents involving attempted ML or TF before occurring. Article 2, part (b) of Resolution 252/2002 states that the control system should include the review and development of internal policies and procedures and rules to combat ML and TF. However, there is no requirement to communicate the internal control system to employees. This is the only provision regarding internal control requirements that apply to DNFBPs.

1083. Application of Recommendation 21: There are no requirements for DNFBPs related to transactions from countries that do not sufficiently apply the FATF Recommendations. There are no requirements for DNFBPs to examine transactions that have no apparent economic or visible lawful purpose.

### Analysis of Effectiveness

1084. From 2005 to 2009, only five STRs were filed by non-FIs. There is little to no implementation of STR requirements by DNFBPs. Lawyers were unaware that the requirements of Resolution 9/2005 applied to their profession, and, therefore, have not implemented its requirements. For the remaining DNFBPs, implementation was mixed, with a general lack of awareness or understanding of the requirement. It is notable that one individual stated that if he were suspicious, he would contact the police. Another commented that, while the requirement was to report suspicions to the MOCI's Department for Combating Money Laundering, he did not think that reporting was his business. Some of this confusion could be the result of the contradicting reporting requirements in Resolution 252/2002 and Resolution 83/2005.

#### 4.2.2 Recommendations and Comments

1085. The authorities are recommended to:

- Fully extend the requirements of Recommendations 13, 15, and 21 to all DNFBPs operating in Kuwait.
- Prohibit DNFBPs from disclosing the fact that an STR or related information is being provided to the competent authorities.
- Ensure the effective implementation of the AML/CFT provisions by DNFBPs.

#### 4.2.3 Compliance with Recommendation 16

|      | Rating | Summary of factors relevant to S.4.2 underlying overall rating  |
|------|--------|---|
| R.16 | NC     | <p><i>Applying R.13:</i></p> <ul style="list-style-type: none"> <li>• There is no requirement in law or regulation that DNFBPs report to the FIU.</li> <li>• Due to the lack of an autonomous TF offense, there is no obligation in law or regulation to file an STR when there are reasonable grounds to suspect those funds are related to TF.</li> <li>• There is no requirement in law or regulation to report attempted transactions.</li> </ul> <p><i>Applying R.14:</i></p> <ul style="list-style-type: none"> <li>• There is no prohibition against DNFBPs disclosing the fact that an STR or related information is being provided to the competent authorities.</li> </ul> <p><i>Applying R.15:</i></p> |

|  | Rating | Summary of factors relevant to S.4.2 underlying overall rating   |
|--|--------|--|
|  |        | <ul style="list-style-type: none"> <li>• Other than for the detection of suspicious transactions, there are no requirements for real estate agents and lawyers to establish and maintain internal procedures, policies, and controls to prevent ML and TF and to communicate these to their employees.</li> <li>• There is no requirement for lawyers or real estate agents to establish and maintain internal procedures, policies, and controls to prevent ML and TF, and to communicate internal procedures, policies, and controls to prevent ML and TF to their employees.</li> <li>• There is no requirement for DNFBPs to develop appropriate compliance management arrangements.</li> <li>• There is no requirement for DNFBPs to maintain an adequately resourced and independent audit function to test compliance with internal procedures, policies, and controls.</li> <li>• There is no requirement for DNFBPs to establish ongoing employee training.</li> <li>• There is no requirement for DNFBPs to put in place procedures to ensure high standards when hiring employees.</li> </ul> <p><i>Applying R.21:</i></p> <ul style="list-style-type: none"> <li>• There is no requirement for DNFBPs related to countries which do not or insufficiently apply the FATF recommendations.</li> <li>• There is no requirement for DNFBPs to examine transactions that have no apparent economic or visible lawful purpose.</li> </ul> |

### 4.3 Regulation, Supervision, and Monitoring (R.24-25)

#### 4.3.1 Description and Analysis

##### **Legal Framework:**

1086. The legal framework for DNFBPs with regard to the regulation, supervision, and monitoring of DNFBPs for AML/CFT purposes include: the AML Law, Resolution 9/2005, Resolution 252/2002, Law No. 23/1980, Resolution 83/2005, Resolution 313/2004, Resolution 221/2007, Resolution 51/2009, and Law No. 42/1964.

##### **Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):**

1087. Under Article 205 of the Law No. 16 of 1960, the Penal Code prohibits gambling or the management of a shop for gambling. Therefore, casinos and internet casinos are prohibited in Kuwait and criterion 24.1 is not applicable.

##### **Monitoring Systems for Other DNFBPs (c. 24.2 and 24.2.1):**

1088. Under Article 1 of Law No. 35/1969, no commercial entity may open an installation or office to do business or practice any profession without first obtaining a license from the MOCI to conduct the business or practice, unless practicing the profession is controlled by special laws, decrees, or resolutions. This requirement applies to all of the DNFBPs operating in Kuwait.

1089. In order to obtain a license, the business must provide information, including the names of the shareholders, the manager of the company, their Civil IDs, the address of the company, the phone number

of the company, the purpose of the company, the amount of capital being paid in, proof of the individual's payment for the capital, and the existence of one or more Kuwaitis owning at least 51 percent of the company.

1090. Neither the AML Law nor Resolution 9/2005 explicitly designates the competent authority responsible for ensuring compliance by the covered institutions with the requirements to combat ML and TF. Article 3 of the AML Law indirectly empowers the supervisory authorities with the responsibility of ensuring compliance by covered institutions with the requirements to combat ML and TF. To this end, it states that those FIs and individuals referred to under that Article, shall strictly abide by the Ministerial instructions and resolutions issued by supervisory government authorities regarding the aforementioned Articles and also any other Ministerial instructions and resolutions related to ML operations.

1091. No risk assessment has been conducted to determine an appropriate system for monitoring and ensuring compliance with AML/CFT requirements.

### **Real Estate Agents and Dealers in Precious Metals and Stones**

1092. Despite the lack of designation by the AML Law or Resolution 9/2005, the MOCI has assumed regulatory, supervisory, and monitoring responsibility for real estate agents and dealers in precious metals and stones with regard to AML matters. The MOCI has issued Resolutions 83/2005, 313/2004, 221/2007, and 51/2009, creating the AML Unit within the MOCI. Pursuant to these Resolutions, the AML Unit within MOCI has the right to examine entities under the supervision of MOCI for AML compliance and to issue sanctions, including warnings, and closing the businesses for 15–30 days.

1093. However, other than Law No. 32/1969, authorities did not provide any further documentation vesting the MOCI with explicit authority to supervise and regulate real estate agents.

1094. Article 2 of Law 23 of 1980 Regarding the Supervision and Monitoring Precious Metals and Stones states that the MOCI is responsible for the supervision and control on the trade, industry, and import of precious metals and jewelry, including the testing analysis of precious and non-precious metals and alloys, and the examination and control of precious stones. Other than law 32/1969 and Article 2 of Law 323/1980, the assessors could find no other statute giving the MOCI authority to regulate and supervise the dealers of precious metals and stones.

1095. Therefore, while the MOCI is engaged in licensing and conducting both regular and AML examinations, the assessors could not ascertain where the MOCI derives the authority to assume the regulatory, supervisory, and monitoring responsibility of the real estate and dealers in precious metals and stones with respect to AML matters.

1096. The MOCI AML Unit indicated that it conducts on-site examinations of real estate agents and dealers in precious metals and stones. However, the assessment team determined that visits from the MOCI rarely involved the review of compliance with AML/CFT obligations.

1097. Due to the gap in the legal authority to regulate, supervise, and monitor real estate agents and dealers in precious metals and stones, assessors determined that these sectors are not subject to effective systems for monitoring compliance with AML/CFT requirements.

1098. The AML Unit has assumed responsibility for monitoring and supervising the 32 insurance companies, 3 600 real estate agents, 195 exchange organizations, and 837 jewelry dealers registered with the MOCI. The AML Unit staff of 25 employees, with only ten on-site examiners, is therefore responsible for the AML/CFT supervision for over 4,600 entities. According to authorities, 436 on-site examinations or visits were conducted in 2009. Therefore, less than 10 percent of the entities registered with the MOCI and subject to AML/CFT obligations under the AML Law and Resolution 9/2005 received an on-site visit.



1099. According to authorities, on-site examiners discovered 142 violations in 2009, resulting in over 30 percent of the on-site visits finding violations. The AML Unit reported that 24 of the violations resulted in a temporary closure of the entity for 15 to 30 days. Authorities provided no further information regarding the nature of the violations.

1100. In addition, the AML unit indicated that in the last four years it has issued a number of warning letters to dealers in precious metals and stones. Warning letters generally notify the individual or entity that they have been found to be in violation of the AML requirements, and that failure to comply with the requirements may result in elevated penalty, such as a temporary closure. According to the AML Unit, it has also temporarily closed dealers 34 times over the last three years. The AML Unit stated that in the last four years, it has not issued sanctions against any of the 3 600 real estate agents licensed in Kuwait.

1101. The fifteen remaining employees of the AML Unit are responsible for off-site reviews. This generally occurs when the entity undergoes its annual or bi-annual renewal of its commercial license. The off-site examination involves a review of the documents provided by the entity, usually just the original ledger recording all transactions of the entity throughout the year.

1102. Based on the above information, assessors determined that the AML Unit within MOCI does not have sufficient technical and other resources to perform its functions.

## **Lawyers**

1103. The profession of lawyers is regulated by the Kuwait Lawyers Association (KLA), a self-regulatory organization (SRO). The KLA is a body that represents the profession of lawyers and has the role of regulating persons who are qualified to practice in the profession. Law No. 42/1964 Regulates the Legal Profession Before the Courts. Articles 1 and 6 of Law No. 42/1964 require that persons practicing the legal practice be listed in the registry of active lawyers maintained at the HQ of Lawyers society, which, according to authorities, is the KLA. Under Article 36 of Law No. 42/1964, taking disciplinary action against a lawyer is within the power of a council consisting of the head of court of first instance or its deputy as a chairman, and two of the council's judges, appointed by its general meeting each year, and lawyers chosen by the lawyers' board of directors. Article 35 of Law No. 42/1964 states that the most severe disciplinary sanction that can be issued by the disciplinary council is striking out the name of the lawyer from the registry. Therefore, ongoing supervision is conducted by the KLA, which receives complaints or concerns. When a matter of professional misconduct is discovered by the KLA, it is referred to the disciplinary council to rule on the matter.

1104. However, the KLA is not engaged in regulating, supervising, or monitoring of lawyers for AML/CFT purposes. At the time of the on-site mission, the KLA was unaware that lawyers were covered by Resolution 9/2005. Therefore, assessors determined that lawyers are not subject to effective systems for monitoring compliance with AML/CFT requirements.

## **Guidelines for DNFBPs (c. 25.1):**

1105. While the CBK has issued Guidelines for the Identification of Suspicious Transaction Patterns, these guidelines do not apply to DNFBPs.

1106. There are no guidelines issued for DNFBPs pertaining to AML/CFT compliance.

1107. The principal guidance issued by the MOCI with respect to AML/CFT is Resolution 252/2002, which provides little information beyond what is available in the AML Law or Resolution 9/2005. The MOCI's AML Unit has issued a number of pamphlets and materials to real estate agents and dealers in precious metals and stones. These materials outline the AML/CFT obligations that apply to the sectors, without the provision of guidance on implementation.

1108. No guidelines have been issued by the KLA to lawyers with respect to their AML obligations pursuant to the AML Law and Resolution 9/2005.

**Feedback and Guidelines for DNFBPs with respect to STR and other reporting (c. 25.2):**

1109. The PPO has been designated to receive STRs, but has not issued any feedback on the STRs it has received. According to authorities, the KFIU does not have the authority to give feedback to reporting institutions on STRs. Therefore, as with FIs, no feedback has been provided to DNFBPs with respect to STRs.

1110. While the CBK has issued Guidelines for the Identification of Suspicious Transaction Patterns, these guidelines do not apply to DNFBPs.

1111. There are no guidelines issued for DNFBPs pertaining to filing STRs.

**Analysis of Effectiveness**

1112. Despite the gap in legal authority, the MOCI has engaged in limited AML supervision of real estate agents and dealers in precious metals and stones. However, based on meetings with the private sector, assessors determined that the MOCI’s limited AML supervision of real estate agents or dealers in precious metals and stones was ineffective. The MOCI inspections are limited to a review to determine that the commercial license is valid and displayed, and a cursory check of the business ledger to ensure that transactions are being recorded. Inspection rarely determined if identification had been verified, or copies of identification were made, and did not ask about internal controls or checked for awareness of the STR requirement. The MOCI visits seemed to be cursory in nature and focused on administrative checks pertaining to the commercial license.

1113. With respect to lawyers, there appears to be no supervision or monitoring of the lawyers with respect to AML obligations.

**4.3.2 Recommendations and Comments**

1114. The authorities are recommended to:

- Ensure that real estate agents, dealers in precious metals and stones, and lawyers are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. They should consider conducting a risk assessment to determine the risk of ML or TF in each sector in order to determine the appropriate level of monitoring for each sector.
- Designate a competent authority or an SRO responsible for monitoring and ensuring compliance of real estate agents and dealers in precious metals and stones. This authority or SRO should have adequate power to perform its function, including powers to monitor and sanction in line with Recommendation 17 and 23, and sufficient technical and other resources to perform its functions.
- Establish guidelines to assist DNFBPs in implementing and complying with their AML/CFT obligations.

**4.3.3 Compliance with Recommendations 24 & 25 (c. 25.1, DNFBP)**

|      | Rating | Summary of factors relevant to s.4.3 underlying overall rating   |
|------|--------|--|
| R.24 | NC     | <ul style="list-style-type: none"> <li>• DNFBPs are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.</li> <li>• Absence of a clear legal framework for monitoring and ensuring compliance of real</li> </ul> |

|             | Rating    | Summary of factors relevant to s.4.3 underlying overall rating   |
|-------------|-----------|--|
|             |           | estate agents or dealers in precious metals and stones.  |
| <b>R.25</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Lack of guidelines for DNFBPs to assist in implementing and complying with AML/CFT obligations.</li> <li>• Lack of adequate and appropriate feedback from competent authorities.</li> </ul> |

#### 4.4 Other Nonfinancial Businesses and Professions—Modern and Secure Transaction Techniques (R.20)

##### 4.4.1 Description and Analysis

###### Legal Framework:

1115. While Kuwait is working on developing modern and secure techniques of money management that are less vulnerable to money laundering, there appears to be no specific provision in the legal framework that addresses this issue.

###### Other Vulnerable DNFBPs (applying R.5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

1116. Article 2 of Resolution 9/2005 includes “sole proprietor companies and institutions that trade in jewels, valuable stones and precious metals, and other valuable movable property.” Otherwise, there are currently no AML/CFT requirements for nonfinancial businesses and professions (NFBPs) in Kuwait. In addition, the term “other valuable movable property” is not defined. Assessors are unaware of any efforts by Kuwaiti authorities to apply Recommendations 5, 6, 8–11, 13–15, 17, or 21 to NFBPs.

###### Modernization of Conduct of Financial Transactions (c. 20.2):

1117. According to the authorities, efforts are being made to reduce the reliance on cash in its economy. For example, the authorities are working to promote the use of secure cards, such as ATM, credit, and debit cards at points of sale. Mechanisms to promote the use of secure cards include incentives such as minimal or no fees. These efforts have resulted in a 20 percent growth in the use of debit cards. In addition, Kuwait has instituted free online bill paying services for certain items, such as utility bills.

###### Analysis of Effectiveness

1118. Kuwait’s efforts to reduce reliance on cash have resulted in some progress. Nevertheless, it should be noted that, particularly among the large expatriate community, there remains a marked reliance on cash as a payment method.

1119. Kuwaiti authorities inform the assessment team that the largest currency denomination is a KD 50 (USD 176) bank note. Consequently, very large denomination bank notes do not appear to be issued in Kuwait.

##### 4.4.2 Recommendations and Comments

1120. The authorities are recommended to:

- Consider conducting a risk assessment as to the extent to which NFBPs are at risk of being misused for ML and TF.

- Consider applying Recommendations 5, 6, 8-11, 13-15, 17, and 21 to nonfinancial businesses and professions (other than DNFBPs) that are at risk of being misused for ML and TF.
- Continue to take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

#### 4.4.3 Compliance with Recommendation 20

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.20 | PC     | <ul style="list-style-type: none"> <li>• No consideration has been given to applying Recommendations 5, 6, 8–11, 13–15, 17 or 21 to NFBPs that are at risk of being misused for ML and TF.</li> <li>• Although Kuwait has taken some important steps to reduce the reliance on cash as a payment method, there is still a very high reliance on cash, especially among the large expatriate community.</li> </ul> |

## 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

### 5.1 Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

#### 5.1.1 Description and Analysis

##### **Legal Framework:**

1121. A description of the types of legal persons that may be created in the State of Kuwait is contained in Part 1 of this report.

##### **Partnerships:**

1122. Registration of partnerships is governed by Law No. 15/1960. This Law allows the creation of joint liability companies, partnerships, and limited liability companies. Pursuant to the law mentioned above, partnerships must register with the Department of Partnerships (DOP) within the MOCI and, in order to do so, must provide the following information: names of the shareholders or owners; the manager of the company; their Civil IDs; the address of the company; the phone number of the company; the purpose of the company; the amount of capital being paid in; proof of an individual's payment for 5 percent or more of the capital, and the existence of one or more Kuwaitis owning at least 51 percent of the company.

1123. According to the authorities, when a company is a partnership, the DOP must also seek all the appropriate information to identify beneficial owners. If it is a local company, then a copy of the Memorandum of Association should be provided. On the other hand, if it is a foreign company, certified proof of the commercial registration in their country of origin and the Memorandum of Association showing the name of all the shareholders must be certified by the Ministry of Foreign Affairs.

1124. The DOP verifies the information provided against valid identity documents at the time of registration. The law requires any change to be reported to the commercial register annually and approved by the authorities.

##### **Corporations:**

1125. Registration of corporations is governed by Commercial Code No. 68/1980. This Law allows the creation of joint stock and holding companies. Pursuant to the commercial code, legal persons must register with the Department of Corporations (DOC). The same documents and obligations applying to partnerships are required for corporations.

1126. The DOC verifies the information provided against valid identity documents at the time of registration; however, there are no requirements to update the information related to the beneficial ownership and control of legal persons throughout the life of the corporation.

1127. Law No. 2/1999, Article 1, requires each shareholder to notify the Kuwait Stock Exchange (KSE) whenever his interest in a listed company exceeds 5 percent. Pursuant to Article 4, the KSE shall take required measures to verify the accuracy of this and other data.

**Foreign companies:**

1128. Foreign Companies must be registered in Kuwait. At least 51 percent of the shares must be held by Kuwaiti residents. Branches may be registered on the basis of their Memorandum of Association and must provide a proof of the commercial registration in their country of origin.

**Access to Information on Beneficial Owners of Legal Persons (c. 33.2):**

1129. As mentioned above, legal persons are required to be registered in the commercial registry which is maintained by the DOC.

1130. The DOP and DOC have different systems of central registration. The main ownership and control details for all legal persons are registered with and maintained by the DOP. All information stored on the DOP database is accessible by the investigatory authorities (see Recommendation 27). The DOP indicates that it usually provides information from its registry upon request from Parliament, the Council of Ministers, the CBK, the Ministry of Justice, the PPO, or the Ministry of Interior.

1131. However, the DOC does not update the registry with regard to the transfers of shares. Consequently, the information in the Registry concerning ownership and beneficial ownership is not reliably up-to-date and accurate.

1132. The CBK and the KSE have access to information pertaining to the ownership of corporations, as set forth above.

1133. Requests regarding the beneficial ownership and control of legal persons are usually answered after two to three days from the relevant department at the MOCI.

**Prevention of Misuse of Bearer Shares (c. 33.3):**

1134. Article 101 of Commercial Code No. 15/1960 expressly stipulates that the shares of companies established in Kuwait must be nominal. Consequently, the issuance of shares in bearer form is not permitted in Kuwait.

**Additional Element—Access to Information on Beneficial Owners of Legal Persons by FIs (c. 33.4):**

1135. There are no mechanisms in place in Kuwait for FIs to obtain official beneficial ownership and control information.

**5.1.2 Recommendations and Comments**

1136. The authorities are recommended to:

- Update the DOC databases regularly and include all the information related to the changes in ownership and control information of corporations.
- Respond to requests from competent authorities in a timely fashion and include adequate, accurate, and current information on the beneficial ownership and control of legal persons.

**5.1.3 Compliance with Recommendations 33**

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.33 | NC     | <ul style="list-style-type: none"> <li>• Changes in ownership and control information of corporations are not kept up-to-date.</li> </ul> |

|  | Rating | Summary of factors underlying rating  |
|--|--------|---|
|  |        | <ul style="list-style-type: none"> <li>Absence of adequate, accurate, and current information related to corporations that can be obtained in a timely fashion by competent authorities.</li> </ul> |

## 5.2 Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1 Description and Analysis

#### Legal Framework:

1137. The Kuwaiti legislation does not provide for the creation of trusts or other similar legal arrangements. At the time of the assessment, there was no information available that would indicate that the private sector holds funds under foreign trusts and/or provides other trust services.

### 5.2.2 Recommendations and Comments

### 5.2.3 Compliance with Recommendations 34

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.34 | NA     | <ul style="list-style-type: none"> <li>Not applicable. There are no legal arrangements such as trusts in Kuwait.</li> </ul> |

## 5.3 Non profit Organizations (SR.VIII)

### 5.3.1 Description and Analysis

#### Legal Framework:

#### Types of NPOs:

1138. Law No. 24/1962 on non-profit organizations (NPOs) and associations and Law No. 14/1994 on foundations distinguish between three different types of NPOs: the NPO, the associations, and the foundations.

1139. NPOs are regulated by Law No. 24/1962 that defines them as legal entities that exist for a specific period of time for a non-profitable purpose, and that aim at establishing social activity or cultural, religious, and sportive activities. These two types of NPOs were initially supervised by the Department of Nonprofit Organizations (DNPO) within the MOSAL. In August 2002, MOSAL issued a ministerial decree creating the Department of Charitable Organizations and Foundations<sup>102</sup> (DOCF). The primary responsibilities of the new department are to register and supervise NPOs with charitable purpose (Charities) and foundations. The old department, the DNPO kept its responsibilities for supervising NPOs that are not allowed to conduct charitable activities (Associations).

1140. Currently, there are 10 charities approved by MOSAL. Five are authorized to distribute funds for specific projects outside of Kuwait and, therefore, transfer funds abroad. There are also 71 registered foundations which are supervised by the DOCF. The foundations are regulated by Law No. 14/1994 and ministerial decrees 74/1999 and 48/1999. Other ministerial decrees that will be detailed under the criteria

<sup>102</sup> The name for foundations in Arabic is Mabarar.

regulate the work of charities. There are also 72 associations that are still registered and supervised by the DNPO.

1141. According to the authorities, charities are allowed to collect donations, including Zakat, and therefore the DCOF conduct enhanced supervision and monitor their operations. However, the foundations and associations are prohibited from collecting donations and transferring funds abroad. Therefore, their regulation and supervision by the DOCF and the DNPO, respectively, is not very strict. However, foundations and associations are not prohibited from receiving funds from companies and individuals. Throughout this section, we will apply the criteria to the charities on the one hand and to the foundations and associations on the other. There are also two charities (Kuwait Zakat House and Public Secretary of Awkaf) that are managed and supervised by the State Audit Bureau.

**Figure 3: NPOs supervision**

|   |  |  |  |
|---|--|--|--|
| <b>Ministry of Social Affairs and Labor (MOSAL)</b>   |  |  |  |
| <b>State Audit Bureau</b>   | <b>Department of Associations</b>  | <b>Department of Charities and Foundations (DOCF) (Established in 2002)</b>            |  |
| Kuwait Zakat House<br>Public Secretary of Awkaf   | Law 24/1962 amended by Laws 28/1965 and 12/1993<br>Ministerial Decree  | Law 24/1962 amended by Laws 28/1965 and 12/1993<br>Ministerial Decree                  | Law 14/1994<br>Ministerial Decrees 38 and 74 of 1999 |
| Two Public Charities that are licensed by MOSAL, receive funds from the Government solely and supervised by the State Audit Bureau. | <b>Nonprofit Organizations (72)</b><br>(Only non-charities or associations, can receive but not collect funds, prohibited from collecting or transferring funds abroad, Law No. 24/1962 and ministerial decrees) | <b>Number of Charities 10</b><br><b>Only 5 are authorized to transfer funds abroad</b> | <b>Number of Foundations 70</b>                      |

**Review of Adequacy of Laws and Regulations of NPOs (c. VIII.1):**

1142. In light of international developments, the authorities reviewed the domestic regulations on NPOs and issued several resolutions regulating the work of charities. The DCO was created and it established guidelines for charities explaining donation collection procedures and regulating financial activities. A further review led the authorities to impose new obligations on charities that are considered at risk of being misused for TF. As a registration authority, the MOSAL has information on the general evolution and size of the charity sector.

**Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):**

1143. Several measures have been taken by the authorities to raise awareness of the charities sector about the risks of terrorist abuse. This has mainly been done through the meetings with all the charities to explain the objectives of the legal framework. On an ongoing basis, a working group composed of the DOCF and the charities chairman has been established to ensure that charities understand the regulations.

1144. The charities also publish the regulations and instructions regularly in the newspapers when collecting funds for new projects. The creation of the DOCF as a supervisory authority for the charities in 2002 and the supervision and communication that followed have enhanced the transparency. The DOCF



provides guidance for the charities and regularly holds coordinating meetings. It encourages charities to provide donors with a better understanding of the charity sector and monitors fundraising activities. Moreover, the DOCF regularly issues warnings in the media on the rules and risks of fundraising.

1145. In addition, the Ministry also publishes in the newspapers the authorizations for the approved projects with details on the way of collecting the funds through an automated system (the K-Net<sup>103</sup>) and other ways of fundraising, the name of the charity and its administrators, and the telephone number that can be called for complaint or inquiries.

1146. Finally, MOSAL formed a Committee (Coordination Committee) that includes in its membership some members from outside the Ministry. They include a representative for the Ministry of Interior, the MOCI, the Ministry of Mass Communication, the Ministry of Awqaf and Islamic Affairs, Kuwait Municipality, as well as some authorities inside the Ministry from the labor sector, cooperation sector, and the management of national associations and the management of charity associations.

1147. The Committee undertakes the following tasks: (i) examining objectives of the NPOs; (ii) studying the new applications procedurally and ensuring that they fulfill the provisions included in the law and the regulations; (iii) studying the needs of the community for the activity of the association in providing social and cultural care to promote the civil community; and (iv) preparing a note for the cabinet on the applications of the NPOs for approval. The Committee also conducted some outreach to promote the transparency, accountability, and public confidence in the administration and management of the NPOs.

### **Supervision or monitoring of the NPO sector (Applying c. VIII.3)**

1148. Law No. 24/1962 amended by Laws 28/1965 and 12/1993 requires NPOs to be registered and sets out a general monitoring framework. Pursuant to Article 3 of the Law, the MOSAL (both DOCF and DOA departments) accepts the request for registration and declaration on the basis of a decision made by the MOSAL. NPOs have to maintain information on the purpose and objectives of their stated activities and the identity of the founders. Any modification of the purpose has to be reported to the relevant department. The ministry has to be informed about the session of the general assembly of every NPO and should send a representative to attend the general assembly sessions. The general assembly is typically in charge of the election of the members of the board of directors and of the adoption of annual financial statements. All activities and accounts of the assembly are subject to the supervision of the Ministry.

1149. If the purpose of an NPO is charitable, it has to be authorized by the DOCF and stricter requirements related to the collection of funds apply. The primary responsibilities of the new department, the DOCF, are to receive applications for registration from charitable organizations, monitor their operations, and establish a new accounting system to ensure that such organizations comply with the law both at home and abroad. The DOCF has established guidelines for charities explaining donation collection procedures and regulating financial activities. The DOCF is also charged with conducting periodic inspections to ensure that charities maintain administrative, accounting, and organizational standards according to Kuwaiti Law. It mandates the certification of charities' financial activities by external auditors and limits the ability to transfer abroad only to select charities approved by MOSAL.

1150. MOSAL also requires all transfers of funds abroad to be made between authorized charity officials after getting an approval from the MFA. MFA reportedly monitors all transactions funneled to charities abroad. Applications have to be approved by the NPO supervisory authority abroad and submitted to the MFA by the recipient charity. Banks and money exchange businesses are not allowed to transfer any charitable funds outside of Kuwait without prior permission from MOSAL. The application is usually verified and approved by the MFA. It includes the types of the projects, the objective of its establishment,

<sup>103</sup> K-Net is an automated system that was developed recently by MOSAL. The donors can use their credit and debit cards to donate to the NPOs.

the names of the countries benefiting from the projects and methods of collecting donations, and a copy of the ad that is assumed to be published in the different media. Finally, any such wire transactions must be reported to the CBK, which maintains monthly database of all transactions conducted by the charities. Despite these restrictions, it was not clear for the assessment team if it is implemented in practice.

1151. Unauthorized public donations, including Zakat collections in mosques, are prohibited. The donations are supervised by MOSAL. The MOSAL introduced a pilot program requiring charities to raise donations through the sale of government-provided coupons, a voucher system, electronic bank transfers or K-Net, or checks. MOSAL has been encouraging the electronic collection of charitable funds using a combination of electronic kiosks, hand-held collection machines. Such devices generate an electronic record of the funds collected, which are subject to MOSAL supervision. The Coordination Committee plays also a role in ensuring the implementation of these requirements.

1152. According to the authorities, the associations and foundations are prohibited from collecting funds. However, they can receive donations by transfer and checks. Therefore, there is no need to apply the stricter requirements for NPOs mentioned above.

**Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):**

1153. According to Article 21 and 23 of Law No. 24/1962, MOSAL should maintain and have access to all information related NPOs through a register that includes the name of the NPO, location, number and names of the members of the board, financial statements, the name of the chairman and his deputy, the treasurer, secretary, as well as its objectives. This information is not accessible to the public.

**Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):**

1154. Paragraphs 11 and 21 of Ministerial Decree No. 104/2002 require DOCF to conduct regular inspection on the administrative, technical, organizational, and accounting aspects of the charities and examine all the documents and correspondence related to the projects of the charities.

1155. The MOSAL has the right to refer a case involving any person or authority that collects donations without permission to the PPO in accordance with the law organizing the collection of money for public purposes, Law No. 1959 and Law No. 24/1962. According to Articles 27 and 31 of the said Law, it also has the right to: *(i)* dissolve the association itself or its board members when necessary; *(ii)* fine (KD 50) any person or authority that is found guilty of collecting money without permission; and *(iii)* refer the case to the PPO for investigation and prosecution. The PPO could also freeze their bank accounts, if warranted.

1156. MOSAL also has the power to send warnings and notifications to avoid violation and to recommend them to refer to the concerned authorities to apply the regulations. This power has been used frequently by the relevant department at MOSAL. The other civil, administrative, or criminal sanctions have never been used against the NPOs.

**Licensing or registration of NPOs and availability of this information (c. VIII.3.3):**

1157. The primary responsibilities of the MOSAL are to receive applications for licensing from NPOs. MOSAL investigates the criminal records of the founders with the assistance of the MOI and reviews the objective and procedural applications and indicates its degree of compliance with the provisions set forth in the law and regulations.

1158. The MOSAL undertakes the publication of its system after registering and completing all the provisions of the Decree of the Cabinet No. 29/ 2004. No association can undertake any activities unless it is registered, licensed, and publish its system in an official paper in accordance with Article 2 of Law No. 24/1962.

1159. No association or club can start its activities unless it gains the legal personality and is registered and licensed by MOSAL and authorized by a Ministerial Resolution.

1160. The registry managed by MOSAL contains the name of the association, its location, the number of its board, its fiscal year, the name of its chairman and its deputy, as well as the treasurer and the secretary, and the objectives behind declaring it. After registering the association and meeting all the provisions of the cabinet in accordance with Decree No. 29/2004, attached the decrees of cabinet No.3, the Ministry shall undertake publishing the summary of its system.

**Maintenance of records by NPOs and availability to appropriate authorities (c. VIII. 3.4):**

1161. Pursuant to Article 23 of Law No. 24/1962, NPOs are required to maintain a register at its headquarters that includes the names of the members, the subscribing members, books and minutes of meetings of the board, the general assemblies, accounts ledgers, revenues and expenses, and donations supported with approved documents. However, this Article does not specify the period of time that NPOs are required to maintain the records.

**Measures to ensure effective investigation and gathering of information (c. VIII.4):**

1162. Domestic cooperation, coordination, and information sharing take place under the AML/CFT Committee and the coordination committee where all concerned authorities are represented. In addition, MOSAL receives the lists issued by MFA to implement UNSCRs 1267 and 1373 to check them against its register. To date, no STR related to the work of NPOs has been sent to the KFIU through the PPO.

**Responding to international requests regarding NPOs—points of contact and procedures (c. VIII.5):**

1163. The authorities have designated the MFA as the point of contact for international requests for information about an NPO suspected of TF or other forms of terrorist support. The MFA has ongoing relations with the MOSAL and information on a particular NPO can be transmitted promptly.

**5.3.2 Recommendations and Comments**

1164. The transparency of NPOs appears to have contributed to an increase donors' trust. Nevertheless, Kuwait should continue to improve its framework, particularly by taking the following actions:

- Apply AML/CFT requirements for charities to foundations and associations.
- Review the NPOs legislation to require NPOs to maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.
- Conduct systematic on-site inspections of international projects to ensure that funds have been spent in a manner consistent with the purpose and objectives of the charities. A risk assessment of the projects could effectively enable the MOSAL to tailor the extent of such on-site inspections and the staffing of the missions.
- Although it is not a requirement under the standards, the FIU is encouraged to analyze the information that the NPOs are currently reporting when making international transfers.
- Outreach focused on raising awareness on the risks of terrorist abuse and the measures available to protect against such abuses should be directed to the entire NPO sector, including associations and foundations.

- Strengthen the sanctions for noncompliance with registration requirements to ensure that they are effective and dissuasive.

### 5.3.3 Compliance with Special Recommendation VIII

|         | Rating | Summary of factors underlying rating  |
|---------|--------|---|
| SR.VIII | PC     | <ul style="list-style-type: none"> <li>• The association and foundations supervision regime is not comprehensive like the one in place for charities.</li> <li>• Absence of requirement to maintain records for five years.</li> <li>• Lack of outreach to the NPO sector.</li> <li>• Sanctions for noncompliance with registration requirements are not effective and dissuasive.</li> </ul> |

## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1 National Cooperation and Coordination (R.31 & R.32)

#### 6.1.1 Description and Analysis

##### **Legal Framework:**

1165. Two mechanisms are in place to ensure cooperation among the relevant authorities in the fight against ML and TF, namely, the National AML/CFT Committee and the Committee on Combating Terrorism (CCT).

##### **Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):**

1166. According to the authorities, the responsibility for AML/CFT policy issues falls primarily on the Ministry of Finance, which chairs a National AML/CFT Committee. According to the resolution establishing it, the Committee is tasked with coordinating the national policy in the AML/CFT area and it does not have operational responsibilities.

1167. The CCT, chaired by the Ministry of Foreign Affairs, has no statutory objectives and is primarily used as a channel of communication for the implementation of notifications and communications under UNSCR 1373. It is composed of representatives from the CBK, the MOI, the MOJ, the Ministry of Defense, the MOCI, the MOSAL, the MOF, the GAC, and the PPO. However, there is no regulation establishing this Committee, or describing the procedure (mechanism) it follows in implementing UNSCR 1373. The whole procedure was agreed to at a meeting of the CCT itself, and was only set forth in the minutes of the meeting.

1168. In 2004, Decision 11/2004 of the Minister of Finance provided that the Chair of the National AML/CFT Committee should be attributed to the Governor of Central Bank of Kuwait. The National AML/CFT Committee includes the CBK, the MOI, the MFA, the PPO, the MOCI, the Ministry of Finance, the Ministry of Social Affairs and Labor, the KSE, the General Administration of Customs, and the Union of Kuwaiti Banks.

1169. The main responsibilities of the National AML/CFT Committee include:

- Drawing up the strategy and policy of the State in the area of anti-money laundering and combating TF;
- Preparing the AML/CFT-related legislation, as well as the relevant implementing regulations;
- Coordinating the position of ministries and other national institutions in various matters related to combating ML and TF;
- Following the AML/CFT trends and developments at local, regional, and international level;
- Serving as the main channel of communication in the AML/CFT area with regional and international institutions;

- Representing the State of Kuwait in meetings and conferences at local, regional, and international levels in the AML/CFT area; and
- Proposing training programs and raising awareness with regard to the fight against ML and TF.

1170. In addition, the decree establishing the KFIU<sup>104</sup> provides that representatives of the: (i) MOCI; (ii) CDI at the MOI; and (iii) GDC should be members of the KFIU. This will, amongst others, serve the purpose of coordinating the collection of information at the level of the KFIU.

### **Bilateral Coordination**

#### **MOI and MOSAL**

1171. The MOI participates, through the staff of the CID, in (i) the committee controlling charitable activities; (ii) the joint committee between the MOSAL and concerned parties, as well as (iii) the public welfare associations established in accordance with the decrees of the MOSAL in order to coordinate and cooperate in monitoring charitable activities and protecting them from being used for purposes of TF.

#### **Analysis of effectiveness**

1172. The National AML/CFT Committee was responsible for preparing the draft AML/CFT Law (which is pending Parliamentary approval). Representatives of the Committee also participated in meetings and conferences at the local, regional, and international levels and organized training programs for relevant national institutions.

1173. One of the committee's statutory responsibilities is to oversee the level of compliance by the responsible ministries and departments in implementing the AML/CFT requirements. The committee has, so far, not adopted any procedures to achieve this objective.

1174. The National AML/CFT Committee has not developed effective mechanisms to enable the policy makers, law enforcement and supervisors, and other competent authorities to coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF.

1175. As noted above, the CCT has no statutory objectives and is primarily used as a channel for the distribution of notifications and communications under UNSCR 1373.

#### **Additional Element—Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):**

1176. No mechanisms have been put in place to ensure adequate consultation of the financial and nonfinancial sectors that are subject to the AML/CFT measures.

#### **Statistics (applying R.32):**

1177. No statistics are maintained.

### **6.1.2 Recommendations and Comments**

1178. The authorities are recommended to:

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<sup>104</sup> Decree No. 10/2003.

- Put in place effective mechanisms which enable the concerned authorities to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF.
- Ensure as a matter of priority that the CCT play an enhanced role in the cooperation for the implementation of UNSCRs 1267 and 1373.
- Develop comprehensive statistics in the relevant areas of the fight against ML and TF (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation).

### 6.1.3 Compliance with Recommendation 31 & 32 (criterion 32.1 only)

|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
| R.31  | PC     | <ul style="list-style-type: none"> <li>• Lack of effective mechanisms in place which enable the concerned authorities to coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF.</li> <li>• Absence of coordination and mechanisms between the CCT members for the implementation of UNSCR 1267 and 1373.</li> </ul> |
| R. 32 | NC     | <ul style="list-style-type: none"> <li>• Absence of comprehensive statistics of the relevant areas of the fight against ML and TF.</li> </ul>  |

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 Description and Analysis

#### Legal Framework:

#### Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

1179. As described in Section 2 of this report, Kuwait has either enacted legislation or used existing legislation to implement the key AML requirements of the Vienna Convention. Proper ancillary offenses as well as the association to commit ML are criminalized by the law.<sup>105</sup> Kuwait has also criminalized the trafficking in narcotics and other related offenses.

1180. The Penal Code, the CPC, and the AML Law provide for provisional measures and for confiscations of property. Controlled deliveries are also available for use by investigators upon authorization by the PPO.<sup>106</sup>

#### Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1).

1181. Other sections of this report show that Kuwait has either enacted legislation or used existing legislation to implement some of the key AML requirements of the Palermo Convention, especially in the area of international cooperation.<sup>107</sup> However, some gaps still remain, such as the fact that smuggling of migrants and TF are not predicate offenses to ML, and the limitation of applicability of criminal liability to companies only, and not to other legal persons.

<sup>105</sup> See Articles 45, 48, 49, 56 of the Penal Code and Article 2 of the AML Law.

<sup>106</sup> Ratified with Law No. 25/2000.

<sup>107</sup> Ratified with Law No. 5/2006.

1182. Although prosecution and law enforcement authorities have a range of special techniques of investigation at their disposal, such techniques are rarely used for ML investigation and prosecution.

1183. In the area of international cooperation, the condition that requests should emanate from a competent judicial authority will in most cases limit cooperation to the requests made in the form of a letter rogatory through diplomatic channels. Moreover, Kuwait has not concluded any agreement for coordinating seizure and confiscation actions, or sharing assets with other countries.

**Implementation of SFT Convention (Articles 2-18, c. 35.1 & c. I.1).**

1184. Kuwait is not party to the 1999 ICSFT Convention.

**Ratification of CFT Related UN Conventions (c. I.1).**

1185. Kuwait has not yet signed the ICSFT Convention. In 2005, the MFA has decided to refer the Convention to the Parliament to study the provisions of the Convention with a view to Kuwait's ratification. The Parliament did not proceed with the ratification and returned it to the MFA for further consideration. TF has not been criminalized. Other requirements of the ICSFT Convention have not been implemented in the Kuwait legislation.

**Implementation of UNSCRs Relating to Prevention and Suppression of TF (c. I.2).**

1186. Kuwait informs the UNSC of the progress made in the fight against terrorism. It submitted its report to the UNSC 1267 Committee (in accordance with UNSC Resolution 1455 (2003)) on April 17, 2003<sup>108</sup> and its reports<sup>109</sup> to the UNSC 1373 Committee on December 21, 2001, August 6, 2002, November 19, 2003, December 31, 2004, and November 17, 2006.<sup>110</sup>

1187. An inter-ministerial committee, the Committee on combating terrorism (CCT), has been established among other things to ensure the coordination of the implementation of UNSCR 1373, but no legal measures have been taken to ensure that the authorities may rely on an effective freezing mechanism (see write up under SR.III and Recommendation 31). As mentioned in the relevant sections of this report, the National AML/CFT Committee does not ensure effective coordination in the implementation of UNSCR 1267.

1188. According to the authorities, none of the persons and legal entities listed under UNSCR 1267 has been identified in Kuwait. Four of the persons designated under UNSCR 1373 were identified in 2008 in Kuwait. (See also write-up under SR.III).

**Additional Element—Ratification or Implementation of Other Relevant International Conventions (c. 35.2).**

1189. The Kuwaiti parliament is still considering accessing to: (i) the 1998 Arab Convention for the Suppression of Terrorism; (ii) the 1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism; and (iii) the 2004 Gulf Cooperation Council Convention for the Suppression of Terrorism.

**6.2.2 Recommendations and Comments**

1190. The authorities are recommended to:

<sup>108</sup> <http://daccess-ods.un.org/TMP/6146881.html>

<sup>109</sup> <http://www.un.org/en/sc/ctc/resources/1373.html>

<sup>110</sup> For more on the implementation of UNSCRs 1267 and 1373 see the relevant parts of this report.



- Take the necessary measures to fully implement the Vienna and Palermo Conventions (please refer to Section 2.1 for more details).
- Sign, ratify, and fully implement the 1999 International Convention for the Suppression of Terrorism Financing.
- Take the necessary measures to comply with and fully implement UNSCR 1267 and 1373 (and their successor resolutions) as recommended under SR.III.

### 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.35 | PC     | <ul style="list-style-type: none"> <li>• Kuwait has not ratified the 1999 UNCSFT convention.</li> <li>• Vienna and Palermo are not fully implemented:               <ul style="list-style-type: none"> <li>○ Smuggling of migrants and terrorism financing are not predicate offenses for ML.</li> <li>○ Criminal liability only applies to companies, and not to other legal persons.</li> </ul> </li> </ul> |
| SR.I | NC     | <ul style="list-style-type: none"> <li>• Kuwait is not party to and has not implemented the ICST Convention.</li> <li>• Kuwait has not implemented the UNSCRs 1267 and 1373.</li> </ul>   |

## 6.3 Mutual Legal Assistance (MLA) (R.36-38, SR.V)

### 6.3.1 Description and Analysis

#### Legal Framework:

1191. The type and extent of international cooperation that Kuwait may provide is mainly regulated by Law No. 5/2006 approving the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (Palermo Convention), the other international conventions to which Kuwait is party, and by a number of regional and bilateral agreements. Moreover, the AML Law contains two provisions relating to international cooperation.<sup>111</sup> Law No. 5/2006 reproduces *verbatim* the text of the Palermo Convention. However, it should be noted that not all of the provisions of the Palermo Convention are “self-executing” as they require legislation to be adopted at a national level by the State Party to be effectively implemented (*e.g.*, Article 12.1 relating to confiscation).

1192. Requests for MLA (to and from Kuwait) are channeled through the MFA and are dealt with by the PPO which acts as the central authority for all MLA requests concerning criminal matters (including in the area of AML/CFT). In application of the Director of the PPO’s Resolution 8/2009, the “Office of the PPO for Criminal Execution and International Cooperation Affairs” is entrusted by the Director of the PPO with the task of handling MLA requests. This office comprises a director, a deputy director, and 25 members from the PPO.

#### Widest Possible Range of Mutual Assistance (c. 36.1):

1193. The Kuwait legal system provides for a wide range of MLA. Through Law No. 5/2006 mentioned above, the Palermo Convention and its Protocols have become an integral part of Kuwaiti legislation. Accordingly, pursuant to Article 18, Paragraph 3, of this Convention, Kuwait will afford the widest measure of MLA in investigations, prosecutions, and judicial proceedings in relation to the offenses

<sup>111</sup> Articles 17 and 18 of the AML Law.

covered by this Convention, including the offense of money laundering, and will reciprocally extend similar assistance to a requesting State Party.

1194. More specifically, the measures that may be taken upon the request of another country include:

- Taking evidence or statements from persons;
- Effecting service of judicial documents;
- Executing searches, seizures, and freezing;
- Examining objects and sites;
- Providing information, evidentiary items, and expert evaluations;
- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate, or business records;
- Identifying or tracing proceeds of crime, property, instrumentalities, or other things for evidentiary purposes;
- Facilitating the voluntary appearance of persons in the requesting State Party.

1195. These measures may be granted on the basis of multilateral or bilateral agreements and, where no such agreement exists, on the basis of reciprocity.

1196. The PPO may, at the request of a competent judicial authority in another country, search or seize property, proceeds, or instrumentalities connected with an ML offense committed in that foreign country on the basis of a bilateral MLA treaty with that country or on the basis of reciprocity.<sup>112</sup>

1197. Kuwaiti criminal courts may, in execution of a final judgment delivered by a foreign court, proceed with the confiscation of properties, proceeds, or instrumentalities connected with an ML offense, on the basis of a bilateral MLA treaty with that country or on the basis of reciprocity.<sup>113</sup> The legal provisions, which are available in domestic cases in relation to provisional measures,<sup>114</sup> apply also to requests for MLA concerning ML investigations and prosecutions.

1198. The requirement in the AML Law<sup>115</sup> that MLA requests to “follow or seize property, proceeds or instrumentalities” should come from a “competent judicial authority” is rather restrictive, even if the authorities claim that, in practice, they respond to search or seizure requests even if they do not emanate from a judicial authority. The assessment team maintains that such a requirement may slow down and ultimately hamper effective and timely cooperation in this area.

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<sup>112</sup> Article 17 of the AML Law.

<sup>113</sup> Article 18 of the AML Law.

<sup>114</sup> Notably, Articles 77, 78 and 89 of the Criminal Procedure Code.

<sup>115</sup> Article 17 of the AML Law.

**Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):**

1199. As provided by the Palermo Convention,<sup>116</sup> the Kuwaiti authorities endeavor to ensure “speedy and proper execution” of a request by the PPO. The assessment team was informed that, in practice, one month is the average time needed by the central authority (the PPO) to handle an MLA request.

1200. However, the statistics provided by the authorities (see below) show that the time is consistently much longer, ranging from few months to nearly two years. The authorities indicated to the assessment team that all requests received by the Kuwaiti authorities have been fully implemented in relation to all the aspects of the request.

**No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):**

1201. There are no unreasonable or unduly restrictive conditions on MLA under Kuwaiti law. The Kuwaiti authorities indicated that requests for assistance can be refused based on the relevant provisions of the Palermo Convention as follows:

- (a) If the request is not made in conformity with the provisions of the Palermo Convention;
- (b) If Kuwait considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public*, or other essential interests;
- (c) If the authorities of Kuwait would be prohibited by their domestic law from carrying out the action requested with regard to any similar offense, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; or
- (d) If it would be contrary to the legal system of Kuwait relating to MLA for the request to be granted.

1202. MLA may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution, or judicial proceeding.<sup>117</sup> Dual criminality is a strict requirement under Kuwaiti law only in the area of extraditions. In the area of MLA, Kuwaiti law does not generally require dual criminality.

1203. The authorities assured the assessment team that, in practice, no request for MLA in the ML or TF<sup>118</sup> areas was ever refused in the last ten years and that there was no request which contradicted the Kuwaiti legal system.

**Efficiency of Processes (c. 36.3):**

1204. The above-mentioned “Office of the PPO for Criminal Execution and International Cooperation Affairs” is responsible for handling MLA, extradition, and transfer of sentenced persons’ requests. It also conducts the necessary investigations, issues international arrest warrants, notifies INTERPOL of the execution of warrants, and addresses foreign judicial authorities through the Foreign Ministry or other competent authorities specified in bilateral agreements for the mutual execution of all aspects of judicial cooperation.

1205. Although the authorities noted that MLA requests are handled in a timely manner and without undue delay,<sup>119</sup> the statistics provided by the authorities (see below) show that the time to reply to an MLA request can be long (*i.e.*, up to nearly two years) raising questions about the efficiency of the process.

<sup>116</sup> Paragraph 13 of Article 18 of the Palermo Convention, applicable in Kuwait on the basis of the Law No. 5/2006. (The numberings of the provisions of this Law coincide with the provisions of the Palermo Convention.)

<sup>117</sup> Paragraph 25 of Article 18 of the Palermo Convention.

<sup>118</sup> There has been only one MLA request to Kuwait in the TF area, and that was from Bosnia and Herzegovina and it is still pending (*i.e.*, no decision has been taken yet).

**Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):**

1206. Paragraph 22 of Article 18 of the Palermo Convention provides that States Parties may not refuse a request for MLA on the sole grounds that the offense is also considered to involve fiscal matters. The authorities informed the assessment team that they have never refused cooperation on the grounds that the offense is also considered to involve fiscal matters (especially since tax evasion is not a crime in Kuwait).

**Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):**

1207. Pursuant to the relevant provisions of the Palermo Convention,<sup>120</sup> which is part of Kuwaiti law, Kuwait does not decline to render MLA on the grounds of bank secrecy or any other secrecy or privacy requirement on FIs, businesses, or nonfinancial professions.

1208. The authorities informed the mission that the PPO has wide powers to request and obtain information from FIs, businesses, and nonfinancial professions in the course of their investigation and prosecution. The PPO is, therefore, able to respond to MLA requests, notwithstanding the existence of bank secrecy or any other secrecy or privacy requirement.<sup>121</sup>

**Availability of Powers of Competent Authorities (applying R.28, c. 36.6):**

1209. All the powers granted to the relevant authorities in domestic cases may be made available for use in response to requests for MLA. (See Section 2.6 of this report.)

**Avoiding Conflicts of Jurisdiction (c. 36.7):**

1210. The Palermo Convention<sup>122</sup> requires States Parties to adopt such measures as may be necessary to establish its jurisdiction over the offenses established in accordance with Articles 5, 6, 8, and 23 of the Convention, which include the ML offense.

1211. The Kuwaiti Penal Code<sup>123</sup> describes the jurisdiction provisions applicable in the country. In case of conflict of jurisdiction, the competent authorities in Kuwait and the other country(ies) are required to consult with each other as appropriate to determine which country will exercise jurisdiction.

**Additional Element—Availability of Powers of Competent Authorities Required under R.28 (c. 36.8):**

1212. The investigative powers at the authorities' disposal under Recommendation 28 are also available when there is a direct request from a foreign judicial or law enforcement authority. (See Section 2.6 of this report.)

**International Cooperation under SR.V (applying c. 36.1-36.6 in R.36, c. V.1) & Additional Element under SR.V (applying c. 36.7 & 36.8 in R.36, c. V.6):**

1213. Although there is no provision under Kuwaiti law criminalizing TF as such, the authorities informed the assessment team that Kuwait does not require dual criminality for the provision of MLA and, thus, the provisions described above apply equally to TF.

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<sup>119</sup> The PPO indicated to the assessment team that it needs an average time of one month to handle a MLA request.

<sup>120</sup> Paragraph 8 of Article 18.

<sup>121</sup> See also Section 3.1 of this report.

<sup>122</sup> Article 15.

<sup>123</sup> Articles 11 to 17.

1214. The assessment team, however, maintains that the lack of a specific provision in Kuwaiti law criminalizing TF may constitute in practice an obstacle to effective international cooperation in this area. Indeed, the provisions of the Palermo Convention relating to MLA do not apply to TF per se, as the latter is not criminalized as such in Kuwait and is thus not a “serious offense” under Article 2.b of the Palermo Convention.<sup>124</sup> Moreover, there has been only one MLA request to Kuwait relating partly to TF in the last ten years, and the request is still waiting a decision by the authorities. Due to the limited number of cases, it is not possible for the assessment team to assess the effectiveness of the system, nor can it be established to the assessors’ satisfaction that Kuwait is able to provide MLA in a timely and effective manner.

#### **Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):**

1215. Dual criminality is only strictly required for extradition. In the area of MLA, the authorities informed the mission that, in line with paragraph 9 of Article 18 of the Palermo Convention, they provide assistance irrespective of dual criminality. The authorities indicated that this applies to any measure, including less intrusive and noncompulsory measures. In principle, the existence of criminal proceedings in the requesting country is sufficient to provide MLA.

1216. However, beyond the mere reproduction of paragraph 9 of Article 18 of the Palermo Convention (which is a rather general provision about dual criminality) in Kuwaiti law, there is no other provision in the Kuwaiti legal system containing some details about how dual criminality is to be applied in practice in relation to MLA requests (*e.g.*, situations in which MLA will be declined/rendered in the absence of dual criminality). The assessment team acknowledges that the provision or otherwise of MLA is a discretionary decision by the requested State (Kuwait) on a case-by-case basis. However, some additional details in internal Kuwaiti law as to how paragraph 9 of Article 18 of the Palermo Convention is to be applied in internal law, may provide some guidance to the requesting State as to the cases in which they can reasonably expect a positive reply to their MLA requests.

#### **International Cooperation under SR.V (applying c. 37.1-37.2 in R.37, c. V.2):**

1217. Although there is no provision under Kuwaiti law criminalizing TF as such, the authorities informed the assessment team that Kuwait does not require dual criminality for the provision of MLA and, thus, the provisions described above apply equally to TF. However, there is no legal provision, nor case-law, supporting this statement. The assessment team maintains that the lack of a specific provision in Kuwaiti law criminalizing TF may in practice constitute an obstacle to effective international cooperation. Moreover, there has been only one MLA request to Kuwait relating partly to TF in the last ten years, and the request is awaiting a decision by the authorities. One case (still pending) is not sufficient for the assessors to establish the effectiveness of the system.

#### **Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):**

1218. Overall, the Palermo Convention<sup>125</sup> and the AML Law provide the legal basis for the execution of foreign criminal court decisions, including foreign confiscation orders and provisional measures.

1219. The PPO may, at the request of a competent judicial authority in another country, search or seize property, proceeds, or instrumentalities connected with an ML offense committed in that foreign country on the basis of a bilateral MLA treaty with that country or on the basis of reciprocity.<sup>126</sup> As noted above, the requirement that requests for search or seizure should come from a “competent judicial authority” is rather restrictive, even if the authorities claim that, in practice, they respond to search or seizure requests

<sup>124</sup> The provisions of the Palermo Convention relating to MLA would however apply to the terrorism-related offenses contained in those treaties annexed to the 1999 Convention which have been ratified by Kuwait.

<sup>125</sup> Articles 12 and 13 of the Palermo Convention.

<sup>126</sup> Article 17 of the AML Law.

even if they do not emanate from a judicial authority. The assessment team maintains that such a requirement may slow down and ultimately hamper effective and timely cooperation in this area.

1220. Kuwaiti criminal courts may, in the execution of a final judgment delivered by a foreign court, proceed with the confiscation of properties, proceeds, or instrumentalities connected with an ML offense, on the basis of a bilateral MLA treaty with that country or on the basis of reciprocity.<sup>127</sup> However, the authorities provided no statistics about the number of cases in which this occurred.

#### **Property of Corresponding Value (c. 38.2):**

1221. Article 12.1 (a) of the Palermo Convention requires States Parties “to adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

*(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds [..].”*

1222. Article 14, Paragraph 3, of that Convention refers to the actions States Parties may take when acting on the request made by another State Party in accordance with Articles 12 and 13, which includes value-based confiscation.

1223. In spite of the ratification of the Palermo Convention, no provision has been adopted in the Kuwaiti national law expressly allowing for the confiscation of property of corresponding value, be it nationally or at the request of another State. This shows the importance (elaborated below) of going beyond the “mere” ratification of international conventions which is certainly important, but not always sufficient, to develop an effective and comprehensive AML/ CFT framework. This is particularly true with regard to the so-called “non self-executing provisions”, *i.e.*, provisions of international treaties requiring action to be taken at a national level to be fully implemented.

#### **Coordination of Seizure and Confiscation Actions (c. 38.3):**

1224. Kuwait has no specific arrangement with other countries for the coordination of seizure and confiscation actions. However, Kuwait could coordinate joint investigations, including seizure and confiscation measures, on a case-by-case basis, should the need for such a joint operation arise.

#### **International Cooperation under SR.V (applying c. 38.1-38.3 in R.38, c. V.3):**

1225. Although there is no provision under Kuwaiti law criminalizing TF as such, the authorities informed the assessment team that they are able to cooperate with other countries in CFT cases in relation to the identification, seizure, or confiscation of property, proceeds, and instrumentalities.<sup>128</sup> However, the provisions of the Palermo Convention do not apply to TF per se, as the latter is not, as such, a criminal offense in Kuwait and therefore does not fall in the category of “serious offenses” described in Article 2.b of the Convention. No case has occurred so far (one case is pending). Due to the limited number of cases, it is not possible for the assessment team to assess the effectiveness of the system, nor can it be established to the assessors’ satisfaction that Kuwait is able to respond to MLA requests relating to the identification, freezing, seizure, or confiscation of property, proceeds, and instrumentalities, in a timely and effective manner.

1226. Confiscation of property of corresponding value is not possible in Kuwait. Moreover, Kuwait has no agreement for coordinating seizure and confiscation actions with other countries. However, as indicated above, Kuwait could coordinate joint investigations, including seizure and confiscation measures, on a case-by-case basis, should the need for such a joint operation arise.

<sup>127</sup> Article 18 of the AML Law.

<sup>128</sup> On the basis of Article 12 and 13 of the Palermo Convention, and Articles 17 and 18 of the AML Law.

**Asset Forfeiture Fund (c. 38.4):**

1227. No special fund is established in Kuwait. The authorities informed the assessment team that they have considered establishing such a fund, but decided against it as the current process (which consists of depositing confiscated assets in the accounts of the MOJ and, thus, include them on its publicly available balance sheet) was considered to be sufficient.

**Sharing of Confiscated Assets (c. 38.5):**

1228. Kuwait has ratified the UN Convention against Corruption which contains specific provisions<sup>129</sup> relating to the return of assets. Should the case arise, the authorities informed the assessment team that they would proceed to share confiscated assets on a case-by-case basis as provided for by Article 14.3.b of the Palermo Convention (to which Kuwait is a Party).

**Additional Element (R 38) – Recognition of Foreign Orders for: a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):**

1229. Pursuant to Article 18 of the AML Law, the criminal courts may, in the execution of a final judgment delivered by a foreign court, proceed with the confiscation of properties, proceeds, or instrumentalities connected with an ML offense, on the basis of a bilateral MLA treaty with that country or on the basis of reciprocity. No information has been provided by the authorities about the number of cases in which this occurred.

1230. Foreign noncriminal confiscation orders are handled by the Civil Court under the Civil Procedure Code. While not immediately enforceable, the execution of foreign noncriminal confiscation orders is left to the discretion of the President of the Civil Court. Again, no information has been provided by the authorities about the number of cases in which this occurred.

**Additional Element under SR.V (applying c. 38.4-38.6 in R.38, c. V.7):**

1231. The authorities informed the assessment team that the provisions described above apply equally to the fight against terrorism and TF. However, no case occurred yet.

**Statistics (applying R.32):**

1232. Statistics provided by the Kuwaiti authorities show a rather low number of MLA requests received from foreign countries (8 from 2000 to 2010) or sent to foreign countries (1 from 2000 to 2010), and most of them concerned ML (only one related partly to TF). No request for MLA was made by Kuwait to another country in the TF area.

<sup>129</sup> Articles 51 and 57 of the Merida Convention.

Table 25 – Number of MLA requests

| Year | Coming from/Going to            | Received on | Requested actions   | Actions taken   | Crime              |
|------|---------------------------------|-------------|---|---|--------------------|
| 2000 | Germany/Kuwait                  | 8/16/2000   | Investigation/Request for information on account at an exchange house | Seizure   | ML                 |
| 2003 | United States of America/Kuwait | 10/6/2003   | Accounts  | Reply on 8/10/2005  | ML                 |
| 2006 | Egypt/Kuwait                    | 1/13/2006   | Accounts and assets   | Letter from PPO to MFA of 2/14/2007                               | ML                 |
| 2007 | Egypt/Kuwait                    | 12/27/2006  | Accounts; copy of documents; origin of funds                          | Letter from PPO to MFA of 2/14/2007                               | ML                 |
| 2007 | Kuwait/UAE                      | 1/16/2007   | Seizure; witness statement  | Under investigation by UEA  | ML                 |
| 2009 | Belgium/Kuwait                  | 1/13/2009   | Accounts  | Letter from PPO to MFA dated 5/9/2010                             | ML                 |
| 2009 | United States of America/Kuwait | 6/9/2009    | Accounts; documents; deposits/transfers                               | Letter from PPO to MFA dated 3/22/2010                            | ML                 |
| 2010 | Bahrain/Kuwait                  | 3/28/2010   | Witness statements; accounts; search and seizure                      | Letter from PPO to MFA of 9/20/2010                               | ML                 |
| 2010 | Bosnia and Herzegovina/ Kuwait  | 10/12/2010  | Witness statements; information about a charity                       | Waiting information from the Ministry of Social Affairs and Labor | ML/TF /tax evasion |

### 6.3.2 Recommendations and Comments

- The ratification and implementation of the Palermo Convention is a welcome development and provides, together with the relevant provisions of the AML Law, the Penal Code and the Criminal Procedure Code, a sound legal basis for the provision of comprehensive international cooperation.
- The condition that requests to “follow or seize property, proceeds or instrumentalities”<sup>130</sup> should emanate from a competent **judicial** authority is likely to limit cooperation to the requests made in the form of a rogatory letter through diplomatic channels. Such a requirement means that, in practice, cooperation may not always occur in a timely manner.
- While the legal framework in place for MLA is on paper largely in line with the standards, the authorities did not provide, in most cases, a rapid response.
- The lack of a specific provision criminalizing TF may be an obstacle in extradition cases, where dual criminality is strictly applied, and more generally hampers the overall effectiveness of the international cooperation mechanism of Kuwait. Moreover, only one case (still pending) of an MLA request in the TF area (which is a fact that cannot be blamed on the authorities as such), is nonetheless not sufficient for the assessors to establish, to their satisfaction, that Kuwait is able to respond to MLA requests in the TF area in a timely and effective manner.

<sup>130</sup> See Article 17 of the AML Law.



*Recommendation 36:*

1233. The authorities are recommended to:

- Ensure that cooperation in the AML/CFT area relating to search or seizure of property, proceeds, or instrumentalities can occur even when requests are issued from a competent authority in another country which is not a judicial authority, thus recognizing the differences in legal systems.
- Ensure the handling of MLA requests in a rapid, constructive, and effective manner.

*Recommendation 37*

1234. The authorities are recommended to:

- Adopt provisions in Kuwaiti law that contains some details about the manner in which the authorities implement paragraph 9 of Article 18 of the Palermo Convention.

*Recommendation 38:*

1235. The authorities are recommended to:

- Adopt legislation which specifically allows (nationally and at the request of another country) for value-based confiscation.

*SR.V*

1236. The authorities are recommended to:

- Adopt legislation that specifically criminalizes TF.
- Ensure the handling of MLA requests in TF cases in a rapid, constructive, and effective manner.

**6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V**

|             | Rating    | Summary of factors relevant to s.6.3 underlying overall rating  |
|-------------|-----------|---|
| <b>R.36</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>• International cooperation in the area of search or seizure of property, proceeds or instrumentalities is slowed down, or hampered, as requests can be executed only when emanating from a competent “judicial” authority in another country.</li> <li>• MLA not provided, in most cases, in a rapid manner.</li> </ul> |
| <b>R.37</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>• Lack of clarity in internal Kuwaiti law as to manner in which it gives effect to Article 18, paragraph 9 of the Palermo Convention.</li> </ul>   |
| <b>R.38</b> | <b>LC</b> | <ul style="list-style-type: none"> <li>• No value-based confiscation.</li> </ul>  |
| <b>SR.V</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• Lack of criminalization of TF.</li> <li>• Impossibility to assess the effectiveness of the mutual legal assistance and extradition regimes relating to TF due to the limited number of cases.</li> </ul>   |

## 6.4 Extradition (R.37, 39, SR.V)

### 6.4.1 Description and Analysis

#### **Legal Framework:**

1237. The general provision relating to extradition can be found in the Law No. 5/2006 which transposes the Palermo Convention into Kuwaiti law.<sup>131</sup> However, as noted above, it should be recalled that not all the provisions of the Palermo Convention are directly applicable.

#### **Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):**

1238. Dual criminality is a requirement for the provision of extradition. However, the authorities mentioned that, when deciding whether or not dual criminality exists, they look at the underlying conduct which led to the offense rather than the title or denomination of the offense. Therefore, the authorities informed the assessment team that: (a) extradition may be rendered when both the requested and the requesting State make the underlying conduct a criminal offense, notwithstanding the manner in which the conduct is denominated or categorized; and (b) MLA requests (including those seeking noncompulsory or less intrusive measures) do not require dual criminality.

1239. At the time of the on-site visit, there was only one case of extradition relating to ML, and none relating to TF. It is, therefore, not possible for the assessment team to assess the effectiveness of the system.

#### **Money Laundering and Terrorist Financing as Extraditable Offense (c. 39.1 & SR.V.4):**

1240. Pursuant to Article 16 of the Palermo Convention, ML is an extraditable offense. There was only one case of extradition relating to ML (in 2005).<sup>132</sup> The authorities informed the assessment team that, even if TF is not explicitly criminalized under Kuwaiti law, extradition for conducts amounting to TF (as described by the Kuwaiti authorities) is possible. However, no request for extradition has been made to Kuwait in a TF-related case; nor did Kuwait ever make a request for extradition in a TF-related case. Under these circumstances, the assessment team cannot assess the overall effectiveness of the system.

1241. The extradition procedure for ML cases is similar to that for other types of crimes and is regulated by Law No. 5/2006, and by the relevant bilateral and regional treaties relating to extradition to which Kuwait is Party.

1242. Requests for extradition to Kuwait must be sent in the Arabic language and by original copy (*i.e.*, the authorities will not accept extradition requests made via fax or e-mail). Such requests are channeled through the MFA and are dealt with by the PPO. In application of the Director of the PPO's Resolution 8/2009 (mentioned above), the PPO for Criminal Execution and International Cooperation Affairs is entrusted by the Director of the PPO with the task of handling such requests and acts as the central authority.

1243. However, the lack of a specific provision explicitly criminalizing TF may hamper the effectiveness of the extradition process where dual criminality remains a requirement for Kuwait.

<sup>131</sup> Article 16 of the Palermo Convention deals with extradition and, through Law No. 5/2006, is transposed into national law in Kuwait.

<sup>132</sup> Extradition of an Iranian national to Iran.

**Extradition of Nationals (c. 39.2) & Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):**

1244. Articles 10 and 11 of the Palermo Convention provide the legal framework relating to the extradition of nationals.<sup>133</sup> The authorities informed the assessment team that the extradition of Kuwaiti nationals is not possible pursuant to Article 28 of the Kuwaiti Constitution.

1245. Kuwait has concluded bilateral legal and judicial cooperation agreements in criminal matters with a number of countries, including Egypt, Bulgaria, Turkey, Syria, India, and Iran. Kuwait is also a Party to the Riyadh Arab Convention on Judicial Cooperation which contains provisions relating to the extradition of its own nationals. In line with the principle of *aut dedere, aut iudicare*, in lieu of the extradition of its nationals, the Kuwaiti judicial authorities bring legal action without delay against the Kuwaiti national subject to an extradition request. The authorities provided no information about cases in which this happened.

**Efficiency of Extradition Process (c. 39.4):**

1246. Requests for extradition and other requests for judicial assistance are handled “without undue delay” by the PPO in accordance with Resolution 8/2009. The authorities informed the assessment team that a properly made request for extradition (not necessarily in the ML/TF area) is executed by the PPO—on average, between six weeks and two months maximum from the date it is received. However, only one request for extradition concerned ML; there has been no extradition request made to, or sent from, Kuwait in the TF area. The assessment team is not in a position to assess the effectiveness of the process under these circumstances.

**Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5) & Additional Element under SR. V (applying c. 39.5 in R.39, c. V.8):**

1247. The bilateral and multilateral agreements to which Kuwait is a Party contain simplified procedures relating to extradition, namely, the direct transfer of extradition requests between Ministries and simplified procedures in urgent cases.

1248. The authorities informed the assessment team that, even if TF is not explicitly criminalized under Kuwaiti law, extradition for conducts amounting to TF (as described by the Kuwaiti authorities) is possible. However, the lack of a specific provision explicitly criminalizing TF hampers the effectiveness of the extradition process where dual criminality remains a requirement for Kuwait.

<sup>133</sup> Article 10 of the Palermo Convention read as follows: “A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offense to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offense of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.” Article 11 of the Palermo Convention read as follows “Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.”

Statistics (R.32)

Table 26 – Number of Extradition

| Extradition of persons      | 2005 | 2006 | 2007 | 2008 | 2009 | Total | Crime  |
|-----------------------------|------|------|------|------|------|-------|--|
| From Kuwait to <sup>1</sup> | 14   | 22   | 39   | n/a  | 15   | 90    | ML <sup>2</sup><br>Theft<br>Drugs<br>Carrying Weapons<br>Counterfeit |
| To Kuwait from <sup>3</sup> | 10   | 11   | 8    | n/a  | 15   | 44    | Embezzlement<br>Murder<br>Checks without provisions                  |

Table Notes:

1. From Kuwait to: Qatar, Bahrain, Pakistan, Egypt, Iran, KSA, UAE, Syria, Bulgaria, and Philippine.
2. Only 1 case in 2005 in which an Iranian national was extradited to Iran.
3. To Kuwait from: Bahrain, Egypt, UAE, Us, Syria, KSA and Jordan.

1249. Only one case of extradition concerned ML. There was no extradition case relating to TF.

6.4.2 Recommendations and Comments

- Kuwaiti’s extradition regime is largely based on the relevant international conventions to which Kuwait is a Party and the bilateral agreements concluded by Kuwait and appears compliant with the standards. However, while the assessment team acknowledges that Kuwait cannot control the number of extradition requests it receives, it remains a fact that the effectiveness of the system cannot be properly assessed as there was only one case relating to ML and no case relating to TF.
- The lack of an explicit provision criminalizing TF remains a cause of concern and is an obstacle to an effective extradition regime in the CFT area.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

|      | Rating | Summary of factors relevant to s.6.4 underlying overall rating   |
|------|--------|--|
| R.39 | LC     | <ul style="list-style-type: none"> <li>• Impossibility of assessing the effectiveness of the extradition system in the ML/TF area.</li> </ul>  |
| R.37 | LC     | <ul style="list-style-type: none"> <li>• Impossibility to assess the effectiveness of the system due to the limited number of cases.</li> </ul>  |
| SR.V | NC     | <ul style="list-style-type: none"> <li>• No criminalization of terrorist financing</li> <li>• Impossibility to assess the effectiveness of the mutual legal assistance and extradition regimes relating to TF due to the limited number of cases.</li> </ul> |

## 6.5 Other Forms of International Co-Operation (R.40 & SR.V)

### 6.5.1 Description and Analysis

#### Law enforcement agencies:

1250. The law enforcement authorities in Kuwait are able to provide international cooperation to their foreign counterparts through a number of fora, including Interpol, as well as direct police-to-police contact. The CDI in the MOI receives and reply to request of information from counterparts.

1251. The CID and SSB may and have in the past cooperated and shared information with foreign law enforcement authorities in relation to ML offenses. They also replied to one request related to three persons involved in TF. The channels used to exchange information with foreign counterparts include Interpol and Attaché offices maintained by Kuwait in a number of countries.

1252. Kuwaiti law enforcement authorities have signed MOUs with counterparts in a large number of countries. The provision of direct assistance is generally not subject to any conditions or restrictions. The information-sharing ability of law enforcement also extends to information subject to confidentiality. As mentioned under section 2, the customs also exchange information bilaterally and through the RILO offices. LEAs, more specifically the PPO made several investigations on behalf of foreign counterparts.

1253. The LEAs exchanged information with foreign counterparts. The following table includes information on the number of requests made by the MOI:

| Year | ML cases | FT cases |
|------|----------|----------|
| 2008 | 6        | 2        |
| 2009 | 5        | 3        |
| 2010 | 4        | 1        |

1254. However, although there are provisions in the police Law that prevents the officials from disseminating the information, the assessment team's view is that there is some uncertainty surrounding the applicability of the provisions that could not be considered as adequate controls and safeguards to ensure that information received is used only in authorized manner.

#### FIU:

1255. The FIU cannot share information with its foreign counterparts, since it can only act under instruction from the PPO. Any request for information received from a foreign FIU must be channeled through the PPO, and can only be given if approved by the Prosecutor. The KFIU is not implementing the Egmont Group Statement of Purpose and its Principles for Information Exchange.

#### Supervisors:

1256. **Central Bank of Kuwait:** The ability of the CBK to share confidential information internationally outside the context of consolidated supervision is inhibited by the confidentiality provision of the CBK Law. Article 28 of the CBK Law states that, unless otherwise permitted by law, no member of the Board of Directors, manager, official or employee of the CBK shall disclose any information he has access to by reason of the duties of his office when that information relates to the affairs of the bank or its customers or the affairs of other banks subject to the supervision of the CBK. Due to the broad language of

Article 28, assessors determined that it applies to the release of AML/CFT information. See recommendation 4 for more detail.

1257. The CBK indicated that it has sharing agreements with the 16 countries where Kuwaiti banks have foreign branches or ownership interests in a foreign bank, or vice versa. However, this information sharing process is pursuant to consolidated supervision agreements which are limited to the banks where both Kuwait and the foreign country share supervision. It does not affect other institutions or countries that are not involved with consolidated supervision with Kuwait.

1258. Outside the context of consolidated supervision, it is necessary for the CBK to go through the PPO in order to provide information. This is of particular concern with regard to the countries where Kuwaiti FIs have correspondent banking relationships or are involved in other international transactions, but do not have a physical presence. Such situations would include cross-border transactions, including cross-border wires. This limitation in sharing would also affect inquiries where a foreign country is seeking information about specific accounts relating, for instance, to tax evasion.

1259. Not only is the requirement to go through the PPO limiting, it reduces the likelihood that the cooperation with the foreign counterpart will be in a rapid, constructive and effective manner. In addition, going through the PPO would be limited to criminal matters. Hence, there is no framework or apparent ability to cooperate outside of the context of either consolidated supervision or criminal matters.

1260. **MOCI and Kuwait Stock Exchange:** Neither the MOCI nor the KSE has any sharing agreements with foreign countries either on a formal or informal basis. However, the authorities have stated that neither the MOCI nor the KSE are required to have such arrangements or have to go through the PPO in order to obtain or provide international assistance. But the assessors are not informed of the legal basis or framework allowing for the MOCI or the KSE to share internationally.

**Ensure that competent authorities are able to provide the widest range of international cooperation to their foreign counterparts in a rapid, constructive and effective manner (c. 40.1 and 40.1.1):**

1261. As set forth above, the ability of the CBK to share confidential information, including AML/CFT information, with its foreign counterparts is limited to those countries with which it has signed sharing agreements. The existing sharing agreements are limited to the 16 countries where Kuwaiti banks have foreign branches or interests and are subject to consolidated supervision. Thus, information sharing pursuant to these consolidated supervision agreements is limited to the banks where both Kuwait and the foreign country share supervision. It would not affect other institutions or countries that are not involved in consolidated supervision with Kuwait.

1262. Outside the context of consolidated supervision, it is necessary for the CBK to go through the PPO in order to provide confidential information to its international counterparts. This would include the sharing of AML/CFT information where a FI is involved in an international transaction or where there are cross-border relationships, including correspondent banking arrangements or cross-border transactions, such as cross-border wires. It would also include situations where a foreign country is seeking information outside the context of consolidated supervision about a particular account, including for tax-related purposes. Also, as stated above, the ability to go through the PPO would be limited to criminal matters.

1263. Due to the lack of sharing outside the context of consolidated supervision, assessors determined that the CBK cannot provide the widest range of international cooperation to their foreign counterparts. For countries where no agreement exists, assessors believe that the process of seeking PPO authorization necessarily implies that sharing will not be rapid or effective. No statistics are currently available to determine if sharing is rapid, constructive or effective in situations where a sharing agreement does exist.

1264. As set forth above, the KSE and the MOCI do not currently engage in international sharing.

**Clear and effective gateways to engage in international sharing (c. 40.2):**

1265. As mentioned above, the CBK only shares confidential information internationally within the context of consolidated supervision. Outside the context of consolidated supervision, it is necessary for the CBK to go through the PPO in order to provide information. Assessors are not informed whether this process of going through the PPO has been formalized and placed in writing to ensure that it is clearly understood. In addition, as stated above, the ability to go through the PPO is limited to criminal matters. So there is no clear gateway for international sharing outside the context of consolidated supervision and criminal matters.

1266. The KSE and MOCI do not have effective gateways for international sharing directly with foreign counterparts.

1267. The lack of international sharing and the lack of an effective gateway for international sharing is particularly troublesome with regard to the KSE, given the fact that Kuwait's securities market is the second largest market, by capital value, in the Gulf region. In addition, the KSE was created with the objective of protecting investors in securities and organizing and developing the securities market. The lack of active international sharing and the lack of a framework for such sharing adversely affect KSE's functions.

**Exchanges should both spontaneous and upon request and should be in relation to both ML and the underlying predicate offenses (c. 40.3):**

1268. The CBK indicates that there can be sharing of AML/CFT information which is both spontaneous and upon request. However, assessors determined that this can only take place where an agreement within the context of consolidated supervision already exists.

1269. For countries where no agreement for sharing exists, there is a need to seek PPO authorization. As a result, this prevents spontaneous sharing by the CBK. In such cases, all sharing would be upon a case-by-case approval by the PPO after submission of a specific request for sharing.

1270. As stated above, there is no framework for international sharing by the MOCI or the KSE. Consequently, it is unknown how that sharing would occur and whether it would be spontaneous.

**Authorized to conduct inquiries on behalf of foreign counterparts (c. 40.4):**

1271. The CBK indicates that they may conduct inquiries on behalf of foreign counterparts, seeking confidential information pursuant to a sharing agreement within the context of consolidated supervision.

1272. For countries where no agreement of sharing exists, the CBK can only conduct such inquiries on behalf of foreign counterpart after the inquiry has been approved by the PPO. The assessors were not informed of any framework allowing for such inquiries, especially those that would not involve criminal matters and, thus, would be outside the jurisdiction of the PPO.

1273. The assessment team was not informed of any situation where this type of inquiry has occurred with regard to either the KSE or the MOCI. In addition, there is no framework or legal support authorizing the undertaking of such inquiries by the KSE or the MOCI on behalf of foreign countries.

**Exchanges of information subject to disproportionate or undue restrictions. (c. 40.6):**

1274. As set forth above, the ability of the CBK to share confidential information, including AML/CFT information, with its foreign counterparts is limited to those countries with which it has signed sharing agreements. In the absence of an agreement of sharing, it is necessary for the CBK to go through the PPO

in order to provide information to its international counterparts. Assessors determined that requirement to go through the PPO would place undue restrictions on the CBK to share AML/CFT information. This is an undue restriction to the efficient and complete ability to share information with foreign counterparts.

1275. The assessment team has not been informed of any situation where inquiries have occurred with regard to either the KSE or the MOCI. Consequently, it is not clear what restrictions, if any, might apply.

**Requests should not be refused due to matters dealing with fiscal matters (c. 40.7):**

1276. The authorities have informed the assessment team that cooperation may not be refused merely based on the involvement of fiscal matters. However, assessors have not been informed of any written process that sets forth the scope or nature of the sharing of AML/CFT information internationally or that would specifically permit the sharing of information related to fiscal matters.

**Requests should not be refused on the grounds of laws that impose secrecy or confidentiality (c. 40.8):**

1277. As outlined above, Article 28 of the CBK Law contains a confidentiality provision that restricts the ability of CBK to share confidential information. While Article 28 of the CBK Law does not specifically address secrecy with regard to AML/CFT, assessors determined that the broad secrecy provision of Article 28 goes beyond prudential matters and prohibits the disclosure of information related to AML/CFT. Assessors determined that Article 28 of the CBK Law prohibits the CBK from sharing confidential information internationally with other competent authorities outside the context of consolidated supervision. For more information, see Section 3, Recommendation 4.

1278. As mentioned above, the CBK requires an agreement for the sharing of confidential information. In the absence of an agreement of sharing, it is necessary for the CBK to go through the PPO in order to provide information, which, as stated above, would be limited to criminal matters. The assessors are not aware of a written process or procedure that governs this process. Further, the assessment team is not aware of the standards, if any, applied by the PPO to determine whether to permit or refuse information sharing.

1279. There are no secrecy provisions affecting the MOCI or the KSE.

1280. With regard to DNFBPs, it is clear that attorneys are subject to the normal confidentiality constraints when representing clients. (See Articles 11 and 35 of Law 42/1964, Regulation of Legal Profession before the Courts.) However, otherwise, the assessors were not informed of other secrecy provisions affecting DNFBPs.

**Safeguards to ensure the confidentiality of shared information (c. 40.9):**

1281. The authorities have informed the assessment team that information shared with the CBK would be subject to controls and safeguards. However, assessors were not informed of any legal or written process that would dictate the manner of sharing of AML/CFT information internationally and that would ensure that information received by the CBK is used only in an authorized manner. In addition, the assessors were not informed if such provisions are outlined in the agreements of sharing with other countries within the context of consolidated supervision.

1282. However, any information received by the CBK would be subject to the confidentiality provision in Article 28 of the CBK Law, prohibiting the disclosure of the information received from a foreign counterpart. However, this would not ensure the information received would be used only in the manner authorized.



1283. As the MOCI and the KSE have not engaged in international sharing, the assessors were not informed of any controls or safeguards that have been established to ensure that information received by competent authorities is kept confidential and is used only in an authorized manner.

**Mechanisms to permit a prompt and constructive exchange of information with non-counterparts (c. 40.10):**

1284. The assessment team was not informed of any process by which the CBK, the MOCI or the KSE could engage in the exchange of information with non-counterparts.

**Statistics (R.32):**

1285. Law enforcement authorities, the FIU, and the supervisory authorities do not maintain statistics on the number of requests for assistance made or received nor on the treatment of such requests.

**Analysis of Effectiveness**

1286. The level of cooperation by competent authorities with their international counterparts is not as wide ranging as it should be.

1287. The KFIU cannot share information with foreign FIUs. Law enforcement agencies are not proactive enough in requesting information on ML/TF and underlying predicate offences from their counterparts. They are not authorized to conduct investigations on behalf of foreign counterparts and need to reinforce the controls and safeguards to ensure that information received is used only in an authorized manner.

1288. There is an absence of clear and effective gateways for the CBK to share information with its international counterparts outside of the context of consolidated supervision and criminal matters. In addition, there is an absence of clear and effective gateways for the MOCI and the KSE to share information with their international counterparts.

1289. The necessity of the CBK to go through the PPO in certain cases represents an undue restriction to the efficient and complete ability to share information with foreign counterparts. Also, there is a lack of clear authority to share matters dealing with fiscal matters. In addition, there are secrecy impediments to CBK's ability to share with its international counterparts outside the context of consolidated supervision, and an absence of clear safeguards to ensure the confidentiality of information by the MOCI and the KSE.

1290. Finally, there is an absence of clear restrictions on the competent authorities with regard to the unauthorized use of confidential information.

**6.5.2 Recommendations and Comments**

1291. The authorities are recommended to:

- Empower the FIU to exchange information with its counterparts.
- Establish controls and safeguards to ensure that information received by LEAs is used only in an authorized manner.
- Provide for an efficient and effective mechanism by which the CBK, the MOCI and the KSE can share ML and TF information with international counterparts. Requests for cooperation should not be refused on the grounds of laws that impose secrecy or confidentiality requirements on FIs and

DNFBPs, and should not be subject to disproportionate or unduly restrictive conditions. The mechanism should include:

- The provision of the widest range of international cooperation to their foreign counterparts in a rapid, constructive and effective manner;
  - The ability to exchange information spontaneously and upon request in relation to both ML and the underlying predicate offenses;
  - A clear legal framework to conduct inquiries on behalf of foreign counterparts; and
  - Controls and safeguards to ensure that information received by competent authorities are used only in an authorized manner consistent with national provisions on privacy and data protection.
- Maintain statistics on the number of requests for assistance made or received by law enforcement authorities, the FIU and supervisors, including whether the request was granted or refused and the response time.

### 6.5.3 Compliance with Recommendation 40 and Special Recommendation V

|      | Rating | Summary of factors relative to s.6.5 underlying overall rating  |
|------|--------|---|
| R.40 | PC     | <ul style="list-style-type: none"> <li>● FIU is not able to exchange information with its counterparts.</li> <li>● Lack of controls and safeguards to ensure that information received by LEAs is used only in an authorized manner.</li> <li>● Outside the context of consolidated supervision:                             <ul style="list-style-type: none"> <li>○ International cooperation by the CBK is limited and the PPO's approval is required. The necessity for the CBK to go through the PPO in certain situations represents an undue restriction to sharing.</li> <li>○ There is a lack of clear gateways for sharing by the CBK, except in criminal matters.</li> <li>○ There is a lack of spontaneous sharing by the CBK.</li> <li>○ There are secrecy constraints against the CBK sharing confidential information.</li> <li>○ There is a lack of clear authority for the CBK to conduct inquiries for foreign counterparts without the authority of the PPO.</li> </ul> </li> <li>● International cooperation by the KSE is insufficient.</li> <li>● For the MOCI and the KSE, there is a lack of:                             <ul style="list-style-type: none"> <li>○ clear gateways for international sharing;</li> <li>○ proven spontaneous sharing;</li> <li>○ proven ability to conduct inquiries for foreign counterparts; and</li> <li>○ clear safeguards for maintaining the confidentiality of information.</li> </ul> </li> <li>● Lack of clear authority for competent authorities to share with regard to fiscal matters.</li> <li>● Lack of clear prohibition against supervisors using information for unauthorized purposes.</li> <li>● Lack of statistics and overall effectiveness.</li> </ul> |

|      | Rating | Summary of factors relative to s.6.5 underlying overall rating  |
|------|--------|---|
| SR.V | NC     | <ul style="list-style-type: none"><li>• Lack of FT criminalization limits the ability to provide cooperation by all concerned authorities.</li><li>• Lack of overall effectiveness of the exchange of information relating to TF.</li><li>• Lack of statistics.</li></ul> |

## 7. OTHER ISSUES

### 7.1 Resources and Statistics

1292. The authorities are recommended to:

- Allocate more resources to the competent authorities.
- Provide specialized training to the staff of competent authorities and develop professional standards, including confidentiality standards to control and safeguard the information.
- Develop comprehensive statistics in all relevant areas of the fight against ML and TF (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation, on-site examinations conducted by supervisors, and sanctions applied).
- Regularly review the effectiveness of the AML/CFT system.

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.30 | NC     | <ul style="list-style-type: none"> <li>• Overall, the allocation of resources is uneven, particularly in view of the rapid development and diversification of the economy.</li> <li>• Overall, Professional standards, including confidentiality standards are not fully developed.</li> <li>• Lack of specialist skills training in law enforcement authorities including prosecution agencies, FIU, supervisors (MOCI and KSE), and other competent authorities involved in combating ML/TF.</li> </ul>  |
| R.32 | NC     | <ul style="list-style-type: none"> <li>• Competent authorities have yet to develop comprehensive statistics in all relevant areas of the fight against ML and TF (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation, on-site examinations conducted by supervisors, and sanctions applied).</li> <li>• Overall, there are no statistics available on formal requests for assistance made or received by supervisors, relating to or including AML/CFT.</li> <li>• No evidence of reviews of effectiveness of Kuwait's AML/CFT system.</li> </ul> |

## TABLES

Table 1. Ratings of Compliance with FATF Recommendations

| Forty Recommendations                                | Rating    | Summary of factors underlying rating <sup>134</sup>   |
|--|-----------|---|
| <b>Legal systems</b>                                 |           |   |
| 1. ML offense  | <b>LC</b> | <ul style="list-style-type: none"> <li>Smuggling of migrants and terrorism financing are not predicate offenses for ML.</li> <li>Reluctance to undertake ML prosecutions without prior convictions for the predicate offense.</li> </ul>  |
| 2. ML offense—mental element and corporate liability | <b>LC</b> | <ul style="list-style-type: none"> <li>Criminal liability only applies to companies, and not to other legal persons.</li> </ul>   |
| 3. Confiscation and provisional measures             | <b>LC</b> | <ul style="list-style-type: none"> <li>Impossibility to confiscate property of corresponding value.</li> <li>Lack of evidence of the effectiveness of the AML confiscation framework.</li> </ul>  |
| <b>Preventive measures</b>                           |           |   |
| 4. Secrecy laws consistent with the Recommendations  | <b>LC</b> | <ul style="list-style-type: none"> <li>The financial secrecy law for the CBK impedes regulatory cooperation and sharing at the international level outside of the context of consolidated supervision and criminal cases.</li> </ul>  |
| 5. Customer due diligence                            | <b>NC</b> | <p>Lack of explicit obligations imposed by law or regulation (primary or secondary legislation) for:</p> <ul style="list-style-type: none"> <li>Undertaking customer due diligence measures when: <ul style="list-style-type: none"> <li>Carrying out occasional transactions that are wire transfers in the circumstances covered by Interpretative Note to SR.VII;</li> <li>There is suspicion of ML or TF, regardless of any exemptions or thresholds;</li> <li>The FI has doubts about the veracity or adequacy of previously obtained customer identification data.</li> </ul> </li> <li>Identifying and verifying the identity of any person purporting to act on behalf of a legal person (not only for companies and institutions).</li> <li>Identifying all types of legal persons, using reliable, independent, data or information (identification data).</li> </ul> |

<sup>134</sup> These factors are only required to be set out when the rating is less than Compliant.

| Forty Recommendations | Rating | Summary of factors underlying rating <sup>134</sup>  |
|-----------------------|--------|--|
|                       |        | <ul style="list-style-type: none"> <li>• Taking reasonable measures to determine, for all customers, whether the customer is acting on behalf of another person, who are the natural persons who ultimately own or control the customer, and also those persons who exercise ultimate effective control over a legal person or arrangement.</li> <li>• Conducting ongoing due diligence on the business relationship, including the scrutiny of transactions undertaken through the relationship.</li> </ul> <p>Lack of measures in law, regulation or other enforceable means that require FIs to:</p> <ul style="list-style-type: none"> <li>• Verify the legal status of all legal persons.</li> <li>• Understand the ownership and control structure of the customers.</li> <li>• Obtain information on the purpose and intended nature of the business relationship with regard to insurance companies and exchange organizations and the intended nature of the business relationship with regard to banks, investment companies, and brokerage companies.</li> <li>• Undertake reviews of existing records collected under the CDD process, particularly for higher-risk categories of customers and business relationships.</li> <li>• Ensure that documents, data, and information collected by insurance companies, exchange organizations, and brokerage companies under the CDD process are kept up-to-date and relevant.</li> <li>• Perform enhanced due diligence for higher-risk categories of customer, business relationships, and transactions.</li> <li>• Consider making a suspicious transaction report when FIs are unable to comply with Criteria 5.3 to 5.6.</li> <li>• Terminate the business relationship and consider making a suspicious transaction report after the business relationship has commenced, but the FI is not longer satisfied with the veracity or adequacy of previously obtained customer identification data.</li> <li>• Apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times (insurance companies, exchange organizations and brokerage companies).</li> </ul> <p>Effectiveness issues:</p> <ul style="list-style-type: none"> <li>• The effective implementation of the requirements is undermined by factors, such as: <ul style="list-style-type: none"> <li>○ The lack of evidence supporting that implementation is effective, especially for exchange companies, insurance companies, exchange organizations, and brokerage companies.</li> <li>○ The lack of effective supervision of insurance companies, exchange organizations, and brokerage</li> </ul> </li> </ul> |

| Forty Recommendations                           | Rating    | Summary of factors underlying rating <sup>134</sup>   |
|---|-----------|---|
|   |           | companies.  |
| 6. Politically exposed persons                  | <b>NC</b> | <ul style="list-style-type: none"> <li>● No clear definition of PEPs under the legal framework.</li> <li>● Lack of requirements for exchange companies, insurance companies, exchange organizations, and brokerage companies with respect to PEPs.</li> <li>● Lack of requirements for banks and investment companies to perform CDD measures or to put in place appropriate risk management systems to determine whether a potential customer, a customer, or a beneficial owner is a PEP.</li> <li>● Lack of requirements for banks and investment companies to obtain senior management approval to continue a business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP.</li> <li>● Lack of requirement for banks and investment companies to take reasonable measures to establish the source of wealth of customers and the source of wealth and the source of funds of beneficial owners identified as PEPs.</li> <li>● Lack of requirement for banks and investment companies to conduct enhanced ongoing monitoring when they are in a business relationship with a PEP.</li> <li>● Limited effectiveness in the implementation of the measures undertaken by FIs with regard to PEPs.</li> </ul> |
| 7. Correspondent banking                        | <b>PC</b> | <ul style="list-style-type: none"> <li>● Lack of requirements for banks, exchange companies, and investment companies to gather sufficient information about the respondent institutions in order to be able to fully understand the nature of the respondents' business and to determine from publicly available information the reputation of the institution or the quality of supervision, including whether the institution has been subject to ML investigation or regulatory action.</li> <li>● Lack of requirements for banks, exchange companies, and investment companies to document the respective AML/CFT responsibilities of each institution.</li> </ul>   |
| 8. New technologies & non face-to-face business | <b>NC</b> | <ul style="list-style-type: none"> <li>● No requirements for exchange companies, insurance companies, exchange organizations, or brokerage companies regarding the misuse of new technologies.</li> <li>● No requirements for FIs to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions.</li> <li>● Limited effectiveness in the implementation of requirements related to modern technologies and non-face to face transactions.</li> </ul>   |
| 9. Third parties and introducers                | <b>NC</b> | <ul style="list-style-type: none"> <li>● While in practice some financial institutions do rely on third parties to perform some CDD measures, there is no requirement in law, regulation or OEM to regulate the</li> </ul>  |

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|                          |           | conditions of this reliance.   |
| 10. Record-keeping       | <b>LC</b> | <ul style="list-style-type: none"> <li>● The requirement to maintain records of identification data, account file and business correspondence is tied to a transaction, not to the termination of an account or business relationship.</li> <li>● There is no requirement for brokerage companies, insurance companies or exchange organizations to provide information on a timely basis to domestic competent authorities with appropriate authority.</li> <li>● FIs are only required to extend the record-keeping requirement if requested by a criminal investigator in specific cases upon proper authority. This requirement does not extend to a request by other competent authorities, such as financial supervisors.</li> </ul>   |
| 11. Unusual transactions | <b>PC</b> | <ul style="list-style-type: none"> <li>● There are no requirements for insurance companies, exchange organizations, or brokerage companies regarding unusual transactions.</li> </ul>  |
| 12. DNFBP–R.5, 6, 8–11   | <b>NC</b> | <p><i>Applying R.5:</i></p> <ul style="list-style-type: none"> <li>● Lack of explicit obligations imposed by law (primary or secondary legislation) for undertaking customer due diligence measures when: <ul style="list-style-type: none"> <li>○ Carrying out occasional transactions above the applicable designated threshold.</li> <li>○ There is suspicion of ML or TF, regardless of any exemptions or thresholds.</li> <li>○ The FI has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>○ Identifying and verifying the identity of all occasional customers.</li> <li>○ Identifying and verifying the identity of any person purporting to act on behalf of a legal person (not only for companies and institutions).</li> <li>○ Identifying all types of legal persons, using reliable, independent data or information.</li> <li>○ Taking reasonable measures to determine who are the natural persons that ultimately own or control the customer, and also those persons who exercise ultimate effective control over a legal person or arrangement.</li> <li>○ For lawyers, conducting ongoing due diligence on the business relationship.</li> </ul> </li> <li>● Lack of measures in law, regulation or other enforceable means that require DNFBPs to: <ul style="list-style-type: none"> <li>○ Verify the legal status of all legal persons and legal arrangements (not only for companies and institutions).</li> <li>○ Understand the ownership and control structure of the customer.</li> <li>○ Perform enhanced due diligence for higher risk</li> </ul> </li> </ul> |



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|                                      |           | <p>categories of customer, business relationships or transactions.</p> <ul style="list-style-type: none"> <li>○ Consider filing an STR when DNFBPs are unable to comply with criteria 5.3 to 5.5.</li> <li>● Lack of measures in law, regulation or other enforceable means that require lawyers to: <ul style="list-style-type: none"> <li>○ Obtain information on the purpose and intended nature of the business relationship.</li> <li>○ Conduct ongoing due diligence and scrutinize transactions undertaken through the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of their customers, their business and risk profile, and where necessary, the source of funds.</li> <li>○ Ensure that documents, data and information collected under the CDD process is kept up-to-date, particularly for higher risk categories.</li> <li>○ Satisfactorily completing CDD or applying CDD measures to existing customers.</li> </ul> </li> <li>● Lack of or inadequate implementation by DNFBPs.</li> </ul> <p><i>Applying R.10:</i></p> <ul style="list-style-type: none"> <li>● The recordkeeping requirement in law and regulation is tied to the transaction, not to the termination of an account or business relationship.</li> <li>● There is no requirement for DNFBPs to provide information on a timely basis to domestic competent authorities with appropriate authority.</li> <li>● Lack of or inadequate implementation by DNFBPs.</li> </ul> <p><i>Applying R.6, 8-9, and 11:</i></p> <ul style="list-style-type: none"> <li>● No requirements for DNFBPs related to PEPs, payment technologies, introduced business and unusual transactions.</li> </ul> |
| 13. Suspicious transaction reporting | <b>NC</b> | <ul style="list-style-type: none"> <li>● There is no requirement in law or regulation that STRs be filed with the FIU.</li> <li>● Due to the lack of an autonomous TF offense, there is no obligation in law or regulation to make an STR when there are reasonable grounds to suspect that funds are related to TF.</li> <li>● There is no requirement in law or regulation to report attempted transactions.</li> <li>● Lack of effective implementation of the requirement to report suspicious transactions.</li> </ul>  |
| 14. Protection & no tipping-off      | <b>PC</b> | <ul style="list-style-type: none"> <li>● There is no prohibition against banks, investment companies, or exchange companies from disclosing the fact that an STR or related information was reported or provided to the FIU or PPO.</li> </ul>   |

| Forty Recommendations                     | Rating    | Summary of factors underlying rating <sup>134</sup>  |
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|   |           | <ul style="list-style-type: none"> <li>• There is no prohibition against brokerage companies, insurance companies, and exchange organizations, their directors, officers, or employees from disclosing the fact that an STR or related information was reported or provided to the FIU or PPO.</li> </ul>  |
| 15. Internal controls, compliance & audit | <b>PC</b> | <ul style="list-style-type: none"> <li>• Brokerage companies are not required to establish and maintain internal procedures, policies, and controls to the prevention of TF.</li> <li>• FIs are not specifically required to communicate their internal procedures, policies, and controls to their employees and are not specifically required to contain requirements on CDD, record retention, the detection of unusual transactions, and the STR reporting obligations.</li> <li>• There is no requirement for banks or investment companies that the compliance officer or the head of the compliance unit be at the management level.</li> <li>• There is no requirement for exchange companies, brokerage companies, insurance companies, or exchange organizations to develop appropriate compliance management arrangements, including, at a minimum, the designation of an AML/CFT compliance officer at the management level.</li> <li>• There is no requirement that FIs ensure that compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, transactions records, and other relevant information.</li> <li>• For banks, investment companies, and exchange companies: <ul style="list-style-type: none"> <li>○ There is no requirement that audits be adequately resourced and independent to test for compliance with internal procedures, policies, and controls.</li> <li>○ It is unclear whether audits are required to perform sample testing of procedures, policies, and controls.</li> <li>○ There is no requirement that brokerage companies, insurance companies, or exchange organizations maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.</li> <li>○ There is no requirement that banks, investment companies, exchange companies, brokerage companies, insurance companies, or exchange organizations put in place a screening procedure to ensure high standards when hiring new employees.</li> </ul> </li> <li>• There is a lack of effective implementation by brokerage companies, insurance companies, and exchange organizations of requirements to: <ul style="list-style-type: none"> <li>○ Establish and maintain internal procedures, policies and controls to prevent ML and TF;</li> <li>○ Establish ongoing employee training to ensure that employees are kept informed of new developments,</li> </ul> </li> </ul> |

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|                        |           | including information on current ML and TF techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and, in particular, the requirements concerning CDD and suspicious transaction reporting.   |
| 16. DNFBP–R.13–15 & 21 | <b>NC</b> | <p><i>Applying R.13:</i></p> <ul style="list-style-type: none"> <li>• There is no requirement in law or regulation that DNFBPs report to the FIU.</li> <li>• Due to the lack of an autonomous TF offense, there is no obligation in law or regulation to file an STR when there are reasonable grounds to suspect those funds are related to TF.</li> <li>• There is no requirement in law or regulation to report attempted transactions.</li> </ul> <p><i>Applying R.14:</i></p> <ul style="list-style-type: none"> <li>• There is no prohibition against DNFBPs disclosing the fact that an STR or related information is being provided to the competent authorities.</li> </ul> <p><i>Applying R.15:</i></p> <ul style="list-style-type: none"> <li>• Other than for the detection of suspicious transactions, there are no requirements for real estate agents and lawyers to establish and maintain internal procedures, policies, and controls to prevent ML and TF and to communicate these to their employees.</li> <li>• There is no requirement for lawyers or real estate agents to establish and maintain internal procedures, policies, and controls to prevent ML and TF, and to communicate internal procedures, policies, and controls to prevent ML and TF to their employees.</li> <li>• There is no requirement for DNFBPs to develop appropriate compliance management arrangements.</li> <li>• There is no requirement for DNFBPs to maintain an adequately resourced and independent audit function to test compliance with internal procedures, policies, and controls.</li> <li>• There is no requirement for DNFBPs to establish ongoing employee training.</li> <li>• There is no requirement for DNFBPs to put in place procedures to ensure high standards when hiring employees.</li> </ul> <p><i>Applying R.21:</i></p> <ul style="list-style-type: none"> <li>• There is no requirement for DNFBPs related to countries which do not or insufficiently apply the FATF recommendations.</li> <li>• There is no requirement for DNFBPs to examine transactions that have no apparent economic or visible lawful purpose.</li> </ul> |

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| 17. Sanctions                                   | <b>NC</b> | <ul style="list-style-type: none"> <li>● Lack of a clear designation of the authorities empowered to apply sanctions.</li> <li>● Absence of a clear basis for the MOCI to apply sanctions to insurance companies and exchange organizations for not complying with AML/CFT requirements.</li> <li>● Lack of a sanction regime with respect to directors and senior management of insurance companies, exchange organizations, and brokerage companies.</li> <li>● Lack of a sufficient range of sanctions. Sanctions are not proportionate and dissuasive (MOCI, KSE).</li> <li>● The involvement of the Minister of Finance in applying one of the sanctions set forth under the CBK Law (deletion from CBK's Register), undermines the effectiveness of the sanctioning regime.</li> <li>● Lack of penalties/sanctions in the securities sector despite the low level of compliance of the sector with AML/CFT provisions.</li> <li>● The sanctioning regime, especially for the MOCI and KSE, is not effective.</li> </ul> |
| 18. Shell banks                                 | <b>PC</b> | <ul style="list-style-type: none"> <li>● There are not sufficient legal provisions preventing the establishment or continued operation of shell banks. There is no requirement that banks seeking a license have or maintain a physical presence in Kuwait in accordance to the FATF standard.</li> <li>● There is no prohibition on exchange companies from entering into or continuing correspondent banking relationships with shell banks.</li> </ul>   |
| 19. Other forms of reporting                    | <b>C</b>  | <ul style="list-style-type: none"> <li>● This recommendation is fully observed.</li> </ul>  |
| 20. Other NFBP & secure transaction techniques  | <b>PC</b> | <ul style="list-style-type: none"> <li>● No consideration has been given to applying Recommendations 5, 6, 8–11, 13–15, 17 or 21 to NFBPs that are at risk of being misused for ML and TF.</li> <li>● Although Kuwait has taken some important steps to reduce the reliance on cash as a payment method, there is still a very high reliance on cash, especially among the large expatriate community.</li> </ul>   |
| 21. Special attention for higher risk countries | <b>NC</b> | <ul style="list-style-type: none"> <li>● There are no requirements for exchange companies, insurance companies, exchange organizations, or brokerage companies regarding business relationships and transactions with persons from or in countries which do not, or which insufficiently, apply the FATF recommendations.</li> <li>● There are no effective measures to ensure that FIs are advised of concerns about the weaknesses of the AML/CFT systems of other countries.</li> <li>● There are no requirements for banks or investment companies to examine and prepare written findings with</li> </ul>  |

| Forty Recommendations                            | Rating    | Summary of factors underlying rating <sup>134</sup>  |
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|  |           | <p>regard to transactions involving noncompliant countries that have no apparent economic or visible lawful purpose.</p> <ul style="list-style-type: none"> <li>• Kuwait has not applied appropriate counter measures to countries that continue not to apply to insufficiently apply the FATF Recommendations.</li> </ul>   |
| 22. Foreign branches & subsidiaries              | <b>NC</b> | <ul style="list-style-type: none"> <li>• There are no requirements for FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e., host country) laws and regulations permit.</li> <li>• There is no requirement that, where the minimum AML/CFT requirements of the home and host countries differ, the branches and subsidiaries in host countries apply the higher standard.</li> <li>• There is no requirement that investment companies, exchange companies, brokerage companies, insurance companies, or exchange organizations inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.</li> </ul>   |
| 23. Regulation, supervision and monitoring       | <b>LC</b> | <ul style="list-style-type: none"> <li>• Lack of a clear basis for the MOCI to supervise the insurance sector and the exchange organizations to ensure compliance with AML/CFT requirements.</li> <li>• Lack of provisions related to the control by supervisory authorities of the ownership structure of FIs to prevent criminals and their associates from holding or being the beneficial owners of a significant controlling interest.</li> <li>• Lack of ability for the CBK, MOCI, and KSE to apply fit and proper test on directors and senior management of investment companies, exchange companies, insurance companies, exchange organizations, and brokerage companies.</li> <li>• No supervision of brokerage companies for compliance with AML/CFT obligations.</li> <li>• The insurance sector and the exchange organizations are not effectively supervised for compliance with AML/CFT requirements.</li> <li>• Low awareness by the FIs under the supervision of the MOCI of the AML/CFT requirements.</li> </ul> |
| 24. DNFBP—regulation, supervision and monitoring | <b>NC</b> | <ul style="list-style-type: none"> <li>• DNFBPs are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.</li> <li>• Absence of a clear legal framework for monitoring and ensuring compliance of real estate agents or dealers in precious metals and stones.</li> </ul>   |
| 25. Guidelines & Feedback                        | <b>NC</b> | <ul style="list-style-type: none"> <li>• Lack of guidelines for brokerage companies, insurance companies or exchange organizations.</li> </ul>   |

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|   |           | <ul style="list-style-type: none"> <li>● Limited guidelines on STR reporting provided by the CBK to relevant institutions.</li> <li>● Lack of adequate and appropriate feedback from competent authorities.</li> <li>● There is an insufficient amount of guidance by the CBK for FIs on how to implement and comply with their AML/CFT obligations.</li> <li>● Lack of guidelines for DNFBPs to assist in implementing and complying with AML/CFT obligations.</li> <li>● Lack of adequate and appropriate feedback from competent authorities to DNFBPs.</li> </ul>  |
| <b>Institutional and other measures</b> |           |  |
| 26. The FIU                             | <b>NC</b> | <ul style="list-style-type: none"> <li>● Absence of a clear legal basis for establishing the KFIU and providing it with its powers and functions.</li> <li>● No clear guidance on filing STRs has been issued by the KFIU.</li> <li>● Insufficient tactical, operational and strategic analysis of STRs and other related information.</li> <li>● Absence of a legal basis to request additional information from FIs and DNFBPs.</li> <li>● The KFIU is not authorized to disseminate financial information to domestic agencies for investigation or when there are grounds to suspect ML or TF.</li> <li>● Inadequate operational independence and autonomy to ensure that the KFIU is free from undue influence or interference.</li> <li>● Inadequate protection of information and premises.</li> <li>● No publication of periodic reports.</li> </ul> |
| 27. Law enforcement authorities         | <b>PC</b> | <ul style="list-style-type: none"> <li>● No autonomous or predicate TF offense as legal basis for investigative/compulsory measures.</li> <li>● Overall, investigation and prosecution authorities do not appear to adequately pursue ML cases.</li> <li>● Shortage of evidence as to the effectiveness of law enforcement authorities and the lack of statistics.</li> </ul>  |
| 28. Powers of competent authorities     | <b>PC</b> | <ul style="list-style-type: none"> <li>● No autonomous or predicate TF offense as a legal basis for investigative/compulsory measures.</li> <li>● Shortage of evidence as to the effectiveness of law enforcement authorities and the lack of statistics.</li> </ul>   |
| 29. Supervisors                         | <b>NC</b> | <ul style="list-style-type: none"> <li>● Lack of a clear basis and supervisory authority/powers for the MOCI to ensure compliance by the insurance companies and the exchange organizations with AML/CFT requirements.</li> <li>● Lack of powers to monitor compliance and conduct</li> </ul>  |

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|  |           | <p>inspections of the FIs subject to the MOCI's control.</p> <ul style="list-style-type: none"> <li>• The supervisory powers of the KSE to monitor and inspect are not adequate and lack a clear process.</li> <li>• Lack of AML/CFT inspections of brokerage companies to monitor compliance.</li> <li>• AML/CFT inspections on exchange organizations and insurance companies are limited in scope and are not effective..</li> <li>• Lack of examinations procedures in place for the supervision of the insurance companies, exchange organizations, and brokerage companies</li> <li>• MOCI and KSE do not have adequate powers of enforcement and sanction against FIs, their directors, and senior management.</li> <li>• The CBK's power with respect to the revocation of licenses is dependent on the decision of the Minister of Finance.</li> <li>• Lack of effectiveness.</li> </ul> |
| 30. Resources, integrity, and training | <b>NC</b> | <ul style="list-style-type: none"> <li>• Overall, the allocation of resources is uneven, particularly in view of the rapid development and diversification of the economy.</li> <li>• Overall, professional standards, including confidentiality standards are not fully developed.</li> <li>• Lack of specialist skills training in law enforcement authorities including prosecution agencies, FIU, supervisors (MOCI and KSE), and other competent authorities involved in combating ML/TF.</li> </ul>   |
| 31. National co-operation              | <b>PC</b> | <ul style="list-style-type: none"> <li>• Lack of effective mechanisms in place which enable the concerned authorities to coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF.</li> <li>• Absence of coordination and mechanisms between the CCT members for the implementation of UNSCR 1267 and 1373.</li> </ul>  |
| 32. Statistics                         | <b>NC</b> | <ul style="list-style-type: none"> <li>• Competent authorities have yet to develop comprehensive statistics in all relevant areas of the fight against ML and TF (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation, on-site examinations conducted by supervisors, and sanctions applied).</li> <li>• Overall, there are no statistics available on formal requests for assistance made or received by supervisors, relating to or including AML/CFT.</li> <li>• No evidence of reviews of effectiveness of Kuwait's AML/CFT system.</li> </ul>  |

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| 33. Legal persons–beneficial owners        | <b>NC</b> | <ul style="list-style-type: none"> <li>● Changes in ownership and control information of corporations are not kept up-to-date.</li> <li>● Absence of adequate, accurate, and current information related to corporations that can be obtained in a timely fashion by competent authorities.</li> </ul>  |
| 34. Legal arrangements – beneficial owners | <b>NA</b> | Not applicable. There are no legal arrangements such as trusts in Kuwait.   |
| <b>International Cooperation</b>           |           |   |
| 35. Conventions                            | <b>PC</b> | <ul style="list-style-type: none"> <li>● Kuwait has not ratified the 1999 UNCSFT convention.</li> <li>● Vienna and Palermo are not fully implemented: <ul style="list-style-type: none"> <li>○ Smuggling of migrants and terrorism financing are not predicate offenses for ML.</li> <li>○ Criminal liability only applies to companies, and not to other legal persons.</li> </ul> </li> </ul>   |
| 36. Mutual legal assistance (MLA)          | <b>LC</b> | <ul style="list-style-type: none"> <li>● International cooperation in the area of search or seizure of property, proceeds or instrumentalities is slowed down, or hampered, as requests can be executed only when emanating from a competent “judicial” authority in another country.</li> <li>● MLA not provided, in most cases, in a rapid manner.</li> </ul>   |
| 37. Dual criminality                       | <b>LC</b> | <ul style="list-style-type: none"> <li>● Lack of clarity in internal Kuwaiti law as to manner in which it gives effect to Article 18, paragraph 9 of the Palermo Convention.</li> </ul>   |
| 38. MLA on confiscation and freezing       | <b>LC</b> | <ul style="list-style-type: none"> <li>● No value-based confiscation.</li> </ul>  |
| 39. Extradition                            | <b>LC</b> | <ul style="list-style-type: none"> <li>● Impossibility of assessing the effectiveness of the extradition system in the ML/TF area.</li> </ul>   |
| 40. Other forms of co-operation            | <b>PC</b> | <ul style="list-style-type: none"> <li>● FIU is not able to exchange information with its counterparts.</li> <li>● Lack of controls and safeguards to ensure that information received by LEAs is used only in an authorized manner.</li> <li>● Outside the context of consolidated supervision: <ul style="list-style-type: none"> <li>○ International cooperation by the CBK is limited and the PPO’s approval is required. The necessity for the CBK to go through the PPO in certain situations represents an undue restriction to sharing.</li> <li>○ There is a lack of clear gateways for sharing by the CBK, except in criminal matters.</li> <li>○ There is a lack of spontaneous sharing by the CBK.</li> <li>○ There are secrecy constraints against the CBK sharing confidential information.</li> <li>○ There is a lack of clear authority for the CBK to</li> </ul> </li> </ul> |



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|                       |        | <p>conduct inquiries for foreign counterparts without the authority of the PPO.</p> <ul style="list-style-type: none"> <li>● International cooperation by the KSE is insufficient.</li> <li>● For the MOCI and the KSE, there is a lack of: <ul style="list-style-type: none"> <li>○ clear gateways for international sharing;</li> <li>○ proven spontaneous sharing;</li> <li>○ proven ability to conduct inquiries for foreign counterparts; and</li> <li>○ clear safeguards for maintaining the confidentiality of information.</li> </ul> </li> <li>● Lack of clear authority for competent authorities to share with regard to fiscal matters.</li> <li>● Lack of clear prohibition against supervisors using information for unauthorized purposes.</li> <li>● Lack of statistics and overall effectiveness.</li> </ul> |

| Nine Special Recommendations                  |           |   |
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| SR.I Implement UN instruments                 | <b>NC</b> | <ul style="list-style-type: none"> <li>● Kuwait is not party to and has not implemented the ICST Convention.</li> <li>● Kuwait has not implemented the UNSCRs 1267 and 1373.</li> </ul>   |
| SR.II Criminalize terrorist financing         | <b>NC</b> | <ul style="list-style-type: none"> <li>● No specific provision criminalizing TF.</li> </ul>   |
| SR.III Freeze and confiscate terrorist assets | <b>NC</b> | <ul style="list-style-type: none"> <li>● There is no law and procedure in place to implement UNSCRs 1267 and 1373, or to handle freezing requests from other countries.</li> <li>● There is no authority responsible for the designations, or a legal basis for the freezing/seizing orders.</li> <li>● Implementation of freezing orders, when it occurs, takes more than “a matter of hours.”</li> <li>● No coordination mechanism in place for the implementation of UNSCRs 1267 and 1373.</li> <li>● No communication mechanisms or guidance for institutions not subject to the CBK supervision.</li> <li>● Lack of an appropriate review mechanism.</li> <li>● Lack of clear monitoring and sanctioning procedures to verify implementation of freezing requests.</li> <li>● No criminalization of TF.</li> </ul> |
| SR.IV Suspicious transaction reporting        | <b>NC</b> | <ul style="list-style-type: none"> <li>● Due to the lack of an autonomous TF offense, there is no obligation in law or regulation for FIUs to report to the FIU when they suspect or have reasonable grounds to suspect funds are related to, or are being used for, terrorism, terrorist acts, or by terrorist organizations or</li> </ul>   |

| Nine Special Recommendations                                 |           |   |
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|  |           | <p>those who finance terrorism.</p> <ul style="list-style-type: none"> <li>• There is no requirement in law or regulation for FIs to report attempted transactions, regardless of amount, when there are reasonable grounds to suspect those funds are related to, or are being used for, terrorism, terrorist acts, or by terrorist organizations or those who finance terrorism.</li> </ul>   |
| SR.V International cooperation                               | <b>NC</b> | <ul style="list-style-type: none"> <li>• Lack of criminalization of TF.</li> <li>• Impossibility to assess the effectiveness of the mutual legal assistance and extradition regimes relating to TF due to the limited number of cases.</li> <li>• Lack of FT criminalization limits the ability to provide cooperation by all concerned authorities.</li> <li>• Lack of overall effectiveness of the exchange of information relating to TF.</li> <li>• Lack of statistics.</li> </ul>  |
| SR.VI AML/CFT requirements for money/value transfer services | <b>PC</b> | <ul style="list-style-type: none"> <li>• Lack of effective monitoring of a potential small informal money/value transfer system operating in Kuwait.</li> <li>• The application of the FATF Recommendations to MVTS providers suffers from the same deficiencies identified in relation to the rest of the financial sector (see Sections 3.1 to 3.10 of this report).</li> </ul>   |
| SR.VII Wire transfer rules                                   | <b>LC</b> | <ul style="list-style-type: none"> <li>• The shortcomings identified under Recommendations 17 (sanctions) and 23 (monitoring and supervision) have a negative impact on this Special Recommendation.</li> </ul>   |
| SR.VIII Non-profit organizations                             | <b>PC</b> | <ul style="list-style-type: none"> <li>• The association and foundations supervision regime is not comprehensive like the one in place for charities.</li> <li>• Absence of requirement to maintain records for five years.</li> <li>• Lack of outreach to the NPO sector.</li> <li>• Sanctions for noncompliance with registration requirements are not effective and dissuasive.</li> </ul>   |
| SR.IX Cross-Border Declaration & Disclosure                  | <b>PC</b> | <ul style="list-style-type: none"> <li>• Absence of requirement of the declaration system for outbound cross-border transportation of cash and bearer negotiable instruments.</li> <li>• Absence of clear definition of bearer negotiable instruments.</li> <li>• Absence of implementation of the system for outbound transportation of currency and bearer negotiable instruments.</li> <li>• Lack of clear powers to request and obtain further information from the carrier with regard to the origin of the currency or the bearer negotiable instruments and their intended use.</li> </ul> |

| Nine Special Recommendations |  |  |
|------------------------------|--|--|
|                              |  | <ul style="list-style-type: none"><li>• No specific powers to be able to stop or restrain currency and bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found.</li><li>• Lack of proportionate sanctions for false disclosure, failure to disclose, or cross-border transportation for ML and TF purposes.</li><li>• Lack of requirement for the retention of records.</li><li>• The absence of criminalization of TF as autonomous or predicate offense will affect the effectiveness of the implementation of SR.IX.</li><li>• Insufficient statistics upon which to assess the effectiveness of the measures in place.</li></ul> |

Table 2. Recommended Action Plan to Improve the AML/CFT System

| FATF 40+9 Recommendations   | Recommended Action (in order of priority within each section)   |
|---|---|
| <b>1. General</b>   |   |
| <b>2. Legal System and Related Institutional Measures</b>                 |   |
| <b>2.1 Criminalization of Money Laundering (R.1 &amp; 2)</b>              | <p><b>Recommendation 1:</b></p> <ul style="list-style-type: none"> <li>Effectively undertake prosecutions for ML also in cases where no prior conviction for the predicate offense has been obtained.</li> <li>Criminalize the following categories of offenses: smuggling of migrants and terrorism financing.</li> </ul> <p><b>Recommendation 2:</b></p> <ul style="list-style-type: none"> <li>Extend criminal liability to all legal persons, not just the companies licensed by the MOCI.</li> </ul>   |
| <b>2.2 Criminalization of Terrorist Financing (SR.II)</b>                 | <ul style="list-style-type: none"> <li>The authorities should criminalize TF in accordance with SR.II.</li> </ul>   |
| <b>2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)</b> | <ul style="list-style-type: none"> <li>Make provision allowing for confiscation of property of corresponding value.</li> <li>Ensure that the AML confiscation regime is applied effectively and is frequently used to seize and confiscate criminal assets for ML and predicate crimes.</li> </ul>  |
| <b>2.4 Freezing of funds used for terrorist financing (SR.III)</b>        | <ul style="list-style-type: none"> <li>Adopt laws and procedures to comply with SR.III. In particular, the authorities should adopt legislation that provides for the freezing of terrorist assets in the context of UNSCRs 1267 and 1373, and their respective successor Resolutions, and for the proper handling of freezing requests from other countries (including a specific procedure for the implementation of UNSCRs 1267 and 1373).</li> <li>Ensure that the implementation of the freezing orders takes place within “a matter of hours”<sup>135</sup> and without prior notice to the target.</li> <li>Ensure that the institutions which are not subject to the supervision of the CBK are aware about the implications of the notifications received under UNSCRs 1267 and 1373, and the manner in which they should be implemented.</li> <li>Adopt specific provision criminalizing TF.</li> </ul> |
| <b>2.5 The Financial Intelligence Unit and its functions (R.26)</b>       | <ul style="list-style-type: none"> <li>Address the legal basis that established the KFIU as a national center for receiving (and, as permitted, requesting), analyzing, and disseminating disclosures of STRs and other relevant information concerning suspected ML or TF activities.</li> <li>Ensure that the KFIU provides FIs and other reporting parties with guidance regarding the manner of reporting, including the procedures to be followed when reporting.</li> <li>Ensure that the KFIU (i) reinforce its access, on a timely basis to the financial, administrative and law enforcement information; (ii) request on regular basis additional information from reporting entities; (iii)</li> </ul>   |

<sup>135</sup> It rather takes over two/three days under the current system.

| FATF 40+9 Recommendations  | Recommended Action (in order of priority within each section)   |
|--|---|
|  | <p>enhance the quality of its STR operational and tactical analysis; and (iv) conduct strategic analysis.</p> <ul style="list-style-type: none"> <li>• Protect the security of the information held by the KFIU and disseminate it in accordance with the law.</li> <li>• Ensure that the KFIU publishes periodically annual reports, typologies and trends of ML/TF.</li> <li>• Ensure that the KFIU periodically reviews the effectiveness of the system to combat ML and TF and improves its collection of statistics.</li> <li>• Provide the KFIU with its own dedicated staff and supply it with the appropriate IT equipment and analytical databases to accomplish its mission. The staff should receive in-depth training on the core functions of the FIU.</li> </ul>  |
| <p><b>2.6 Law enforcement, prosecution and other competent authorities (R.27 &amp; 28)</b></p> | <ul style="list-style-type: none"> <li>• Take a more proactive approach to investigating and prosecuting ML and TF.</li> <li>• Introduce an autonomous and predicate TF offense required to complete the AML/CFT regime.</li> <li>• Ensure that law enforcement authorities keep comprehensive statistics on the amount of criminal proceeds seized and confiscated and on the number of ML/TF investigations, prosecutions, and judgments to measure the effectiveness and competence of the AML/CFT system.</li> </ul>  |
| <p><b>2.7 Cross-Border Declaration &amp; Disclosure (SR IX)</b></p>                            | <ul style="list-style-type: none"> <li>• Amend the AML Law to provide a clear legal basis for a declaration system when leaving the country and adopt a national strategic approach to detect the physical cross-border transportation of currency and bearer negotiable instruments. The system should apply to both incoming and outgoing transportation of currency and bearer negotiable instruments and should be extended to the shipment of currency and bearer negotiable instruments through cargo containers and the mail.</li> <li>• Define clearly the term “bearer negotiable instruments” to include monetary instruments in bearer form such as: travelers cheques; negotiable instruments (including cheques, promissory notes, and money orders) that are either in bearer form, endorsed without restriction made out to a fictitious payee, or otherwise in such a form that title can pass upon delivery; and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee’s name omitted.</li> <li>• Take legislative steps to align the cross-border cash and bearer negotiable instruments powers to Customs to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of ML or TF and the temporary restraint measures, and the adequate and uniform level of sanctions.</li> <li>• Provide Customs with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found, where there is a suspicion of ML or TF; or where there is a false declaration.</li> <li>• Enhance the exchange of information between the customs and the KFIU and create a database at the Customs to record all declared data related to currencies and bearer financial instruments.</li> </ul> |
| <p><b>3. Preventive Measures–Financial Institutions</b></p>                                    |   |

| FATF 40+9 Recommendations   | Recommended Action (in order of priority within each section)   |
|---|---|
| <b>3.1 Risk of money laundering or terrorist financing</b>                        |   |
| <b>3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)</b> | <p>There are significant shortcomings in Kuwait's AML/CFT framework. This is due, in part, to the fact that a number of requirements that should be set out in primary or secondary legislation are addressed through OEMs or other lower-level texts. In most cases, the measures in place for customer identification are too general and lack the level of detail required under the standard. In addition, a number of CDD requirements are missing.</p> <p>The authorities should review Article 3 of Ministerial Resolution 9/2005 in order to clarify and make sure that no threshold is applied to undertake CDD measures regarding regular customers.</p> <p>Neither the AML Law nor Ministerial Resolution 9/2005 provide a definition of what constitutes beneficial ownership, creating a clear need for further clarification from regulators as to what is expected in the whole area of beneficial ownership.</p> <p>In order to address the shortcomings in the financial sector, it is recommended that the authorities establish, through primary or secondary legislation, clear requirements for FIs to:</p> <ul style="list-style-type: none"> <li>• Undertake customer due diligence (CDD) measures when: <ul style="list-style-type: none"> <li>○ Carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR.VII.</li> <li>○ There is a suspicion of ML or TF, regardless of any exemptions or thresholds.</li> <li>○ The FI has doubts about the veracity or adequacy of previously obtained customer identification data.</li> </ul> </li> <li>• Identify and verify the identity of all types of legal persons, not only companies and institutions, using reliable, independent, data or information (identification data).</li> <li>• Verify that any person purporting to act on behalf of a legal person (not only for companies and institutions) is so authorized, and identify and verify the identity of that person.</li> <li>• Take reasonable measures to determine, for all customers, whether the customer is acting on behalf of another person; who are the natural persons that ultimately own or control the customer; and also those persons who exercise ultimate effective control over a legal person or arrangement.</li> <li>• Conduct ongoing due diligence on the business relationship.</li> </ul> <p>The authorities are recommended to establish, through law, regulation, or other enforceable means, clear obligations/requirements for FIs to:</p> <ul style="list-style-type: none"> <li>• Understand the ownership and control structure of the customers.</li> <li>• Verify the legal status of all legal persons.</li> <li>• Obtain information on the purpose and intended nature of the business relationship with regard to insurance companies and exchange organizations.</li> <li>• Obtain information on the intended nature of the business relationship with regard to banks, investment companies and brokerage companies.</li> <li>• Include the scrutiny of transactions undertaken through the course of that relationship to ensure that the transactions being conducted are consistent with the institutions' knowledge of their customers, their</li> </ul> |

| FATF 40+9 Recommendations | Recommended Action (in order of priority within each section)   |
|---------------------------|---|
|                           | <p>business and risk profile, and where necessary, the source of funds.</p> <ul style="list-style-type: none"> <li>• Undertake reviews of existing records collected under the CDD process, particularly for higher-risk categories of customers or business relationships.</li> <li>• Ensure that documents, data, or information collected by insurance companies, exchange organizations, and brokerage companies under the CDD process are kept up-to-date and relevant.</li> <li>• Perform enhanced due diligence for higher-risk categories of customers, business relationships, or transactions.</li> <li>• Consider making a suspicious transaction report when FIs are unable to comply with Criteria 5.3 to 5.6.</li> <li>• Terminate the business relationship and make a suspicious transaction report when the business relationship has commenced and the FI is no longer satisfied with the veracity or adequacy of previously obtained identification data.</li> <li>• Require insurance companies, exchange organizations and brokerage companies to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.</li> <li>• Lastly, authorities should ensure that the AML/CFT measures are effectively implemented by FIs, by ensuring an appropriate monitoring of the compliance of FIs with Kuwait's AML/CFT measures and by imposing sanctions for failure to comply with these measures.</li> </ul> <p><i>Recommendation 6</i></p> <p>The authorities should fully extend the requirements of Recommendations 6 to exchange companies, insurance companies, exchange organizations, and brokerage companies.</p> <p>The authorities should provide a definition of PEPs in line with the standards.</p> <p>Banks and investment companies should be required to: perform CDD measures and put in place appropriate risk management systems to determine whether a potential customer, a customer or a beneficial owner is a PEP; obtain senior management approval to continue a business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP; take reasonable measures to establish the source of wealth of customers, and the source of wealth and the source of funds of beneficial owners identified as PEPs, and conduct enhanced ongoing monitoring when they are in a business relationship with a PEP.</p> <p><i>Recommendation 7</i></p> <p>The authorities should require banks, exchange companies and investment companies to:</p> <ul style="list-style-type: none"> <li>• Gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision.</li> <li>• Document the respective AML/CFT responsibilities of each institution.</li> </ul> <p><i>Recommendation 8</i></p> <ul style="list-style-type: none"> <li>• The authorities should fully extend the requirements regarding non-face-to-face transactions and new technologies to exchange companies, insurance companies, exchange organizations, and brokerage companies.</li> </ul> |

| FATF 40+9 Recommendations  | Recommended Action (in order of priority within each section)  |
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|  | <ul style="list-style-type: none"> <li>All FIs in Kuwait should be required to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. Measures should include specific and effective CDD procedures that apply to non-face-to-face customers, and should apply when establishing the customer relationship and when conducting ongoing due diligence.</li> </ul>   |
| <p><b>3.3 Third parties and introduced business (R.9)</b></p>                  | <ul style="list-style-type: none"> <li>Introduce in law, regulation, or OEM the requirements set out in the FATF Recommendation 9, regulating the obligations that must be met by the third parties and the FI to allow such reliance.</li> <li>Require KCC to provide copies of identification data and other relevant documentation relating to CDD requirements without delay to the brokerage companies upon request.</li> <li>Introduce provisions for insurance companies in relation to business introduced by insurance brokers and agents, including requirements to: <ul style="list-style-type: none"> <li>Take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay; and</li> <li>Satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD and record-keeping requirements.</li> </ul> </li> </ul> |
| <p><b>3.4 Financial institution secrecy or confidentiality (R.4)</b></p>       | <ul style="list-style-type: none"> <li>Permit sharing of information between CBK and foreign counterparts outside of the context of consolidated supervision and criminal cases.</li> <li>Provide for an efficient and effective mechanisms by which all domestic authorities can share, on a timely basis, the information necessary to perform their functions in combating ML and TF.</li> </ul>  |
| <p><b>3.5 Record keeping and wire transfer rules (R.10 &amp; SR.VII)</b></p>   | <ul style="list-style-type: none"> <li>Establish, by law or regulation, the requirement to maintain records of the identification data, account files, and business correspondence for at least five years following the termination of an account or business relationship.</li> <li>Require FIs to extend the record-keeping requirement if requested by a competent authority in specific cases upon proper authority.</li> <li>Require FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.</li> </ul>  |
| <p><b>3.6 Monitoring of transactions and relationships (R.11 &amp; 21)</b></p> | <p><i>Recommendation 11</i></p> <ul style="list-style-type: none"> <li>Extend the requirements of Recommendations 11 to insurance companies, exchange organizations, and brokerage companies.</li> </ul> <p><i>Recommendation 21</i></p> <ul style="list-style-type: none"> <li>Fully extend the requirements of Recommendations 21 to exchange companies, insurance companies, exchange organizations and brokerage companies.</li> <li>Establish effective measures to ensure that FIs are advised of concerns about the weaknesses of the AML/CFT systems of other countries.</li> <li>Require FIs to examine transactions involving noncompliant countries that have no apparent economic or visible lawful purpose.</li> </ul>  |



| FATF 40+9 Recommendations  | Recommended Action (in order of priority within each section)   |
|--|---|
| <p><b>3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</b></p> | <ul style="list-style-type: none"> <li>● Apply appropriate counter measures to countries that continue not to apply or continue to insufficiently apply the FATF Recommendations.</li> </ul> <p><i>Recommendation 13 and SR.IV: STR Reporting</i></p> <ul style="list-style-type: none"> <li>● Establish in law or regulation that STRs be filed with the FIU.</li> <li>● Extend the requirement in law or regulation to file an STR with the FIU when the funds are suspected or have reasonable ground to be suspected to be linked or to be related to, or to be used for terrorism, terrorist acts, or by a terrorist organization or those who finance terrorism.</li> <li>● Extend the requirement in law or regulation to file an STR with the FIU to explicitly apply to attempted transactions.</li> <li>● Issue additional guidance on STR reporting.</li> </ul> <p><i>Recommendation 14: Protection for STR reporting/Tipping off</i></p> <ul style="list-style-type: none"> <li>● Prohibit brokerage companies, insurance companies, and exchange organizations from disclosing the fact that an STR or related information is being, or has been, provided to the competent authorities. The prohibition against the release of information regarding STR filings by the Board of Directors, managers, or employees of banks, investment companies, and exchange companies should be extended to include the FI itself.</li> </ul> <p><i>Recommendation 25: Feedback and Guidelines for FIs with respect to STR and other reporting</i></p> <ul style="list-style-type: none"> <li>● Issue clear guidance on STR reporting, and provide both specific and general feedback on STRs.</li> </ul> |
| <p><b>3.8 Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</b></p>          | <p><i>Recommendation 15: Internal policies and controls/screening, training, audit</i></p> <ul style="list-style-type: none"> <li>● Require FIs to communicate their internal procedures, policies, and controls to their employees. It should be required that the internal procedures, policies, and controls contain requirements on CDD, record retention, the detection of unusual transactions, and the STR reporting obligations.</li> <li>● Extend the requirement to establish internal procedures to brokerage companies.</li> <li>● Require banks and investment companies to ensure that the compliance officer or head of the compliance unit be at the management level.</li> <li>● Require exchange companies, brokerage companies, insurance companies, and exchange organizations to develop appropriate compliance management arrangements, including, at a minimum, the designation of an AML/CFT compliance officer at the management level.</li> <li>● Require all FIs to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transactions records, and other relevant information.</li> <li>● Require that the audit function of banks, investment companies, and exchange companies be adequately resourced and independent and perform sample testing.</li> <li>● Ensure that the varying requirements for banks, investment</li> </ul>  |

| FATF 40+9 Recommendations            | Recommended Action (in order of priority within each section)  |
|--------------------------------------|--|
|                                      | <p>companies, and exchange companies for internal/external audits qualify as an adequately resourced and independent audit function to test for compliance with internal procedures, policies, and controls.</p> <ul style="list-style-type: none"> <li>• Require the brokerage companies, insurance companies, and exchange organizations to maintain an adequately resourced and independent audit function to test for compliance with laws, regulations and internal procedures, policies and controls with regard to AML/CFT.</li> <li>• Require the banks, investment companies, brokerage companies, insurance companies, and exchange organizations to put in place screening procedures to ensure high standards when hiring new employees.</li> <li>• Ensure that brokerage companies, insurance companies, and exchange organizations are implementing the requirements of the AML Law and Resolution 9/2005 regarding employee training. Such training should not only focus on understanding the laws, regulations and instructions in place, but should also focus on how various systems, sectors, and individual entities can be exploited for the purposes of ML and TF.</li> <li>• Ensure effective implementation by brokerage companies, insurance companies, and exchange organizations of requirements to: <ul style="list-style-type: none"> <li>○ Establish and maintain internal procedures, policies and controls to prevent ML and TF; and</li> <li>○ Establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.</li> </ul> </li> </ul> <p><i>Recommendation 22: Application of AML/CFT measures to foreign branches and subsidiaries.</i></p> <ul style="list-style-type: none"> <li>• Fully extend the requirements of Recommendation 22 to exchange companies, insurance companies, exchange organizations, and brokerage companies.</li> <li>• Require banks and investment companies to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Kuwaiti requirements and the FATF Recommendations, to the extent that host country laws and regulations permit.</li> <li>• Require the branches and subsidiaries in host countries to apply the higher standards where the minimum AML/CFT requirements of the home and host countries differ.</li> <li>• Require investment companies to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because it is prohibited by host country laws, regulations, or other measures.</li> </ul> |
| <p><b>3.9 Shell banks (R.18)</b></p> | <ul style="list-style-type: none"> <li>• Amend the CBK licensing requirements with a view to clearly prevent the establishment of shell banks in Kuwait.</li> <li>• Require that banks seeking a license have and maintain a physical presence in the country in accordance to the FATF standard.</li> <li>• Prohibit exchange companies from entering into, or continue correspondent relationships with shell banks.</li> </ul>  |

| FATF 40+9 Recommendations   | Recommended Action (in order of priority within each section)   |
|---|---|
| <p><b>3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 &amp; 25)</b></p> | <ul style="list-style-type: none"> <li>• Designate under the AML Law or its implementing resolution, the competent authorities with responsibility for ensuring that FIs adequately comply with the AML/CFT requirements and provide them with adequate powers of enforcement and sanction.</li> <li>• Provide for an adequate range of sanctions (MOCI, KSE).</li> <li>• Provide the legal basis for the MOCI to apply sanctions for noncompliance by the insurance sector and the exchange organizations with the AML/CFT provisions.</li> <li>• Establish sanctions for directors and senior management of insurance companies, exchange organizations, and brokerage companies that fail to comply with the AML/CFT requirements.</li> <li>• Provide the CBK with the sole power to revoke licenses for those FIs that fall under its supervision.</li> <li>• Ensure that the supervisors, especially the MOCI and the KSE, use their sanctions powers effectively.</li> <li>• Ensure that licensing requirements or other legal or regulatory measures prevent criminals or their associates from owning or controlling FIs and provide supervisory authorities with the ability to establish prudential controls over the ownership structure of all FIs.</li> <li>• Establish explicit “fit and proper” measures for directors and management of investment companies, exchange companies, insurance companies, exchange organizations, and brokerage companies.</li> <li>• Provide the legal basis for the MOCI to ensure compliance by the insurance companies and the exchange organizations with the AML legal framework. (supervisory powers to monitor and inspect)</li> <li>• Provide the MOCI and the KSE with adequate powers to monitor and ensure compliance by FIs with the AML/CFT requirements.</li> <li>• Ensure adequate and effective AML/CFT supervision of the securities sector, the exchange organizations and the insurance sector.</li> <li>• Conduct AML/CFT inspections on FIs subject to the supervision of the KSE.</li> <li>• Strengthen MOCI’s AML/CFT supervision, including thorough the development of standardized written procedures.</li> <li>• Issue guidelines concerning AML/CFT requirements to all FIs. Such guidelines should be designed to assist FIs implementing effectively and complying with their respective AML/CFT requirements.</li> </ul> |
| <p><b>3.11 Money value transfer services (SR.VI)</b></p>  | <ul style="list-style-type: none"> <li>• Make efforts to determine the size and scope of the informal money/value transfer system operating in Kuwait and to effectively monitor this sector.</li> <li>• Take action to address the deficiencies identified in relation to the implementation of the FATF Recommendations, as identified in sections 3.1 of this report in relation to MVTS providers.</li> </ul>   |
| <p><b>4. Preventive Measures—Nonfinancial Businesses and Professions</b></p>  |   |
| <p><b>4.1 Customer due diligence and record-keeping (R.12)</b></p>  | <ul style="list-style-type: none"> <li>• Introduce requirements for DNFBPs related to PEPs, payment technologies, introduced business and unusual transactions. The effective implementation of the AML/CFT provisions should be</li> </ul>   |

| FATF 40+9 Recommendations  | Recommended Action (in order of priority within each section)  |
|--|--|
|  | <p>ensured.</p> <ul style="list-style-type: none"> <li>Address the shortcoming identified with respect to Recommendations 5 and 10 in Section 3 of this report, as they also apply to DNFBPs. The effective implementation of the AML/CFT provisions should be ensured.</li> </ul>   |
| <p><b>4.2 Suspicious transaction reporting (R.16)</b></p>  | <ul style="list-style-type: none"> <li>Fully extend the requirements of Recommendations 13, 15, and 21 to all DNFBPs operating in Kuwait.</li> <li>Prohibit DNFBPs from disclosing the fact that an STR or related information is being provided to the competent authorities.</li> <li>Ensure the effective implementation of the AML/CFT provisions by DNFBPs.</li> </ul>  |
| <p><b>4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, &amp; 25)</b></p>          | <ul style="list-style-type: none"> <li>Ensure that real estate agents, dealers in precious metals and stones, and lawyers are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. They should consider conducting a risk assessment to determine the risk of ML or TF in each sector in order to determine the appropriate level of monitoring for each sector.</li> <li>Designate a competent authority or an SRO responsible for monitoring and ensuring compliance of real estate agents and dealers in precious metals and stones. This authority or SRO should have adequate power to perform its function, including powers to monitor and sanction in line with Recommendation 17 and 23, and sufficient technical and other resources to perform its functions.</li> <li>Establish guidelines to assist DNFBPs in implementing and complying with their AML/CFT obligations.</li> </ul> |
| <p><b>4.4 Other designated non-financial businesses and professions (R.20)</b></p>                 | <ul style="list-style-type: none"> <li>Consider conducting a risk assessment as to the extent to which NFBPs are at risk of being misused for ML and TF.</li> <li>Consider applying Recommendations 5, 6, 8-11, 13-15, 17, and 21 to nonfinancial businesses and professions (other than DNFBPs) that are at risk of being misused for ML and TF.</li> <li>Continue to take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.</li> </ul>   |
| <p><b>5. Legal Persons and Arrangements &amp; Non-profit Organizations</b></p>                     |  |
| <p><b>5.1 Legal Persons—Access to beneficial ownership and control information (R.33)</b></p>      | <ul style="list-style-type: none"> <li>Update the DOC databases regularly and include all the information related to the changes in ownership and control information of corporations.</li> <li>Respond to requests from competent authorities in a timely fashion and include adequate, accurate, and current information on the beneficial ownership and control of legal persons.</li> </ul>  |
| <p><b>5.2 Legal Arrangements—Access to beneficial ownership and control information (R.34)</b></p> | <p><i>N/A.</i></p>   |
| <p><b>5.3 Nonprofit organizations (SR.VIII)</b></p>  | <ul style="list-style-type: none"> <li>Apply AML/CFT requirements for charities to foundations and associations.</li> <li>Review the NPOs legislation to require NPOs to maintain, for a period of at least five years, and make available to appropriate authorities,</li> </ul>  |

| FATF 40+9 Recommendations   | Recommended Action (in order of priority within each section)  |
|---|--|
|   | <p>records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.</p> <ul style="list-style-type: none"> <li>• Conduct systematic on-site inspections of international projects to ensure that funds have been spent in a manner consistent with the purpose and objectives of the charities. A risk assessment of the projects could effectively enable the MOSAL to tailor the extent of such on-site inspections and the staffing of the missions.</li> <li>• Although it is not a requirement under the standards, the FIU is encouraged to analyze the information that the NPOs are currently reporting when making international transfers.</li> <li>• Outreach focused on raising awareness on the risks of terrorist abuse and the measures available to protect against such abuses should be directed to the entire NPO sector, including associations and foundations.</li> <li>• Strengthen the sanctions for noncompliance with registration requirements to ensure that they are effective and dissuasive.</li> </ul> |
| <b>6. National and International Cooperation</b>                        |  |
| <b>6.1 National cooperation and coordination (R.31)</b>                 | <ul style="list-style-type: none"> <li>• Put in place effective mechanisms which enable the concerned authorities to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF.</li> <li>• Ensure as a matter of priority that the CCT play an enhanced role in the cooperation for the implementation of UNSCRs 1267 and 1373.</li> <li>• Develop comprehensive statistics in the relevant areas of the fight against ML and TF (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation).</li> </ul>  |
| <b>6.2 The Conventions and UN Special Resolutions (R.35 &amp; SR.I)</b> | <ul style="list-style-type: none"> <li>• Take the necessary measures to fully implement the Vienna and Palermo Conventions (please refer to Section 2.1 for more details).</li> <li>• Sign, ratify, and fully implement the 1999 International Convention for the Suppression of Terrorism Financing.</li> <li>• Take the necessary measures to comply with and fully implement UNSCR 1267 and 1373 (and their successor resolutions) as recommended under SR.III.</li> </ul>  |
| <b>6.3 Mutual Legal Assistance (R.36, 37, 38 &amp; SR.V)</b>            | <p><i>Recommendation 36:</i><br/>The authorities are recommended to:</p> <ul style="list-style-type: none"> <li>• Ensure that cooperation in the AML/CFT area relating to search or seizure of property, proceeds, or instrumentalities can occur even when requests are issued from a competent authority in another country which is not a judicial authority, thus recognizing the differences in legal systems.</li> <li>• Ensure the handling of MLA requests in a rapid, constructive, and effective manner.</li> </ul> <p><i>Recommendation 37</i></p> <ul style="list-style-type: none"> <li>• Adopt provisions in Kuwaiti law that contains some details about the manner in which the authorities implement paragraph 9 of Article 18 of the Palermo Convention.</li> </ul>  |

| FATF 40+9 Recommendations                                       | Recommended Action (in order of priority within each section)  |
|---|--|
|   | <p><i>Recommendation 38:</i><br/>The authorities are recommended to:</p> <ul style="list-style-type: none"> <li>• Adopt legislation which specifically allows (nationally and at the request of another country) for value-based confiscation.</li> </ul> <p>SR.V<br/>The authorities are recommended to:</p> <ul style="list-style-type: none"> <li>• Adopt legislation that specifically criminalizes TF.</li> <li>• Ensure the handling of MLA requests in TF cases in a rapid, constructive, and effective manner.</li> </ul>  |
| <p><b>6.4 Extradition (R. 39, 37 &amp; SR.V)</b></p>            | <ul style="list-style-type: none"> <li>• Kuwaiti's extradition regime is largely based on the relevant international conventions to which Kuwait is a Party and the bilateral agreements concluded by Kuwait and appears compliant with the standards. However, while the assessment team acknowledges that Kuwait cannot control the number of extradition requests it receives, it remains a fact that the effectiveness of the system cannot be properly assessed as there was only one case relating to ML and no case relating to TF.</li> <li>• The lack of an explicit provision criminalizing TF remains a cause of concern and is an obstacle to an effective extradition regime in the CFT area.</li> </ul>  |
| <p><b>6.5 Other Forms of Cooperation (R. 40 &amp; SR.V)</b></p> | <ul style="list-style-type: none"> <li>• Empower the FIU to exchange information with its counterparts.</li> <li>• Establish controls and safeguards to ensure that information received by LEAs is used only in an authorized manner.</li> <li>• Provide for an efficient and effective mechanism by which the CBK, the MOCI and the KSE can share ML and TF information with international counterparts. Requests for cooperation should not be refused on the grounds of laws that impose secrecy or confidentiality requirements on FIs and DNFBPs, and should not be subject to disproportionate or unduly restrictive conditions. The mechanism should include: <ul style="list-style-type: none"> <li>○ The provision of the widest range of international cooperation to their foreign counterparts in a rapid, constructive and effective manner;</li> <li>○ The ability to exchange information spontaneously and upon request in relation to both ML and the underlying predicate offenses;</li> <li>○ A clear legal framework to conduct inquiries on behalf of foreign counterparts; and</li> <li>○ Controls and safeguards to ensure that information received by competent authorities are used only in an authorized manner consistent with national provisions on privacy and data protection.</li> </ul> </li> <li>• Maintain statistics on the number of requests for assistance made or received by law enforcement authorities, the FIU and supervisors, including whether the request was granted or refused and the response time.</li> </ul> |
| <p><b>7. Other Issues</b></p>                                   |  |
| <p><b>7.1 Resources and statistics (R. 30 &amp; 32)</b></p>     | <ul style="list-style-type: none"> <li>• Allocate more resources to the competent authorities.</li> <li>• Develop professional standards, including confidentiality standards to</li> </ul>  |

| FATF 40+9 Recommendations                            | Recommended Action (in order of priority within each section)  |
|--|--|
|  | <p>control and safeguard the information.</p> <ul style="list-style-type: none"> <li>• Provide specialized training to the staff of competent authorities.</li> <li>• Develop comprehensive statistics in all relevant areas of the fight against ML and TF (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation, on-site examinations conducted by supervisors, and sanctions applied).</li> <li>• Regularly review the effectiveness of the AML/CFT system.</li> </ul> |
| <b>7.2 Other relevant AML/CFT measures or issues</b> |  |
| <b>7.3 General framework – structural issues</b>     |  |

## ANNEXES

### ANNEX 1. AUTHORITIES' RESPONSE TO THE ASSESSMENT

### ANNEX 2. DETAILS OF ALL BODIES MET DURING THE ON-SITE VISIT

1. Central Bank of Kuwait (CBK)
2. Kuwait Financial Intelligence Unit (KFIU) at the CBK
3. Law Enforcement Agencies
  - a. Public Prosecutor Office (PPO)
  - b. Ministry of the Interior (MOI)- Criminal Investigation Department (CID)
  - c. General Administration of Customs (GAC)
  - d. State Security Bureau (SSB)
4. Members of the AML/CFT National Committee
5. The Ministry of Finance (MOF)
6. Ministry of Justice (MOJ)
7. Ministry of Foreign Affairs (MFA)



8. Ministry of Commerce and Industry (MOCI)
9. Ministry of Social Affairs and Labor (MOSAL)
10. Kuwait Stock Exchange (KSE)
11. Financial Institutions
  - a. Representatives from the banking industry (both conventional and Islamic).
  - b. Representatives from investment companies
  - c. Representatives of the exchange companies
  - d. Representatives from the insurance companies
  - e. Representatives from the brokerage companies
  - f. Kuwait Banks Association
12. DNFBPs
  - a. Representatives from lawyers
  - b. Representatives from the real estate agents
  - c. Representatives from dealers in precious metals and precious stones
  - d. Representatives of accountants

### **ANNEX 3. LIST OF ALL LAWS, REGULATIONS, AND OTHER MATERIAL RECEIVED**

## ANNEX 4. COPIES OF KEY LAWS, REGULATIONS, AND OTHER MEASURES

### **Law No 35 of 2002 For Combating Money Laundry Processes**

#### **Upon viewing constitution**

- And law no. 15/1960 for issuing law of commercial companies and amending laws,
- And penal code issued with law No. 16/1960, and amending laws
- And penal procedures and trials code issued with law no. 17/1960 and amending laws,
- Law No. 32 of 1968 concerning bank notes and Central bank of Kuwait and banking profession and amending laws
- Decree law No. 13/1980 concerning customs
- And decree law No. 23/1990 concerning regulating judiciary process and amending laws,

National assembly agreed on the following law, which we attested and issued:

#### **Chapter 1**

#### **Defining and criminalizing Money Laundry processes**

##### **Article 1**

Money Laundry process is one or group of financial/non-financial transactions meant to hide or camouflage the illegal source of funds and revenues for any crime and showing the same as coming from legal source; this definition includes diversification and money transfer for money and revenues resulting directly or indirectly from a crime or hide or camouflage the source.

##### **Article 2**

Money laundry convict is the person who does the following:

1. Money laundry knowing source of money is committing or participating in a crime.
2. Money transfer, possession, owning, usage or receiving knowing its source is committing or participating in a crime.
3. Hiding or camouflaging the truth of money and its source or their place and disposition thereof or transaction or rights related to it and owning thereof, knowing its source is committing or participating in a crime.

#### **Chapter 2**

#### **Commitment from Banking and financial Institutions and Government entities**

##### **Article 3**

Banks, investment companies, institutions and banking companies, and insurance companies, and other financial corporates and persons defined by resolution from minister of finance, shall abide by the following:

1. Do not keep any unidentified accounts or accounts with fake or code names or open any of these.

2. Verify the ID of their customers upon official documents issued from competent authorities in the state.
3. Maintain all documents and papers related to national and international transactions including copies of the customers' ids for at least 5 years from the date of transaction completion.
4. notifying any suspicious financial transaction
5. Adopt a policy to train officers and personnel to insure they are aware and updated in the field of money laundry.
6. Adopt work procedures and internal audit systems enough to detect any of such processes upon occurrence and prevent using them in passing suspicious transactions.

All these financial institutions and persons shall abide by all ministerial instructions and resolutions issued from government authorities supervising thereof concerning the aforementioned items and so by any other ministerial resolutions and instructions related to combating money laundry processes.

#### **Article 4**

Any person upon entering Kuwait shall notify customs authority with his possessions of national or foreign currencies or gold alloys or any other valuable items pursuant to rules and procedures issued by the minister of finance.

#### **Article 5**

Public prosecutor shall defined the competent authority with public prosecution to receive reports about money laundry processes set forth in this law.

### **Chapter 3**

#### **Sanctions**

#### **Article 6**

Without prejudice to more severe sanctions set forth by law, a person who commits any crime set forth in article 2 shall be sentenced to imprisonment for period not more than 7 years and a fine not less than half the value of subject amounts, and not more than the full value of these funds, and to confiscate such funds, possessions, revenues and media used in committing this crime, without prejudice to third parties bona fide rights.

Expiry of penal claim for any reason shall never cease to confiscate funds collected from money laundry and in all cases in which it's decided to confiscate according to provisions of these article, confiscated funds shall be disposed according to rules and procedures issued by a resolution from minister of finance.

#### **Article 7**

Imprisonment sanction set forth in article 6 shall be doubled and so the fine to be not less than the value of subject funds and not more than double their value and to confiscate funds and possessions and revenues and media used in committing these crimes without prejudice to third party bona fide rights if this crime is done through an organized group, or if done through using authority or power.

#### **Article 8**

Public prosecutor may order to pan the convict from disposing his money in part or in full till the penal procedure is settled. Any person may sue a claim to competent court in the issue of panned disposal after three months from issuing this order. Court shall settle this claim as fast as possible whether through refusal or cancellation or amendment and set required guarantees if reason is provided; complaint shall not be re-sued after 6 months from the settlement date. Public prosecutor may cease to take this order or amend thereof pursuant to investigation requirements.

### **Article 9**

Penal claim shall not expire for any crimes set forth in article 2 from this law which occur after effective date. Sanction sentenced under this law for crimes set forth in article 2 shall not expire. Articles 81 and 82 from penal code shall not apply for these crimes.

### **Article 10**

Court may discharge from sanctions set forth in articles 6 and 7 if convicts notified competent authorities with this crime and criminals thereof before perpetration.

### **Article 11**

Without prejudice to any more sever sanction set forth in any other law, he shall be sentenced to imprisonment for a period not more than 3 years and a fine not less than 5000 KD and not more than 20000 KD or to both, with job discharge, anyone who thought to report under item 4 from article 3 from this law and didn't report any suspicious transaction he knew about or disclosed any information he knew about a crime stipulated in article 2 hereunder and damaged or hidden documents or instruments related to these crimes. Without prejudice to provisions set forth in the previous section, he shall be punished any one proved to default in any liabilities set forth in article 3 from this law with a fine not more than 1000000 KD.

### **Article 12**

Without prejudice to penal liability for the natural person set forth in this law, partnerships shall be questioned in part for crimes set forth in article 2 hereunder. Company shall be sentenced to a fine that is not more than 1000000 KD if the crime was for its interest or in the name of one of its systems, managers or representative or one personnel therein, and shall be liable to cancellation of business license if it's incorporated for this object. In all cases, a decision is issued to confiscate funds, possessions, revenues and media used in committing these crimes without prejudice to bona fide third parties' rights, and this shall be published in the official gazette and two daily newspapers. Penal procedure shall be commenced against the company against its legal representative at the time these procedures are taken, and company may be represented by any person authorized with the same under law or the company statute, and this representative shall face no compelling procedure except procedures taken against the witness.

### **Article 13**

He shall be sanctioned from violating article 4 hereunder with imprisonment for a period not more than 1 year and a fine not more than 1000 KD or to both.

### **Article 14**

He shall be discharged from criminal, civil and administrative liability natural persons or corporates who, with bona fide, report information under provisions of this law, even if these transactions are proved valid.

### **Article 15**

Upon resolution from minister of finance, an award shall be defined for any person guides or facilitates detention of any money laundry transactions set forth in article 2 hereunder.

### **Article 16**

Public prosecution shall alone investigate and dispose and prosecution in reports coming related to crimes set forth in this law.

Criminal court is the competent authority to consider these crimes.

## **Chapter 4 International Cooperation**

### **Article 17**

Public prosecution if received a request from an competent judiciary authority in another country, may decide to track and confiscate possessions and revenues and media used in crimes set forth in this law if these crime are committed in the other country with violation to laws of that country, given there an attested binary agreement with these countries in this concern, or according to principle of reciprocity.

### **Article 18**

Criminal court may decide to execute any irrevocable an enforceable ruling issued from a competent authority in the another country to confiscate funds, revenues and media related to money laundry crime given a binary agreement attested from that country in this concern, or under the principle of reciprocity, given that these funds confiscated under the foreign ruling may be confiscated according to Kuwaiti law, without prejudice to bona fide third parties' rights, yet if the foreign ruling included items related rights of third parties, it shall be binding to the court if this third party didn't claim his right before foreign courts. Criminal court, if saw necessary, may hear through the judiciary representation if needed, the convict and any person whose rights are related to funds subject to confiscate in the foreign ruling, and those persons may use an attorney before Kuwaiti courts. Before criminal courts considering execution of this foreign ruling rules of procedures law

### **Article 19**

Minister of finance issues a resolution for procedure and rules required for execution of this law.

### **Article 20**

Ministers and prime minister, each in his field shall apply this law.

Prince of Kuwait  
Jaber Al-Ahmed Al-Sabah  
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