

Mutual Evaluation Report 3rd Follow-Up Report for State Of Kuwait

Anti-Money Laundering and
Combating the Financing of Terrorism

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State Of Kuwait

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This report provides an overview of the measures that Kuwait has taken to address the major deficiencies relating to Recommendations rated NC or PC since its last mutual evaluation. The progress shown indicates that sufficient action has been taken to address those major deficiencies, and in particular those related to R5, R13, R23, R26, R35, R40, SRI, SRII, SRIII, SRIV, and SR.V. It should be noted that the original rating does not take into account the subsequent progress made by the country.

The Third Follow-up Report for Kuwait

Application to Move from Follow-Up to Biennial Updating

A. Introduction.

1. The 13th Plenary Meeting adopted the mutual evaluation report (MER) of the State of Kuwait (Kuwait) on 5th May 2011. As a result, Kuwait was placed in a regular follow-up process according to the mutual evaluation procedures. Kuwait submitted a number of follow-up reports as follows: the 1st follow-up report in May 2013 and the 2nd follow-up report in June 2014. Kuwait has expressed its hope that the 21st Plenary Meeting examines its request to move from regular follow-up to biennial updating.

2. This report is based on the procedure for removal from the regular follow-up, as agreed by the 12th Plenary Meeting in November 2010 and the amendments on procedures adopted in the E-Plenary Meeting (August-September 2013). The report contains a detailed description and analysis of the measures taken by Kuwait with respect to the core¹ and key Recommendations rated Non-Compliant (NC) and Partially Compliant (PC) in the abovementioned MER. It also contains a description and analysis of the other Recommendations rated PC or NC. In Annex 1, we are including a list of the major laws and documents relating to AML/CFT system in Kuwait.

3. The procedure requires that the Plenary Meeting considers the removal of the country from the regular follow-up if it has, in the opinion of the Plenary Meeting, an effective AML/CFT system in force, under which the country has implemented the core and key recommendations at the level essentially equivalent to a C (Compliant) or LC (Largely Compliant) taking into consideration that there would be no re-rating.

4. Kuwait was rated PC and NC on a total of 38 recommendations:

Core Recommendations rated PC or NC
R5, R13, SR2, SR4
Key Recommendations rated PC or NC
R23, R26, R35, R40, SR1, SR3, SR5
Other Recommendations rated PC
R7, R11, R14, R15, R18, R20, R27, R28, R31, SR6, SR8, SR9
Other Recommendations rated NC
R6, R8, R9, R12, R13, R16, R17, R21, R22, R24, R25, R29, R30, R32, R33

¹ The Core Recommendations according to FATF classification are: R1, R5, R10, R13, SR2, and SR4.

5. As prescribed by the procedures of exiting the regular follow-up, Kuwait provided the Secretariat with a full report on its progress since the adopting the MER. Accordingly, the Secretariat drafted a detailed analysis of the progress made by Kuwait for the core and key recommendations rated NC or PC, as well as an analysis of the other Recommendations rated NC or PC. The Secretariat provided its report to the Kuwaiti Authorities accompanied with a number of enquiries and requests. Kuwait has provided the secretariat with the required documents and information during this process, and some comments provided by Kuwait were taken into consideration.

6. As a general note on all applications for removal from regular follow-up: this procedure is described as desk based review, and by its nature is less detailed and comprehensive than a MER. The analysis focuses on the Recommendations that were rated NC or PC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. Any conclusions in this report do not prejudge the results of the future assessments, as they are based on information which was not verified through an on-site process and was not as comprehensive as would exist during a mutual evaluation.

B. Main Conclusion and Recommendations to the Plenary Meeting

Core Recommendations

R5 (Customer Due Diligence): Kuwait addressed the deficiencies pertaining to this recommendation through the key obligations related to the CDD measures that were imposed in AML/CFT Law. It includes obligating FIs to deal with anonymous customers or with customers in fictitious or shell names and obligating FIs to define and evaluate risks, as well as taking risk evaluations conducted by such institutions in consideration when taking CDD measures. The law also includes obligating FIs to verify the identity of customers using reliable and independent documents, data, or information. This includes all natural and legal customers and the persons acting on their behalf, understanding ownership structure and control over customers, understanding the purpose and nature of business relationship, ongoing follow-up of business relationships, and examining the transactions carried out by customers.

7. The law also includes the cases in which CDD measures should be taken; stipulating the CDD measures required to be taken for all natural and legal persons, setting a definition for the beneficial owner; requiring institutions to identify and verify his identity, obligating FIs to evaluate risks; taking enhanced diligence measures for high risk customer, business relationships, or transactions; and the validity of implementing simplified CDD measures when risks are low, except when suspecting ML/FT transactions. In addition, the law stipulates that the implementation of CDD measures may be postponed in accordance with

the controls defined by the supervisory entity. It also includes: prompting the FIs to refrain from opening an account, starting a business relationship, carrying out a transaction, or ending the relationship when CDD measures could not be implemented; considering sending a notice to the FIU; subjecting the current business relationships and accounts to CDD measures within a suitable period; and carrying out a periodic evaluation to examine the validity of and update the obtained data, information, and documents.

R13 and SRIV (Reporting Suspicious Transactions): Kuwait addressed the pertaining deficiencies through obligating FIs to report without delay to the FIU when suspecting, or having enough evidence to suspect, that the funds of performed transactions are connected to funds yielded from or connected or associated with a crime that can be used in the commission of ML/FT, including attempts to perform transactions suspected to be proceeds of a predicate crime, regardless of their value. FIs are also obligated to report the funds related to terrorism or used by terrorists, terrorist organizations, or terrorism financiers.

SRII (Criminalization of terrorist financing): Kuwait addressed the deficiencies pertaining to this recommendation. Criminalizing TF by law conforms to a big extent with the Convention for the Suppression of the Financing of Terrorism as it includes forms of providing or collecting funds, whether directly or indirectly, from legal or illegal sources with the intention of using them, completely or partially, in committing a terrorist act or financing terrorist organizations or terrorists. It also includes a definition of the terrorist act, the terrorist, and the terrorist organization, in addition to imposing sanctions for TF crimes.

8. As a general result, it can be said that the level of compliance of Kuwait in these recommendations can be rated as equivalent to LC.

Key Recommendations

R23 (Regulation, Monitoring and Follow-up): Kuwait addressed a large number of deficiencies pertaining to this recommendation though setting a legal basis for monitoring insurance sector and exchange institutions by the Ministry of Commerce and Industry to ensure the compliance of such entities to AML/CFT requirements. In addition, the supervisory entities were granted the authority to impose measure for preventing criminal and their associates from owning controlling stakes in FIs, or becoming the beneficial owners for such stakes. The supervisory entities were also granted the authority to impose the implementation of efficiency and adequacy tests on managers and senior management in FIs, increasing the technical and human resources that were determined by the AML/CFT law in the supervisory entities, enhancing on-site inspection and disk auditing, and training the supervisory entities employees. However, there are still some deficiencies related to the regulatory and supervisory entities not issuing the measures of the criteria of acquiring or controlling big stakes in FIs. In addition, some regulatory and supervisory entities did not issue measures for the efficiency and adequacy procedures and standards related to the experience and integrity of the members of the executive board, the board of the supervisory directors, and the managers of FIs.

R26 (FIU): Kuwait addressed the deficiencies pertaining to this recommendation through establishing the Kuwaiti FIU. The authorities granted to the Unit includes: receiving, analyzing, and sending STRs; requesting additional information from the entities obligated to report; and providing guidance to the entities obligated to report with regards to submitting the STRs to FIU. The FIU is granted full independence with regards to making decisions for directing suspicious transactions. This is in addition to allocating an independent budget for the Unit, moving into a new headquarters that is equipped with modern technology systems, and starting with the operational aspects of the Unit.

R35 (Agreements): Kuwait addressed the deficiencies pertaining to this recommendation through ratifying the Convention of the Suppression of the Financing of Terrorism and criminalizing TF and migrant smuggling. In addition, other procedures were taken for the purpose of implementing Palermo and Vienna Conventions.

R40 (Other Forms of International Co-operation): Kuwait addressed a number of deficiencies pertaining to this recommendation through the authority of supervisory entities to exchange information and cooperate with other international entities in AML/CFT field. In addition, there are no restrictive conditions on exchanging information with the foreign counterpart entities.

SRI (Implementation of UN Instruments): Kuwait addressed the deficiencies pertaining to this recommendation through the ratification of the Convention for the Suppression of Terrorism and the implementation of UNSCRs 1267 and 1373.

SRIII: (Freezing and Confiscating Terrorist Funds): Deficiencies related to freezing and confiscating terrorist assets were addressed, with regards to defining an entity to freeze terrorist assets according to the UNSCRs. A national committee was established to undertake issuing instructions for implementing the obligations mentioned in UNSCRs 1267 and 1373. In addition, a technical committee was established to implement UNSCR 1267, and a technical committee to implement the UNSCR 1373, and other resolutions related to either of them or in relation with the instructions issued for financial and non-financial institutions with regards to persons or entities that might have other targeted funds or assets.

SRV: (International Co-operation): Deficiencies pertaining to international cooperation in the AML/CFT field were addressed. The amended law included provisions on handling mutual legal assistance requests and extradition requests. Concerning the implementation, the national committee in the State of Kuwait prepared the National AML/CFT plan. The plan includes determining the tasks and responsibilities commissioned to all the related supervisory and competent entities. The responsibilities include the ones assigned to the Public Prosecution, which are represented in enhancing the mechanisms of mutual legal assistance and extradition. The Public Prosecution started setting such mechanisms for mutual legal assistance.

Other Recommendations

9. Kuwait addressed the deficiencies pertaining to the other recommendations. It is noteworthy that making the decision for the removal of Kuwait from the follow-up process is primarily based on the core and key recommendations. This report does not provide a detailed analysis with regard to other recommendations.

Conclusion

10. The follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force, under which it has implemented the core and key recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating. The Plenary does, however, retain some flexibility with regard to the key recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC.

11. With regards to core recommendations, it can be said that the level of compliance of Kuwait on these recommendations can be rated at a level equivalent to "LC", at a minimum.

12. With regard to key recommendations, it can be said that the level of compliance of Kuwait on these recommendations can be rated at a level equivalent to "LC", at a minimum, except for R3, as Kuwait has addressed most of the deficiencies defined in the mutual evaluation report. Whereas, there are still some deficiencies related to issuing the measures to prevent criminals to possess or control big stakes of some FIs (insurance, and exchange institutions subject to the supervision of the Ministry of Commerce). Besides, other measures have been issued related to the "fit and proper", and the standards related to the experience and integrity of the members of the executive board of some FIs (insurance, and exchange institutions subject to the supervision of the Ministry of Commerce).

13. With regards to other recommendations where Kuwait was rated NC or PC, it can be said that the level of compliance of Kuwait on these recommendations in general is equivalent to a level of "LC" at a minimum.

14. With regards to the effectiveness, Kuwait did not issue any convictions in ML/FT crimes until the date of writing this report. However, Kuwait provided statistics on the STRs submitted to the Public Prosecution with regards to ML/FT cases from June 2014 to 31 December 2014. The number of STRs received by the FIU reached 129 STRs, 12 of them have been submitted to the Public Prosecution. The statistics show that most of the STRs are provided by the bank sector. There is only one legal assistance request obtained by the Kuwaiti FIU.

15. With regards to the effectiveness of the supervising entities in monitoring FIs and DNFBPs, Kuwait has taken some steps to enhance and activate the level of supervision over FIs. Inspection visits were conducted in bank sector, insurance companies, exchange

companies, and securities sector. Kuwait has made steps to enhance the monitoring level on DNFBPs.

16. Although there are some indicators to the existence of an effective AML/CFT system, the law is issued recently and there are no sufficient and comprehensive statistics on AML/CFT Systems in Kuwait. This results in difficulty of judging the effectiveness of the system as a whole, especially with regards to the measures taken by the supervisory and regulatory entities, the law enforcement authorities, and supervision of cross-border transfer of currencies.

17. As a result, since the level of compliance of Kuwait on the core recommendations is rated at a level equal to "LC" at a minimum and the level of compliance on key recommendations is rated at a level equal to "LC" at a minimum, except the (23). The Plenary Meeting may consider approving the Kuwait's request to move from regular follow-up to biennial updating while urging the authorities to continue addressing the remaining deficiencies related to R23.

C. Overview of the State of Kuwait

Overview of the Main Changes since the Adoption of MER

18. Since the adoption of MER, Kuwait made efforts to implement the action plan developed to complete the requirements to comply with the AML/CFT international criteria. Kuwait adopted law No. 106 for 2013 regarding AML/CFT. In addition, the Minister of Finance issued the executive regulation for the law by virtue of decision No. 37 for 2013 dated 12 June 2013. Moreover, Kuwait issued Law No. 85 for 2013 approving that the State of Kuwait joins the International Convention for the Suppression of the Financing of Terrorism. The Council of Ministers also issued decision No. 1532 for 2013 regarding the Kuwaiti FIU. Moreover, the regulatory and supervisory entities issued AML/CFT instructions for their subject entities.

The Legal and Regulatory Framework

19. The legal framework of the AML/CFT system in Kuwait is based on law No. 106 for 2013 regarding AML/CFT (the Law). The Law was published in the official gazette, dated 26 May 2013, and in the executive regulation issued by virtue of decision No. 37 for 2013, dated 12 June 2013, for the purpose of addressing the deficiencies specified in the MER. The Law caused some modifications on the legal level in Kuwait regarding the expansion of predicate offence scope of ML crimes through adopting a comprehensive methodology in defining predicate offences, criminalizing FT, and setting key obligations of CDD measures to include the financial and non-financial institutions and DNFBPs. This is in addition to determining the regulatory and supervisory entities that ensure the compliance of the persons subject to them to the requirements of law implementation. The entities also submit

notifications to the Kuwaiti FIU when suspecting ML/FT crimes. This is as well as determining the authority to issue procedures and mechanisms for the implementation of UNSCRs No. 1267 and 1373. On the other hand, the Law caused some changes on the Unit level, in terms of establishing it independently and granting it the necessary authorities as the sole national center for receiving, analyzing, directing and referring such STRs. The Unit was established by virtue of the Council of Ministers' decision No. 1532 for 2013. The Unit received and analyzed the notifications and referred them to the competent authorities. In addition, the Unit issued reporting guidelines for the FIs, banks and the other entities obligated to report.

20. In addition to the aforementioned, Kuwait issued law No. 85 for 2013 approving that the State of Kuwait joins the International Convention for the Suppression of the Financing of Terrorism. It also issued law No. 25 for 2012 regarding the Companies Law, which ensures obligating companies to keep a special record at clearing agencies. Kuwait also issued the executive regulation for law No. 7 for 2010 regarding the establishment of the Capital Markets Authority (CMA) and regulating securities. The regulation included obligating every joint stock company to deposit a record of stockholders, upon finishing the establishment process, at a clearing agency that is certified by the authority right.

21. Moreover, Kuwait issued the ministerial decision No. 4 for 2014, which includes forming the committee responsible for implementing the UNSCRs. In addition, Kuwait issued the ministerial decision No. 5 for 2014 concerning the executive regulation responsible for implementing the UNSCRs issued by virtue of Chapter VII of the UN Charter on terrorism and financing of terrorism. Furthermore, the Kuwaiti FIU issued instructions for the monitoring indicators for suspicious transactions for: banks, exchange institutions, insurance companies, investment companies, real estate agents, accountants, lawyers, and gold, precious metals, and gemstones trade.

22. The Unit issued its guidance manual for FIs and DNFBPs concerning filling the STR form. Besides, the Central Bank issued AML/CFT instructions for local banks by virtue of decision No. 2/BS/IBS/308/2013. The Central Bank also issued AML/CFT instructions for financing companies by virtue of decision No. 2/FC/309/2013. In addition, the CBK issued AML/CFT instructions for exchange companies by virtue of decision No. 2/EC/310/2013. The Ministry of Commerce and Industry issued the ministerial decision No. 409 for 2013 regarding the controls and instructions regulating the work of exchange companies and institutions. In addition, the Ministry issued the ministerial decision No. 412 for 2013 regarding the controls and instructions regulation the work of insurance companies, their agents, and their brokers. Furthermore, the Kuwaiti CMA issued instructions concerning AML/CFT No. CMA/QR/TA/4/2013.

C. Review of the measures taken in relation to the Core Recommendations

R5: Rating (NC)

Deficiency 1: Absence of explicit obligations imposed by law (primary or secondary legislation) to: implement CDD measures when performing occasional transactions represented in wire transfers in the conditions included in the interpretive note of SRVII

23. Kuwait addressed the deficiency through AML/CFT law. The law stipulates in Article 5 that FIs are obligated to implement the CDD measures before performing transactions that exceed the threshold reported in the executive regulation of this law for a customer who does not have a business relationship with FIs. The executive regulation of the law defines the threshold as three thousand Kuwaiti dinars as stipulated in Article 6 of the executive regulation. Furthermore, the law stipulates that FIs shall implement the CDD measures before performing any local or international electronic transfer for the customer. However, it did not define any threshold amounts for implementing the CDD measures in the case of performing electronic transactions. In addition, the instructions issued by regulatory and supervisory entities monitoring FIs include obligating them to implement the CDD measures when suspecting ML/FT.

Deficiency 2: Absence of explicit obligations imposed by law (primary or secondary legislation) to: implement CDD measures when suspecting ML/FT regardless of any exemptions or threshold levels

24. Kuwait amended the AML/CFT law so that it stipulates in Article 5 that FIs are obligated to implement the CDD measures when suspecting ML/FT. In addition, the instructions issued by regulatory and supervisory entities monitoring FIs include obligating them to implement the CDD measures when suspecting ML/FT. Thereby, Kuwait addressed the deficiencies pertaining to this recommendation.

Deficiency 3: Absence of explicit obligations imposed by law (primary or secondary legislation) to: implement CDD measures if the FI suspects the accuracy or sufficiency of the previously obtained customer identification data

25. Kuwait addressed the deficiency pertaining to this recommendation through AML/CFT law. The law stipulates in Article 5 that FIs are obligated to implement CDD measures when suspecting the accuracy or sufficiency of the previously obtained customer identification data. In addition, the instructions issued by regulatory and supervisory entities monitoring FIs include obligating them to implement CDD measures when suspecting ML/FT.

Deficiency 4: Absence of explicit obligations imposed by law (primary or secondary legislation) to: identify and verify the identity of any person acting on behalf of a legal person (not only companies or institutions)

26. The executive regulation for the AML/CFT law in Article 5 includes that FIs are obligated to identify and verify the identity of customer or the beneficial owner by virtue of the following documents: civil IDs for citizens and residents; passports or travel documents for non-residents in the State of Kuwait; and business licenses issued by the Ministry of Commerce for companies and institutions registered in Kuwait. Concerning foreign institutions and companies, FIs are required to identify and verify the documents issued by the competent entities in the country where these companies were registered or established. In addition, FIs are obligated to identify and verify the documents, instruments, and judicial rulings that prove that a person has been appointed to represent the person concerned. Thereby, FIs are required to identify and verify the identity of any person working on behalf of any other legal or natural person.

Deficiency 5: Absence of explicit obligations imposed by law (primary or secondary legislation) to: identify all types of legal persons using reliable and independent data or information (identification data)

27. The AML/CFT law includes in Article 5 the obligation of FIs to identify and verify the identity of the customer and beneficial owner using reliable and independent documents, data or information. The law defines the customer as any person who carries out any of the following actions with an FI: the person for whom a transaction, a business relationship, or an account is arranged, opened, or executed; the person or participant in signing a transaction, business relationship, or account; any person for whom an account, rights, or obligations are assigned or transferred; any person who has permission to conduct a transaction or control a business relationship or an account; and any person who proceeded with taking any of the abovementioned actions. Through the definition of the customer in law, it is clear that it includes demanding FIs to identify and verify legal persons through demanding FIs to identify the person for whom a transaction, a business relationship, or an account is arranged, opened, or conducted. Thereby, Kuwait has addressed the deficiencies pertaining to this part of the recommendation.

Deficiency 6: Absence of explicit obligations imposed by law (primary or secondary legislation) to: take reasonable procedures for all customers, so it can determine whether the customer is working on behalf of other natural persons who have actual control or ownership over him, in addition to determining the persons who have actual control over a legal person or arrangement

Deficiency 9: Absence of explicit obligations imposed by law (primary or secondary legislation) to: understand ownership structure and actual control over customers

28. The law stipulates in Article 5 on obligating FIs to implement the CDD measures. Such measures include identifying and verifying the identity of customer and beneficial owner by using reliable and independent documents, data, or information. The law defines the beneficial owner as any natural person who has, or exercises, full control, directly or indirectly, over the customer or the person on whose behalf a transaction is being conducted. The beneficial owner is also the one who exercises full and final control over a legal person or arrangement. Moreover, the instructions issued by the Central Bank to other banks include taking the necessary procedures to determine whether or not the customer is acting on behalf of one beneficial owner or more. This is done through obtaining a signed certificate from the customer when opening the account stating that the customer is the beneficial owner of the account, or through any other sources the bank sees necessary. In addition, the instructions obligate the banks to verify the identity of beneficial owner through using the relevant information or data obtained from an approved source. As a result, the banks will be certain of the beneficial owner's identity and will implement the CDD measures on the beneficial owner.

29. The law in Article 5 obligates FIs to identify the ownership structure and control over customer. However, the instructions issued from the Central Bank exempts banks from identifying and verifying the identity of shareholders and beneficial owners in the company if it is subject to appropriate disclosure rules that disclose the beneficial owner identity. Banks only obtain copies of the documents required to identify the company's identity as mentioned in the instructions. However, if the customer is another legal person or arrangement, banks are required by the instructions to take the appropriate measures to understand the ownership structure and control over the customer, including the final natural person who owns or controls it. The instructions obligate identifying every natural person who owns or controls, whether directly or indirectly, shares that exceed 50% of the legal person and who is responsible for managing the legal person. In addition, the instructions obligate verifying the identity of the alienator, trustee, beneficiary, or any other person who is assigned the same tasks as the persons mentioned in the legal arrangements.

30. The regulation issued by the Central Bank to the financing companies includes obligations as set forth in the instructions issued to the banks. The same applies to the instructions issued to money exchange companies which are subject to supervision by the CBK. As for the institutions subject to supervision by the CMA, the issued instructions include obligating the subject institutions to inquire if the customer is working on his own account or the account of other party/parties when establishing a business relationship with

the customer. This is accomplished by obtaining a signed certificate from the customer when establishing the relationship stating that s/he is the beneficial owner of the account, or through any other sources deemed necessary by the authorized person to determine the beneficial owner.

31. The instructions issued by the MOCI obligate exchange institutions to take the measures to determine the beneficial owner through a signed certificate from the customer, or through any other sources it deems necessary. Moreover, exchange institutions are obligated to verify the identity of beneficial owners and implement CDD measures on them. The instructions issued by the MOCI obligate insurance companies, insurance agents, and brokers to take measures to determine the beneficial owner as mentioned with regards to banks.

Deficiency 7: Absence of explicit obligations imposed by law (primary or secondary legislation) to: implement continuous due diligence with regard to business relationships, which includes inspecting the transactions conducted during the business relationship.

32. Kuwait addressed the deficiencies pertaining to this recommendation through Article 5 of the law which obligates FIs to continuously monitor everything related to a business relationship. In addition, FIs are obligated to inspect all conducted transactions to ensure their consistency with the available customer information, business activities, risk patterns, and the sources of his funds when necessary. The instructions issued by the Central Bank to banks, exchange institutions, and financing companies obligate ongoing monitoring of the customer transactions. The instructions obligate banks to establish automated systems to continuously monitor transactions. The monitoring should include a mechanism to verify that transactions are conducted according to the bank knowledge of the customer, the determined risk pattern for his transactions, and the sources of his funds and wealth if necessary. The monitoring also includes the predetermined restrictions on the transaction amounts, size, and type. Article 6 of the executive regulation obligates FIs to take CDD measures before conducting a transaction of more than three thousand Kuwaiti dinars, or its equivalent in foreign currencies, for a customer with whom the institutions do not have a business relationship, whether such transaction is individual or in the form of many transactions that seem connected; in addition to the other restrictions mentioned in the instructions.

33. The instructions issued by CMA No. (CMA/QR/TA/4/2013) obligate the authorized persons to continuously monitor the business relationship with customers and ensure that conducted transactions are consistent with the information obtained by the authorized person about the customer that is related to his work and risk levels. The instructions issued by the Ministry of Finance to exchange institutions and insurance companies obligate continuous monitoring of business relationships. This is in addition to ensuring that transactions are conducted according to such institutions' knowledge of the customer, according to the determined risk patterns, as well as verifying the sources of funds and wealth when necessary. Item 4 of the CMA instructions obligated the licensed persons to refuse to accept any cash from customers for investment purpose or in exchange for a favor provided to the customer, whether at the beginning of or during the business relationship. The instructions

issued by the Ministry of Commerce for exchange institutions and companies obligates refusing to accept amounts that exceed 3000 Kuwaiti dinars, or its equivalent in foreign currency, when conducting one transaction or many transactions that seem connected with a client in one day. The instructions obligate payments to be through customer accounts, by bank cheques, selling points, and other non-cash payment methods allowed by the Central Bank.

Deficiency 8: Absence of measures in the law, regulation or other enforceable means that obligate FIs to verify the legal status of all legal persons

34. It was previously mentioned that the definition of a customer according to the law includes all legal and natural persons. According to this definition, FIs are obligated to identify and verify the identity of the customer and beneficial owner. The executive regulation and instructions issued by the supervising and monitoring entities obligate verifying the legal status of all legal persons. The instructions issued by the Central Bank, the CMA and the MOCI require obtaining documents that prove the identity of the legal person. Such documents include: the business license issued by MOCI for companies and institutions registered in Kuwait; several forms for signature authorization; and the documents issued from the competent entities in the country in which the company or institution was registered or established, which is verified by the competent authorities in Kuwait, for foreign companies or institutions. This is in addition to the documents, instruments, and judicial rulings that prove that a person has been appointed to represent the concerned person. FIs shall verify such documents.

Deficiency 10: Absence of explicit obligations imposed by law (primary or secondary legislation) to: obtain information on the purpose and nature of the business relationship with regards to insurance companies and exchange institutions; and the nature of the business relationship with regards to banks, investment companies, and brokerage companies

35. Article 5 stipulates that FIs are obligated to understand the purpose and nature of the business relationship and authorizes FIs to request additional information in this regard. It is noteworthy to mention that the instructions issued by the supervisory and monitoring entities include that when FIs define high-risk customers, they implement additional measures on these customers. These additional measures include requesting more information about this customer, including the size of assets, relationships with other banks, reasons for the conducting the expected transaction. Then FIs acquire the approval of the senior management to start or continue in the business relationship.

Deficiency 11: Absence of explicit obligations imposed by law (primary or secondary legislation) to: review existing records that were collected by virtue of the due diligence process especially for customer categories or business relationships with high-risk

Deficiency 12: Absence of explicit obligations imposed by law (primary or secondary legislation) to: ensure that the documents, data, or information that was collected by insurance companies, exchange institutions, and brokerage companies by virtue of the due diligence process are up to date, correct, and sufficient

36. Article 5 of the law stipulates that FIs are obligated to conduct a periodic review to verify the validity of and update the data, information, and documents obtained by virtue of CDD measures. The instructions issued by the supervisory and monitoring entities include that FIs keep the information of customer and beneficiary owner that were collected throughout the period or relationship. Moreover, FIs shall update the information, documents, or data that were collected within the context of CDD measures and verifying their validity by reviewing the existing records over appropriate periods of time. It is noteworthy to mention that the authority to determine such period is left to the FIs. The authorities stated that the data differ from an entity to another according to the nature and type of activity and that FIs are obligated to update the data periodically without specifying the period of time. The forms titled "Know Your Customer" prepared by FIs include an item that emphasizes that customers must periodically update their data, in most cases every two years at the maximum or whenever the data needs to be updated.

Deficiency 13: Absence of explicit obligations imposed by law (primary or secondary legislation) to: conduct enhanced due diligence measures for high-risk customer categories, business relationships, or transactions

37. Article 4 of the law stipulates that FIs are obligated to assess the related ML/FT risks. Moreover, FIs shall keep the risk assessment study along with its related information in writing, in addition to updating it periodically and making it available for supervisory entities when requested. Moreover, the Article stipulates that FIs are obligated to implement enhanced CDD measures when ML/FT risks are considered high. FIs may implement reduced CDD measures when ML/FT risks are considered low. The regulations issued by supervisory and regulatory entities obligate such institutions to conduct risk assessments and implement enhanced CDD measures on high-risk customers. The instructions issued for banks obligate taking into consideration several factors when determining, monitoring, and mitigating ML/FT risks. These factors include risks related to: customers; countries or geographic areas in which they operate or the place of origin or destination of transaction; the nature of products and services provided; and the delivery channels for products and services. In addition, the instructions obligate banks to determine the factors that increase risk levels that require implementing enhanced CDD measures.

38. Banks are also obligated to implement enhanced CDD measures on high-risk customers. These measures include: obtaining additional information about the customer; obtaining additional information about the nature of the predicted business relationship with

the customer; obtaining necessary information about the source of the customer's money and wealth; standing on the reasons of conducted transactions as well as the predicted ones; obtaining senior management approval to start the business relationship or continue with it; strictly following up on the customer's transactions through enhancing the monitoring procedures and their periodicity; determining types of transactions that need additional assessment; and taking ensuring that the first amount by the customer is deposited through another account opened by the same customer in a bank subject to similar CDD measure. This is in addition to a number of other measures mentioned in the instructions.

39. The instructions issued by the Central Bank to financing companies and exchange institutions, as well as the instructions issued by the CMA and the MOCI for insurance companies and exchange institutions, include obligations as set forth in the instructions issued by the Central Bank.

Deficiency 14: Absence of explicit obligations imposed by law (primary or secondary legislation) to: make reports on suspicious transactions when FIs are not able to adhere to standards 3-5 to 5-6.

Deficiency 15: Absence of explicit obligations imposed by law (primary or secondary legislation) to: end a business relationship and make a report on the suspicious transaction when an FI starts a business relationship and it is not satisfied with the accuracy or sufficiency of the previously obtained information

40. Article 5 stipulates that FIs are obligated to refrain from opening an account, start a business relationship, conduct a transaction, or end a business relationship if compliance with CDD measures mentioned in Clause 5 could not be achieved. Moreover, FIs shall consider notifying the Unit. The law allows FIs to delay verifying the identity of customer or beneficial owner until after establishing the business relationship according to cases determined by the regulatory and supervisory entities. The instructions issued by the Central Bank define this possibility according to specific conditions: the possibility of completing the verification process as soon possible; the necessity of not suspending the normal work procedures; and effectively controlling ML/FT risks. In addition, banks are obligated to include lower measures in risk management measures when postponing the identity verification process. The measures include the number, type, or value of transactions that could be conducted by customers.

41. Except for the instructions issued to financing companies, the instructions issued by the regulatory and supervisory entities do not include any cases that allow FIs (insurance, operating in securities field, exchange institutions) to postpone the customer identity verification process. Instructions, however, obligate FIs to conduct the verification process before starting or ending a business relationship with the customer if they are not able to commit to the CDD measures mentioned in the law, the executive regulation, or the instructions issued by the supervisory entity.

Deficiency 16: Absence of explicit obligations imposed by law (primary or secondary legislation) to: implement CDD measures on the basis of relative importance and risks, in addition to implementing CDD measures on current business relationships at appropriate times (insurance companies, exchange institutions, and brokerage companies)

42. The instructions issued by the regulatory and supervisory entities stipulate that FIs are obligated to implement CDD measures on the customers for these institutions as of the effective date of the new requirements. The authorities informed that the law stipulates that FIs are obligated to assess risks, document the risk assessment along with the related information in writing, and keep it up-to-date. Article 3 of the executive regulation stipulates that FIs are obligated to set the appropriate procedures to determine the risks that may arise in the FIs relevant business activities, which are specifically related to the customers. However, such provisions do not impose a general obligation on FIs. In addition, the provisions do not obligate FIs to implement CDD measures on the basis of the relative importance and risks these customers represent. On the other hand, FIs are obligated to implement CDD measures on current business relationships at appropriate times. The authorities in respond to the this deficiency stated that this requirement was previously implemented in the previous instructions in accordance with the previous law, therefore, all customers were subject to the CDD measures.

Deficiency 17: Efficiency-related matters: the effectiveness of implementing the requirements is weakened by the following factors:

- ***Absence of evidence supporting the effectiveness of implementation; especially with regards to exchange companies, insurance companies, exchange institutions, and brokerage companies***
- ***Absence of effective supervision on insurance companies, exchange institutions, and brokerage companies.***

43. The authorities stated that regulatory and supervisory entities carry out quality inspection tasks in the entities subject to their supervision, with regards to the work of AML/CFT organizations: to ensure the adequacy of the systems and policies applicable by this entities; detect any deficiencies or weaknesses and attempting to avoid them in the future to protect the entities from ML/FT risks; and prevent the misuse of the methods provided by such entities in conducting illegal transactions. Authorities provided the following statistics, which show the inspection missions carried out by the supervisory entities in the field of AML/CFT for the period since the law No. 106 for 2013 came in force and until the end of January 2015:

Capital Markets Authority (CMA)			
SN	Inspection Type	Number of Tasks	Number of Violations
1	Comprehensive Inspection	19	28
2	Qualitative Inspection - with defined purpose	14	
Total		33	28

Ministry of Commerce and Industry (MOCI)			
SN	Entity	Number of Tasks	Number of Violations
1	Exchange Institutions	337	N/A
2	Insurance Companies	117	
Total		454	N/A

Central Bank of Kuwait (CBK)		
Entity	Number of Tasks	Number of Violations
Banks	30	-
Foreign Exchange Companies	41	12
Total	71	12

44. Kuwait made a huge effort to correct the legal framework of the CDD measures required from FIs. This was done through addressing deficiencies related to this recommendation either through the law, the executive regulation, or the instructions issued by the regulating and supervising entities to FIs. On the other hand, the statistics submitted above clarifies the amount of efforts exerted by entities in order to ensure that FIs implemented the requirements imposed by virtue of the laws and the regulations and instructions issued by virtue of the law. However, regulatory and supervisory entities shall document sufficient statistics that show the supervisory role they play to ensure that FIs implement the CDD measures, especially with the presence of a large number of recent requirements from FIs; in addition to ensuring that FIs implement such measures.

R13 and SR IV: Rating (NC)

Deficiency 1: There is nothing in law and regulation requires the submission of STRs to the FIU.

Deficiency 3: There is nothing in the law or legislative regulation that prevents submitting a report on an attempt to perform suspicious transactions, regardless of the amount of money involved in the transaction. FIs do not conduct this unless they have the reasonable ground for suspicion that these funds are related to FT, used to commit terrorist acts, or used by terrorist organizations or entities that finance terrorist activities.

45. The law in Article 12 stipulates that FIs shall be obligated to notify the Unit, without delay, with any transaction or any attempt to conduct a transaction regardless of its value; if they suspect or have sufficient evidence of suspicion that such transactions are performed using funds yielded from or connected or associated with a crime, or can be used in the commission of ML/FT operations. This provision provides a direct obligation on all the FIs, which fall under the scope of law, to report suspicious transactions, or any attempt to conduct a suspicious transaction, to Kuwaiti FIU. It is noteworthy that the law defines a transaction as: every purchase; sale; loan; mortgage; donation; financing; or transfer, delivery, deposit, withdrawal, wire transfer, or disposal of funds - in any manner and in any currency; whether in cash, checks, by orders to pay, stocks, bonds or any other financial instruments, or through the use of safes and any other forms of safe deposit or any other disposition of funds determined by the executive regulations.

46. Article 16 of the executive regulation stipulates that FIs shall notify the FIU in accordance with the means and forms specified by the Unit, within two working days as a maximum, with any transaction or any attempt to conduct a transaction regardless of its value, if it suspects or has sufficient evidence for suspicion that such funds are proceeds of a crime, are related to ML/FT operations, or could be used to conduct such operations. In another context, Kuwait has criminalized both FT, by virtue of law No. 91/2013, and migrant smuggling. Therefore, it can be said that the scope of reporting the suspicious transactions in Kuwait comprises all the proceeds of criminal activities, including crimes required to be enlisted as predicated offences of the ML crime.

Deficiency 2: Due to the lack of an independent FT crime, law or regulation does not prevent submitting STRs, in the case of reasonable reasons for suspicion that these funds are related to FT, will be used to commit terrorist acts, or will be used by terrorist organizations or entities that finance terrorist activities.

47. When addressing SR11, criminalizing FT will be discussed independently. Nevertheless, Kuwait addressed the deficiencies pertaining to this recommendation through criminalizing FT and stipulating that FIs shall be obligated to report transactions suspected to be connected to or can be used in FT. Reporting is based on a specific rule in the law, which is suspecting the relation of the transactions with the proceeds of crimes or having sufficient

evidence to suspect that the transactions are conducted using funds yielded from or connected or associated with crimes or can be used in the commission of FT.

Deficiency 4: Absence of effective implementation of the requirements of STR

48. The Kuwaiti authorities have taken some steps to establish an effective reporting system. The Unit issued a number of indicators related to each of the sectors obligated to report to help it detect and report suspicious transactions. The Unit issued indicators that help the banks monitor the suspicious transactions and indicators that help currency exchange companies to monitor the suspicious transactions. It also issued other indicators related to: the sector of exchange institutions, the insurance sector, the sector of investment companies, lawyers, accountants, individual institutions, and the companies operating in the field of the gold, precious metals, and gemstones trade. On the other hand, the Unit submitted statistics on the notifications received during the period from 6/1/2014 to 31/12/2014. The Public Prosecution submitted statistics on the reports submitted to it regarding AML/CFT cases, from August 2013 to 31 January 2015, as follows:

Table: STRs received by the Unit during the period from 6/1/2014 to 31/12/2014

SN	Reporting Entity	Number of STRs	Analyzed	To the public Prosecutor	Dismissed
1	Local banks (traditional)	49	24	6	3
2	Local banks (Islamic)	54	29	6	1
3	Investment companies	4	-	-	-
4	Exchange companies	22	-	-	3
5	Insurance companies	-	-	-	-
6	Companies trading in securities, financial brokerage companies, assurers, managers of assets and mutual funds, custodians, and trustees of companies	-	-	-	-
7	Real estate agents, dealers in precious metals and gemstones, accountants, and lawyers	-	-	-	-
Total		129	53	12	7

Table: Statistics on the number of reports submitted to the Public Prosecution regarding AML/CFT cases from August to 1 January 2015

Cases referred to the Public Prosecution	Dismissal of Referral to Other Jurisdictions	Pending Investigation	Number of Received Reports
8	16	24	48

49. In general, the statistics submitted by the Unit and the Public Prosecution indicate the exerted efforts of Kuwait with regards to increasing the effectiveness of the reporting system. However, there is a constant need for more effective reporting and for addressing such reports by the relevant authorities, especially in the light of legal amendments to the obligation to report FT and other criminal proceeds and the presence of a number of reports that have not been addressed. This casts burden on the authorities to support the Unit resources; hence, helping in the performing its work more effectively during the next phase. It is worthy to note the Unit effort in order to raise the awareness among the entities subject to the law of the legal rule upon which they constitute their suspicion. This is through the guidance on reasonable ground for suspicion provided to the subject entities, which are: banks; exchange institutions; insurance companies; investment companies; real estate agents; gold, precious metal, and gemstone dealers; accountants; and lawyers. However, it is noted that there were no issued indicators related to the sector of companies operating in the securities field. The authorities shall consider issuing indicators related to this sector to help raising the awareness in it.

SRII: Rating (NC)

Deficiency 1: There is no provision for criminalizing FT.

50. Kuwait criminalized FT in accordance with Article 3 of the law, which stipulates that anyone who directly or indirectly, unlawfully and willfully, submitted or attempted to submit or collect funds with the intention that they are to be used to commit terrorist acts, or with the knowledge that it is to be totally or partially used for this purpose, for a terrorist or a terrorist organization, is considered a perpetrator of an FT crime. The law stipulates that any of the abovementioned is considered an FT crime even if the terrorist act did not occur, the funds were not actually used to commit or attempt to commit this terrorist act, or were linked to a specific terrorist act, regardless the country where the attempt of a terrorist act occurred.

51. The law defines the terrorist as any natural person, whether in Kuwait or abroad, who directly or indirectly commits any terrorist act, in accordance with the provisions of the law; participates in a terrorist act; and organizes a terrorist act or directs other persons to commit it; and intentionally contributes in a terrorist act committed by a person or a group of persons acting with a common purpose to expand the terrorist act, with the knowledge of the intention of a person or group of persons to commit this terrorist act. The law also defines the

terrorist organization as any group of terrorists, whether in Kuwait or abroad, who commits any of the acts mentioned in the definition of the terrorist person.

52. Additionally, the law defines the terrorist act as any act committed or attempted to be committed, in Kuwait or anywhere else, in one of the following cases:

- a) If the act is intended to cause the death or serious injury of a civilian or any other person who is not involved in hostile acts in the event of armed conflict, and intended to intimidate a population or to compel a government or an international organization to do or to refrain from doing any action
- b) If the act constitutes a crime according to the definitions stipulated in international conventions and protocols, including the conventions annexed to the International Convention of the Suppression of the Financing of Terrorism.

53. The law also defines funds as any type of assets or properties: whether it is money, securities or commercial papers, or movable or immovable tangible and intangible values; all the related rights, regardless of the manner in which they are obtained; the legal documents and instruments, regardless of its form including electronic and digital forms; and banking facilities, cheques, payment orders, stocks, bonds, bills, and letters of indemnity, whether in Kuwait or abroad. According to the above, it is clear that Kuwait has criminalized FT in conformity with the International Convention for the Suppression of the Financing of Terrorism.

54. The Kuwaiti penal code includes other ancillary offences which involve criminalizing the attempt, contribution, conspiracy, collaboration, incitement, facilitating and directing the commission of a crime. FT crime is considered a predicate offense for ML, since the predicate offence definition set out in the law extends to include every act involving a crime pursuant to the laws of the State of Kuwait. FT is considered a crime according to the law.

55. Additionally, the Kuwaiti penal code stipulates the possibility of deducing the intention factor from objective factual circumstances. The legal persons are subject to criminal liability by virtue of the law, since the person is defined as both the legal and natural persons. The legal person shall be fined an amount not less than fifty thousand dinars, and not exceeding one million dinars, or equivalent to the total amount of the funds subject to the crime. The legal person may also be punished by being banned from directly or indirectly practicing certain commercial activities permanently or temporarily, for a period of not less than five years; or by closing the offices that have been used in committing a crime, either permanently or temporarily, liquidating its business, or appointing a receiver to manage the funds.

56. The criminal liability of the legal persons does not prevent taking administrative procedures at the same time. Article 15 stipulates that the supervisory entities may impose a number of measures or sanctions stipulated in the law if the FIs or DNFBPs violate the provisions of law, executive regulation, or decisions issued thereunder.

57. The natural person shall be punished in case he committed a FT crime as stipulated in Article 29 with the penalty of imprisonment for a term not exceeding 15 years and fine not less than the total amount of money subject of the crime and not exceeding the double of this amount. The seized funds and materials shall also be confiscated. Punishment shall be stiffened to the penalty of imprisonment for a term not exceeding 20 years and with double the fine if the crime is committed in accordance with the conditions specific in Article 30 of the law: committing the crime through an organized criminal group or a terrorist organization; committing the crime by exploiting the functional authority or position, committing the crime through associations of public benefit, charities, and charitable clubs; or recommitting the crime.

D. Review of the measures taken in relation to Key Recommendations

R23: Rating (PC):

Deficiency 1: Lack of legal basis for monitoring insurance sector and exchange institutions by the Ministry of Commerce and Industry to ensure the compliance of such entities with AML/CFT requirements

58. Article 1 stipulated on defining the supervisory entities in charge of verifying the compliance of FIs and DNFBPs with AML/CFT requirements, among which is the Ministry of Commerce and Industry. Additionally, Article 1 of the executive regulation stipulates on identifying the scope of competence of each supervisory entity specified in the law. Moreover, the Ministry of Commerce and Industry monitors the insurance companies, agents, introduced business, exchange institutions, real estate brokers, dealers of precious metals and gemstones, and accountants. Chapter II of the law includes identifying the competencies of supervisory entities including regulation, monitoring and supervising with regards to the compliance of FIs with the conditions stipulated in the law, the executive regulation thereof, the ministerial decisions, and the relevant instructions. In addition, such entities have the power to collect information and data from FIs, conduct field investigation, obligate FIs to provide any information, and take documents or copies of documents, regardless of their storage method, out of their premises. Article 17 of the executive regulation stipulates the competency of supervisory entities to issue the instructions and decisions that the FIs and DNFBPs shall implement, which are related to the controls and requirements that shall be considered in AML/CFT field. Article 18 of the executive regulation includes the power of the supervisory entities to conduct field investigations in order to ensure the compliance of FIs with the implementation of law provisions. The Ministry of Commerce and Industry issued the instructions related to the insurance sector as well as the instructions related to the exchange institutions supervised by the Ministry of Commerce and Industry. Thereby, Kuwait has addressed the deficiencies pertaining to this part of the recommendation.

Deficiency 2: The provisions related to the control of the supervisory entities over the ownership structure of the FIs lacks preventing criminals and their associates from owning big controlling stakes or becoming the beneficial owners for such stakes.

59. The law stipulates in Article 14 on the competency of the supervisory entities to establish and apply the criteria of acquiring or controlling big stakes in FIs, including the beneficial owners for such stakes, or with regards to directly or indirectly participating in it their management, administration, and operation. The authorities did not provide any evidence that the supervisory entities issued such measures.

Deficiency 3: Lack of resources available at the Central Bank of Kuwait, Ministry of Commerce and Industry, and Kuwait Stock Exchange to conduct efficiency and adequacy tests on managers and senior management in investment, exchange, insurance and brokerage companies

60. Article 14 included obligating the supervisory entities to establish and apply efficiency and adequacy procedures and standards related to the experience and integrity of the members of the executive board, the board of the supervisory directors and the managers of FIs. The CMA issued instructions for the rules of efficiency and integrity to licensed persons from which investment companies according to decision No. CMA/Q.R./H.S/1/2013, which included the rules of efficiency and integrity that are based on three criteria: professional efficiency and technical capacity, integrity and honesty, and financial soundness. The integrity and honesty criterion includes obligating the candidates for the positions mentioned in the circular to prove that they have not been convicted of a crime involving moral turpitude or dishonesty, an AML/CFT crime, or a crime of corruption. They must also be of good reputation and behavior, not incapacitated, and has never been removed from or prevented from applying to a vacant position in one of the entities. Such instructions include the entities operating in securities field. The authorities did not provide any evidence that such measures were issued by supervisory entities (exchange institutions subject to CBK and insurance companies subject to Ministry of Commerce and Industry).

Deficiency 4: Absence of supervision over brokerage companies to ensures their compliance with AML/CFT obligations

61. As previously mentioned, Article 1 of the law included identifying the supervisory entities over FIs, including CMA, and identifying the scope of competence of the supervisory entities, set out in Article 1 of the executive regulation, including CMA which is concerned with the supervision on investment companies, securities companies, financial brokerage companies, assurers, managers of assets and mutual funds, and custodians. Accordingly, the CMA is responsible for supervising the brokerage companies with regards to ensuring the compliance of such companies with the law provisions. The CMA is also granted the authority to conduct field investigations as previously mentioned. The Authority issued instructions No. CMA/QR/TA/4/2013 concerning AML/CFT in order to set controls and

instructions regulating the businesses of the licensed persons, including brokerage companies, for the procedures included in such instructions.

62. The authorities stated that CMA performs supervision over financial brokerage companies through both desk auditing and onsite inspection. With regards to onsite inspection, the Authority conducted field visits in all the companies subject to its supervision. The inspection included inspecting all company businesses and how far they are complying with law no. (7) for 2010 and regulations concerning Anti-Money Laundering and Terrorist finance.

Deficiency 5: Non-submission of the insurance sector and the supervisory institutions effectively to ensure their compliance with the AML/CFT obligations

63. Pursuant to the law and the executive regulation, the Ministry of Commerce and Industry supervised insurance companies. The authorities of the Ministry of Commerce and Industry include conducting field inspection visits. The Ministry conducted 117 inspection visits in insurance companies during 2013 and 2014.

Deficiency 6: Low level of awareness of FIs in light of the supervision imposed by the Ministry of Commerce and Industry on the AML/CFT requirements

64. The authorities stated that the supervisory entities held a number of seminars, courses, and awareness conferences on AML/CFT. They also issued awareness publications in this regards. The Central Bank organized 2 training courses for the entities subject to its supervision, which were attended by representatives of the banks. The CMA organized one awareness seminar for the entities subject to its supervision on AML/CFT and issued 3 awareness publications to emphasize on the importance of compliance with obligations mentioned in law No. 106 for 2013 and instructions issued with regards to AML/CFT. The Ministry of Commerce and Industry organized 2 conferences on AML/CFT. The authorities stated that the supervisory instructions issued by the supervisory and regulatory entities included obligating FIs with training and ongoing awareness, so the institutions subject to the supervisory entities conduct ongoing training courses for all their staff.

R26: Rating (NC)

Deficiency 1: Absence of clear legal basis for establishing the FIU and granting it the authorities and tasks

65. The law stipulates in Article 16 on establishing a Kuwaiti FIU as a national center for receiving, requesting and analyzing information related to the suspicion that such funds are yielded from or connected to or associated with a crime, or can be used in the commission of ML/FT operations. Whereas, the executive regulation stipulates that the entities bound to reporting shall notify the FIU within two working days as a maximum in accordance with the

forms and means specified by the Unit. The law also stipulates on considering the Unit as a legal independent person. A decision of the Council of Ministers is issued, on the basis of the proposal of the Minister of Finance, to form the Unit, specify its affiliation, and organize its businesses and resources. The Council of Ministers issued decision No. 1532 for 2009 on the establishment of a Kuwaiti FIU; it stipulated on forming the Unit which shall include a president, a vice-president, and a sufficient number of employees and experts in different specializations from different categories and levels. It also stipulated on appointing the president of Unit and his vice by virtue of a decree pursuant to recommendation by Minister of Finance and after the approval of the Council of Ministers, for a four-year renewable term only once. The decision also stipulated on forming an executive committee chaired by the president of the Unit, with membership of the vice-president and managers of financial analysis administrations, legal affairs, and financial and administrative affairs. A member may be substituted by a representative. The Unit is subject to the supervision of the Ministry of Finance. It submits an annual report to be raised to the Council of Ministers, during the four months of the end of each fiscal year, on its activities and businesses performed during the previous year. The report shall include the Unit accounts and the auditor report.

66. The decision stipulated that the president of Unit shall manage the businesses of the Unit, assume the responsibility of implementing and following-up the decisions issued by the executive committee, and administer the affairs of the Unit. He shall be considered the legal representative of the Unit and shall take the necessary decisions to achieve the purpose for which the Unit was formed; in particular, forming working groups and temporary or permanent committees required by the Unit, determine their competencies, and choose qualified and experienced specialists, weather from inside or outside government bodies, to perform the work of the Unit. As for the executive committee, it is responsible for taking decisions related to informing the Public Prosecution and the other competent entities; if it has reasonable evidence of suspicion that funds are proceeds of, connected to, or associated with a crime, or can be used in the commission of ML/FT operations. It shall also approve the instructions and guidelines provided to the entities bound to reporting, in respect to the manner of reporting suspicious transactions and requesting information, including reporting specifications, its schedule, as well as the procedures that shall be followed in this regard.

67. The executive committee is also responsible for: accreditation of studies; issuing of the necessary decisions which help in the achievement of the Unit goals; defining the countries that the Unit considers as a high-risk countries and the measures that shall be taken with regards to such countries; approving notifying the supervisory entities if the entities bound to reporting violate the obligations required in the law; studying the requests submitted by the other competent entities; issuing the right decisions; approving exchanging information with counterpart units and other competent entities; and making the information available to any foreign entity in accordance with the international, bilateral, and multilateral agreements, for the purpose of implementing the principle of reciprocity, or in accordance with mutual agreement on the basis of cooperation arrangements in which the unit is involved. The committee shall also: approve the analysis report to evaluate the notifications that the Unit receives annually, the ML/FT trends, and the statistics; approve the qualification and training

programs for the staff of the Unit; appoint auditors; define and manage the procedures and the systems of the Unit, including the moral code and the procedures that maintain the confidentiality of the information; set the organizational structure of the Unit; define the competences of the administrations and their respective sections; approve the administrative and financial regulations; and approve the yearly draft budget of the Unit.

68. Decree No. 37 for 2014, dated 30/1/2014, was issued to appoint a president for the Unit for 4 years renewable for one period. Decree No. 136 for 2014, dated 14/5/2014, was issued to appoint a vice-president for the Unit. The FIU is operating and exercising its jurisdiction pursuant to the law.

69. The decision of forming the Unit stipulates on forming the Unit from a sufficient number of administrations and departments to do operate its functions; specially, the financial analysis administrations, legal affairs, financial and administrative affairs, and information technology and security. The president of the Unit issues a decision to form and organize the departments and sections of the Units and define the number and scope of competences of each one of them. The managers of the stated administrations shall be appointed, by a proposal from the president of the Unit in consultation with his vice for the first time, and the executive committee takes the responsibility of appointing their successors later. The decision of the Unit president was issued on 12/1/2014 to approve the organizational structure of the Unit.

70. The decision stipulates on forming specific financial resources to finance the activities of the Unit from what is allocated annually for the unit in the country budget and other revenues approved by the Council of Ministers. The law stipulates that the Unit shall manage itself, in accordance with what the internal regulations determines. With regards to the internal regulation and the work mechanism of the Unit, the authorities stated that they have issued 3 administrative regulations to regulate the course of work. The regulations are: administrative sanction regulation for the Unit staff, the regulation for staff benefits and salaries, and the regulation organizing the working hours and leaves. The authorities also stated that the Unit is working on issuing regulations and internal work procedures for the departments, along with identifying the competences, tasks, and responsibilities entrusted to each department and section and its staff; and the code of ethics regulating the work of the Unit staff.

71. On the other hand, the decision of establishing the Unit in Article 8 includes that the Unit is competent to receive and analyze the notices and information related to the suspicion that funds are yielded from, connected to, or associated with a crime, or can be used in the commission of ML/FT operations. The legal department in the Unit is in charge of managing the reports and appearing before the Public Prosecution, pursuant to what is stipulated in Article 12 of the decision.

Deficiency 2: The FIU didn't issue clear guidelines on raising STRs.

72. The FIU issued the guidance manual of the Kuwaiti FIU for FIs and DNFBPs concerning filling out the STR form. This manual provides guidelines to the entities bound to reporting on reporting methods and contents of the reporting form, including the procedures followed by the entity who submitted the report.

Deficiency 3: Unclear operational, strategic and tactical analysis of the STRs and other relevant information.

73. The Kuwaiti authorities addressed the deficiencies pertaining to this issue through: preparing STRs forms submitted by the entities entrusted to raising reports to the Unit. The Unit also provided an internal report including terms for analyzing the STRs received from the concerned entities. It also provided a report including a detailed presentation of the results of the financial inspections to deliver it to the Public Prosecution, listed the received reports periodically, and worked on categorizing them in accordance with the analysis results.

74. The authorities also stated that it is currently working on establishing an electronic system that basically operates to electronically receive the STRs from the different entities, and performs a preliminary analysis on them, and develops a specialized database that includes all data and information to help in the financial analysis process.

Deficiency 4: Absence of the legal basis for requesting the additional information from FIs and DNFBPs

75. Article (18) of the law stipulates that the Unit is granted the authority to access any additional information necessary for the accomplishments of its tasks, from any person subject to the reporting obligation stipulated in Article 12. The required information is submitted within a period of time specified by the Unit and in accordance with the executive regulation of this law. The executive regulation includes obligating the entities bound to reporting to provide the Unit with any relevant information or copies of documents, regardless of their storage method, within the specified timeframe defined by the Unit. Additionally, the Council of Ministers decision No. 1532 for 2013 concerning the Kuwaiti FIU included that the Unit may request any additional information it deems necessary for the performance of its businesses from the FIs and DNFBPs. The Unit also may obtain any other information it deems necessary for the accomplishment of its tasks from the country bodies who shall meet the Unit requests in this regard without delay.

Deficiency 5: The Kuwaiti FIU is not authorized to send the financial information to the local authorities for the purpose of investigation or when there is a reason for suspecting ML/FT

76. Article 19 of the AML/CFT law stipulated on authorizing the Unit to send financial information to the Public Prosecution and the competent entities for the purpose of investigation and when there is a reason for suspecting ML/FT. The Unit also notifies the supervisory entities if any of the FIs or DNFBPs violates the obligations set out in the law.

Deficiency 6: Insufficient operational independence in a manner that ensures that the Unit is free from implausible intervention or influence

77. Kuwait has taken significant steps to strengthen the independence of the Unit, in terms of stipulating that the Unit has the administrative and financial independency and with regards to taking decisions related to the referral of the information pertaining to the reports received by the Unit. This is shown in Article 16 of the law which stipulates on the independency of the Unit and Article 5 of the decision of establishing the Unit, which stipulates that the Unit is financially and administratively independent and has the full authorities to take decisions on the issues which fall within the scope of its responsibilities and tasks. According to the decision of establishing the Unit, the president of the Unit is granted the authorities to manage the businesses of the Unit, assume the responsibility of implementing and following-up on the decisions issued by the executive regulation, and administer the affairs of the Unit. The executive committee of the Unit is granted broad authorities in terms of taking decisions pertaining to the referral of the information related to the reports to the Public Prosecution and the other competent entities, in addition to preparing the annual draft budget of the Unit and a number of other competences. On the other hand, the Kuwaiti FIU has started to receive reports on the suspicious transactions as of mid 2014. The main personnel of the Unit have been appointed, and the completion of the arrangements of the new headquarter of the Unit is in progress. The Unit is expected to relocate soon.

78. The authorities also stated that the executive committee performed the businesses and tasks entrusted to it. Until the date of preparing this report, 14 meetings were held during 2014 and 2015. Many topics and aspects specific to the functioning of the Unit were discussed during these meetings, including the referral to the prosecution.

Deficiency 7: Insufficient protection of the information and the headquarters.

79. The decision on establishing the Unit stipulates on developing and running a database including all the information pertaining to STRs and the other information related to the competences of the Unit. Any entity is prohibited to access the information available at the Unit expect according to the cases and conditions stipulated in the law or the executive regulation, or the decision issued on establishing the Unit. According to this provision, it is prohibited to access the information owned by the Unit expect for the staff of the Unit. It is noteworthy that the employees of the Unit are obligated to maintain the confidentiality of the

information they obtained within the scope of their duties, even after they stop working for the Unit. These information may not be used expect for the purposes stipulated in the law. It should be noted that the executive committee of the Unit is in charge of approving the procedures specific to maintaining the confidentiality of the information.

80. On the other hand, the entities stated that the current headquarters of the Unit is equipped with modern technology systems, as the access to the headquarters of the Unit is only limited to the its staff using an electronic system that does not permit the access to the headquarters expect for the authorized persons. All the files include information and data that are kept into closed and secured places. When establishing the new headquarters, the working international best practices in the field of protection and security of information were taken into account: the new headquarters were provided with more than one protection level, including the access to the headquarters themselves, and the departments of the Unit, and the data and information related to the business of the Unit. In addition, high quality technology systems were set to ensure the security and confidentiality of information.

Deficiency 8: Lack of publication of periodic reports.

81. This lack is a result of the recent establishment of the Unit. The Unit actually started exercising its work during the mid 2014; the Unit did not publish any periodic reports, except for the publication of the indicators that help the entities bound to reporting to monitor suspicious transactions.

R35: Rating (PC)

Deficiency 1: Kuwait did not ratify the UN Convention for the Suppression of the Financing of Terrorism for 1999.

82. Kuwait issued the law No. 85 for 2013 that approves the joining of Kuwait to the International Convention for the Suppression of Financing of Terrorism.

Deficiency 2: Palermo and Vienna Conventions were not implemented:

- ***Migrant smuggling and FT are not considered predicate offences for ML.***
- ***Criminal liability is applied on companies and not other legal persons.***

83. Kuwait criminalized migrant smuggling by virtue of law No. 91/2013 and criminalized FT by virtue of law No. 106/2013. When criminalizing ML, Article 2 of the law stipulates on the application of the criminal liability on the legal person if this crime was committed in his name or for his account.

R40: Rating (NC)

Deficiency 1: The FIU is not able to exchange information with their foreign counterparts.

84. The law stipulates in Article 19 on authorizing the FIU to make the information available for any foreign entity either on its own or upon request, based on reciprocity or mutual agreements on the basis of cooperation arrangements in which the Unit is involved with this entity. According to what the decision No. 1532 for establishment of the Unit, the executive committee is responsible for agreeing on exchanging information with the counterpart units and other competent foreign entities, in addition to making information available for any foreign entity. This is for the purpose of implementing the international bilateral and multilateral agreements in which Kuwait is a party or implementing the principle of reciprocity or mutual agreements on the basis of cooperation arrangements in which the Unit is involved.

85. On the other hand, the Kuwaiti authorities stated that the FIU submitted a request to join Egmont Group in December 2014. They are currently working on preparing MOU forms to be signed with all the competent entities, whether such entities are counterpart FIUs or other competent entities.

Deficiency 2: Absence of controls and guarantees to ensure the use of information received by the law enforcement authorities in the only way allowed.

Deficiency 7: Absence of a ban on the use of the information by the regulatory entities in purposes that are not permitted.

86. Article 23 in the law stipulates that the Public Prosecution (the entity responsible for the investigation, control and prosecution in ML/FT crimes) exchanges the international coordination requests with the counterpart foreign entities in penal matters in AML/CFT field, predicate offences, or FT offences. This article also defines some forms of international cooperation conducted by the Public Prosecution, among which is mutual legal assistance, and it does not involve information exchange requests with the counterpart foreign entities. In addition, it does not include the mechanism that ensures the use of information received by the law enforcement authorities in the permitted manners.

Deficiency 3: Outside the Framework of Unified Monitoring:

- ***The international cooperation of the Central Bank of Kuwait is limited; approval must be obtained from the Public Prosecutor's Office. The necessity of the Central Bank of Kuwait to refer to the Public Prosecutor's Office represents, in some cases, an unnecessary restrictive condition for the exchange.***
- ***Lack of clear methods of exchange by the Central Bank of Kuwait except for criminal matters.***
- ***Lack of immediate exchange by the Central Bank.***
- ***Presence of confidential restrictions on exchanging confidential information by the Central Bank.***

- ***Lack of clear authority of the Central Bank to perform inquiries to foreign counterparts without the authorization of the Public Prosecutor's Office.***

87. Paragraph 5 of Article 14 of the law stipulates that the Central Bank of Kuwait has the authority (as one of the supervisory entities stipulated in the executive regulations) to cooperate and exchange information with the competent authorities or the foreign entities concerned with AML/CTF. The law does not impose any restrictive conditions on the regulatory entities in exchanging information, in addition to the Central Bank's authority stipulated by the law to collect information and data from the FIs which it supervises. Accordingly, the Central Bank of Kuwait may exchange information with foreign entities in AML/CFT field without referring to any other entities, which increases the speed and the efficiency of exchanging information with foreign entities. This exchange is not restricted to criminal matters, but it includes all information that may be exchanged.

88. The Kuwaiti authorities stated that CBK adopts a reciprocity methodology or bilateral agreements when dealing with information requests. On 28/3/2015, the CBK and the Chinese Banking Regulatory Commission signed letters of intent for cooperation in the field of banking supervision.

Deficiency 4: The international cooperation of Kuwait Stock Exchange is not sufficient.

89. According to what Article 14 of the law stipulates, the CMA has the authority of exchanging information and cooperation with foreign entities in AML/CFT field as one of the supervisory entities. Accordingly, Kuwait has addressed the deficiency related to this recommendation. The CMA became authorized to exchange information and cooperate with foreign entities in AML/CFT field.

90. Article 149 of law No. 7 for 2010 with regards to establishing the Capital Markets Authority and Regulating Securities' Activities for exchanging information with the counterpart authorities in other countries. However, to date, the Authority did not sign any MOUs with foreign entities or authorities. The authorities also stated that the CMA is working on fulfilling the requirements of joining IOSCO. It also has signed MOUs with both the Ministry of Commerce and Industry and the CBK.

Deficiency 5: With regards to the Ministry of Commerce and Industry and Kuwait Stock Exchange, there is a lack in:

- ***Clear ways of international exchange.***
- ***Proven immediate exchange.***
- ***Proven ability to perform inquiries to foreign counterparts.***
- ***Clear guarantees to maintain the confidentiality of the information.***

91. Article 14 of the law provides a wide range for international cooperation between the supervisory entities – including the Ministry of Commerce and CMA – and the counterpart

foreign entities in information exchange. The article does not stipulate specific restrictions on exchanging information in AML/CFT field. It stipulates that the supervisory entities have the authority of information exchange and cooperation. Such entities are competent to collect information and data from FIs which are under their supervision, which gives these entities the ability to share information with foreign entities. However, such entities still must find guarantees to keep the confidentiality of the collected information and the information exchanged with or received from foreign entities.

Deficiency 6: Inexistence of clear authorities specialized in exchange with regards to financial issues.

92. The law stipulates the authority of the supervisory entities in cooperation and information exchange with foreign entities with regards to ML/FT crimes. Despite the lack of rules regulating the powers of supervisory entities included in the law with regards to exchanging information, there are no conditions impose on such entities concerning rejecting these requests for including financial matters. There is still a need to regulate the process of exchanging the information shared with foreign entities.

Deficiency 8: Lack of statistics and overall effectiveness.

93. The authorities did not provide any statistics in this regard.

SRI: Rating (NC):

Deficiency 1: Kuwait is not a party in the UN Convention for the Suppression of Financing of Terrorism and it has not implemented the Convention.

94. Kuwait issued the law No. 85 for 2013 that approves joining the International Convention for the Suppression of Financing of Terrorism.

Deficiency 2: Kuwait did not implement UNSCRs 1267 and 1373.

95. With regard to UNSCRs 1267 and 1373, Kuwait has taken the necessary actions to fully implement and comply with UNSCRs (and the successor resolutions) by virtue of SRIII. Besides, article 25 of the AML/CFT law stipulates the competence of the Council of Ministers, upon the proposal of the Minister of Foreign Affairs to issue the decisions necessary to define the mechanism for the implementing the UNSCRs pursuant to Chapter XVII of the UN Charter related to terrorism, FT and financing of proliferation of weapons of mass destruction. The ministerial decision No. 5 for 2014, dated 8 April 2014, regarding the executive regulations for implementing UNSCRs issued by virtue of Chapter VII of the UN Charter, was issued. In addition, the ministerial decision No. 4 for 2014 was issued to form a committee, chaired by the Ministry of Foreign Affairs, for implementing UNSCRs. This was followed by issuing guiding controls by the committee for implementing the requirements of the decision No. 5 aforesaid.

SRIII: Rating (NC):

Deficiency 1: There is no law or action applied to implement UNSCRs 1267 and 1373, or to deal with freezing requests received from other countries.

96. Article 25 of the law stipulates that the Council of Ministers, upon the proposal of Minister of Foreign Affairs, issues the necessary decisions to implement the UNSCRs pursuant to Chapter VII of the UN Charter related to terrorism, FT, and financing of proliferation of weapons of mass destruction. The Council of Ministers' decision No. 5 for 2014, on 8 April 2014, was issued with regards to the executive regulation for the implementation of UNSCRs stipulated by Chapter VII of the UN Charter which included forming a committee to implement UNSCRs of Chapter VII of the UN Charter related to terrorism and FT, chaired by the Ministry of Foreign Affairs and the membership of representatives of several entities; provided that the Minister shall issue a decision to form such committee. The Minister of Foreign Affairs issued decision No. 4 for 2014 for forming a committee for implementing UNSCRs.

97. By virtue of the Council of Ministers' decision No. 5, the committee shall be responsible for pursuing any future developments of combating terrorism and following up with the necessary actions to achieve the objectives of forming this committee. The committee is also responsible for coordination with other government entities to find out the latest developments related to combating terrorism and the actions taken by these entities to implement the provisions of such decision. The committee is also considered as the link between the government of the State of Kuwait and the relevant foreign entities. The head of the committee is responsible for assigning a secretary of the committee to call for meetings, record the minutes of meeting of the sessions of the committee, and save the records and the decisions.

98. The decision issued by the Council of Ministers included the mechanisms of implementing UNSCR 1267 and 1373. The resolution obligates all persons to freeze, without any delay or warning, all funds belonging to any of the entities identified in the resolution whether they are fully owned by these persons or shared with other entities, and whether they are in his possession or under his authority directly or indirectly. The mechanism includes obliging persons to freeze funds that belong to persons, groups, or entities that are listed or defined by the Sanctions Committee of the International Security Council (the Sanction Committee is formed by virtue of resolution 1267); those who work on behalf of these persons, groups or entities; or those under their supervision or owned by them; or those on which they have a direct or indirect authority. The mechanism also includes freezing the funds of those listed by the committee according to the list issued by virtue of Article 8 of the decision. Article 8 of the decision stipulates the authority of the Unit to include a person, a group, or an entity whether on its own or based on a request from the Kuwaiti FIU, the Public Prosecution, or any foreign or local entities responsible for submitting these requests by virtue of the relevant UNSCR. The competent committee identifies the persons, groups and entities against which there are sufficient reasons to believe they committed, attempted to commit, started to commit, participated in, or facilitated committing a terrorist act. The

committee includes those persons on the list and modifies it accordingly. Besides, the committee reviews the list at least every six months to ensure its accuracy and that there are still enough reasons to keep the names on the list. The decision allows the committee to include any person or group in the list without interviewing or persecuting the person subject to the action. The decision is taken without delay and without prior notice to the concerned person.

99. The decision also defines fund freezing as a prohibition of transferring, disposing, changing, using, dealing with, or moving the funds, which may result in changing its value, amount, position, possession, acquisition, nature, or destination; or may allow, in any possible way, the use of these funds for any purpose. Freezing measures are also implemented on the revenues from which the funds result or are collected. The law also defines funds as any type of assets or properties: whether it is money, securities or commercial papers, or movable or immovable tangible and intangible values; all the related rights, regardless of the manner in which they are obtained; the legal documents and instruments, regardless of its form including electronic and digital forms; and banking facilities, cheques, payment orders, stocks, bonds, bills, and letters of indemnity, whether in Kuwait or abroad. This is a broad definition that matches the requirements of international standards.

100. On the other hand, Article 4 of the decision stipulates the prohibition of making the funds available, presenting financial services, or any related services; directly or indirectly, fully or in participation with others; to a person, group, entity, or for the interest of the persons defined either in the list issued by the Sanctions Committee of the International Security Council, or according to the list issued by the committee; unless it is permitted by the mechanism of the funds which may be excluded from the freezing mentioned in Chapter IV of the decision.

101. The decision requires notifying the competent committee within three days from the freezing date according to Article 3. It also requires notifying the competent committee upon knowledge or suspicion that a customer, a previous customer, or any person with whom it deals or has dealt is one of the persons or groups identified according to the lists issued by virtue of this decision. In addition, it requires providing the committee with any information about the status of the funds, actions taken with regards to these funds, the nature of the frozen funds and their amount, and any other related information or any information that may help in facilitates complying with the freezing decision. The decision obligates the cooperation with the competent committee in verifying the accuracy of provided information. The decision also includes that the committee shall report the FIs and the DNFBPs specified by virtue of the decision that stipulates the delisting or inclusion of a person, a group or an entity in the list pursuant to Article 8 of the decision, and publish the list within 15 days in the Official Gazette. It is noteworthy that Article 8 of the decision includes listing a person, an entity, or a group whether on its own or upon request of the FIU, Public Prosecution, or any local or international entity responsible for representing these requests by virtue of the relevant UNSCR. This means including the persons or the entities reported to the committee

by virtue of UNSCR 1373. Accordingly, the decision does not include the mechanism for reporting the identified FIs and DNFBPs to include a person on the list of Sanctions Committee according to UNSCR 1267. However, the guiding controls issued by the committee competent to implement the requirements of decision No. 5 for 2014 stipulates that FIs shall freeze the target funds for the persons defines in accordance with the lists of the two UN committees. When any accounts belonging to a person, a group, or an entity listed in any of such lists are available, FIs shall report to the committee within 3 days from the date of freezing such assets.

102. The decision allows the committee to modify or rescind the freezing decision. If the paragraph issued by the competent committee concerning the inclusion of a person on the list does not apply to the concerning person, the committee modifies or rescinds the freezing decision. Such action shall be published in the Official Gazette, and the concerned person shall be notified according to the defined procedures. On the other hand, the modification or rescinding imposed according to the list of the Sanction Committee is not allowed except in accordance with the requirements stated in Chapter IV of the decision. This Chapter allows each relevant person to present a written request to the committee to obtain permission for having a full disposal on all or a part of the frozen funds. The committee may grant this permission by virtue of the conditions that it deems relevant to prevent FT for the purpose of the payment of the necessary or primary expenses to a natural person or his family, payment of the expenses of acceptable professional fees, payment of the expenses related to providing legal services, and the payment of the expenses or fees to an FI in exchange for the management of the frozen funds. The committee notifies the competent Sanction Committee of the UN with its intention to exclude the freezing of some funds. If the committee does not receive an objection from the Sanction Committee within one week, the committee shall notify the applicant with the decision of acceptance or rejection of his request within 30 days from the date of receiving the request.

Deficiency 2: There is no authority responsible for the typologies, and there is no legal basis for freezing/seizing.

103. The decision of the Council of Ministers stipulates the establishment of a competent committee chaired by the Minister of Foreign Affairs, which shall be responsible for all the tasks specified in the law and the decision issued by the Council of Ministers. The committee is the entity in Kuwait responsible for listing the names of persons, groups, or entities against which there are enough reasons to believe they committed, attempted to commit, participated in, or facilitated the commission of terrorist acts. The ministerial decision No. 4 for 2014 was issued for establishing such committee. As noted above, Article 25 of the law includes the delegation of the Council of Ministers to issue the necessary decisions for implementing UNSCRs, by virtue of Chapter VII of the UN charter related to terrorism, FT, and financing of proliferation of weapons of mass destruction. The Council of Ministers issued decision No. 5 for 2014 that includes obligating every person to freeze all funds belonging to the entities listed, whether on the list of Sanction Committee of the UN, or on the list on which the competent committee lists the names of persons, groups, or entities according to the criteria defined by the decision.

Deficiency 3: When freezing occur, freezing requests take more than “just hours”.

104. Article 3 of the decision issued by Council of Ministers for implementing the UNSCRs obligates all persons to freeze all funds belonging to the entities specified according to the lists of Sanction Committee or the competent committee **without delay or prior notice**.

105. The guiding controls include detailed procedures that shall be taken when FIs discover the existence of funds or assets in their possession or under their management. Among such procedures is the immediate freezing all such funds or any funds derived from them without submitting any notification to the customer or the potential customer, as soon as the freezing decision is issued, either through including the names in the UN lists or by publishing the decision in the Official Gazette, if the person is listed by the competent committee. The entity which carried out the freezing shall notify the formed committee by virtue of decision 4/2014 within three days from the date of freezing.

Deficiency 4: There is no coordination mechanism for implementing UNSCRs 1267 and 1373.

106. The decision of Council of Ministers stipulates that the competent committee formed according to decision No. 5 for 2014 is responsible for coordinating with other government entities to follow-up the latest developments related to combating terrorism and the actions taken by the government entities to implement the provisions of the decision. The decision also includes considering of the committee as a link between the government of the State of Kuwait and other foreign entities.

Deficiency 5: There are no communication mechanisms or guiding instructions for institutions which are not subject to the supervision of the Central Bank of Kuwait.

107. The authorities stated that guiding controls were issued for implementing the requirements of decision of No. 5 for 2014, with regards to the executive regulation for implementing UNSCRs issued by virtue of Chapter VII of the UN Charter on terrorism and FT.

Deficiency 6: There is no appropriate reviewing mechanism.

108. The decision issued by the Council of Ministers of the implementation of the UNSCRs included reviewing mechanisms. Article 8 stipulates that the competent committee reviews the issued list every six months at least to ensure its accuracy and that there are still sufficient reasons to keep the name on the list. If the competent committee finds that the information and evidences available are no longer sufficient to keep the name on the list, the committee delists the person.

109. On the other hand, the decision issued by the Council of Ministers includes: actions related to consider the delisting requests, actions related to modifying or descending the freezing with regards to the affected persons according to UNSCR 1267, and actions related to considering the permission to access the frozen funds. Besides, the regulation included actions related to considering the requests of appealing against freezing decisions issued according to the list specified by the committee, as well as specific actions related to raising designation requests to the UN or delisting a name from the UN list.

Deficiency 7: There are no clear actions for monitoring and imposing penalties to verify that the freezing requests are implemented.

110. The decision issued by the Council of Ministers includes obliging the specified FIs and DNFBPs to adopt actions to ensure their compliance with the provisions of this decision. The decision also grants the supervisory entities the authority to verify the compliance of the FIs and the DNFBPs with the provisions of this decision. A number of penalties are applied on FIs and DNFBPs in the case of violating the provisions of the decision. The supervisory entities may impose penalties by virtue of Article 15 of the law. In the case of non-compliance with fund freezing according to what the decision defined, the provisions of Article 35 of the law related to penalties shall be applied. On the other hand, the specified FIs and DNFBPs shall be penalized in case of violating the provisions of Article 18 of the decision.

Deficiency 8: Absence of FT criminalization.

111. Kuwait has criminalized FT according to Article 3 of the law.

SRV: Rating: (NC):

Deficiency 1: Lack of actions of criminalizing financing terrorism.

112. It is previously mentioned that Kuwait has criminalized FT according to the requirements of the international standards. The Law No. 85 for 2013 has been issued to approve the joining of the State of Kuwait the International Convention for the Suppression of the Financing of Terrorism, and it has been published in the Official Gazette.

Deficiency 2: Impossibility of evaluating the efficiency of mutual legal assistance and extradition systems due to the limited number of cases.

113. The authorities stated that the National Committee of AML/CFT, during the development of the national plan, defined the tasks and responsibilities commissioned to all the supervisory and competent entities related to AML/CFT. Among the responsibilities assigned to the Public Prosecution is enhancing the mechanisms of mutual legal assistance and extradition. The Public Prosecution started setting such mechanisms for Mutual Legal Assistance.

Deficiency 3: Lack of criminalization of FT limits the ability of cooperation by the competent authorities.

114. The lack of criminalization of FT used to be one of the foremost difficulties that faced the State of Kuwait in the process of information exchange and international cooperation. The State of Kuwait criminalized FT and specified the Public Prosecution as the entity responsible for receiving and exchanging the requests of international cooperation with counterpart foreign entities with regards to penal matters in the field of FT crimes. This takes the form of: legal assistance; rogatory requests and the extradition of the accused and the convicted; and the requests related to locating, tracking, freezing, seizing, or confiscating funds. All this shall be conducted according to the rules prescribed by bilateral and multilateral agreements ratified by Kuwait or according to the reciprocity principle. Besides, the supervisory entities were given the authority to cooperate and exchange information with counterpart foreign entities in CFT field. The Unit was also given the authority to make the information in its ownership available to any foreign entity, whether on its own or upon request from counterpart foreign entities, which increases the level of cooperation ability in FT field.

Deficiency 4: Low level of activating information exchange related to FT in general.

115. Article 14 of the law stipulates the authority of supervisory entities to coordinate and exchange information related to FT. The law also allows the Kuwaiti Financial Investigation Unit to provide information to any foreign entities, whether automatically by the Financial Information Unit, or upon request on the basis of the reciprocity agreement or mutual agreement based on the cooperation arrangements in which the Unit is a party with such entities. The authorities stated that two requests are submitted for exchanging information related to FT through the work of the committee responsible for CFT (the committee responsible for the implementation of the UNSCRs by virtue of Chapter VII of the UN Charter on terrorism and FT).

Deficiency 5: Lack in statistics.

116. It was previously mentioned that the Public Prosecution is going to enhance the mechanisms of mutual legal assistance and the competent committee is submitting 2 requests in this regard. However, it is noteworthy that the criminalization of FT and the provisions included in the law regarding the jurisdiction of the Public Prosecution of the mutual legal assistance requests, extradition, and other legal mechanisms included in the law contribute in addressing the deficiencies related to the State of Kuwait not complying with the recommendations. This would help Kuwait in providing statistics in this regard in the future.

E. Review of measures taken with regards to the other recommendations rated PC or NC

R6: Rating (NC)

117. Kuwait addressed the deficiencies pertaining to implementing the due diligence measures in dealing with PEPs. The PEP is defined, according to the standards, by Article 1 of the AML/CFT law and Article 1 of the executive regulations of the AML/CFT law. All FIs shall set appropriate risk management systems to specify whether the customer or the beneficial owner is a PEP. The FIs are obligated to obtain the approval of the senior management before they establish or continue in a business relationship with a person, in addition to taking all the appropriate measures to identify the source of his/her wealth and funds and monitoring the business relationship continuously and intensively. Moreover, Kuwait has completely expanded the scope of the requirements of R6 to include obligating exchange companies, insurance companies, exchange institutions, and brokerage companies. Article 5 of the law included the obligations that shall be considered for the due diligence towards such persons. All the institutions shall set the appropriate systems of risk management to specify if the customer or the beneficial owner is a PEP. If the institutions discover that the customer or beneficial owner is a PEP, they implement the additional measures to those stipulated in the second paragraph of this article.

118. Moreover, the supervisory entities included obligations for FIs when dealing with PEPs, such as Article 4 of the instructions of the Central Bank of Kuwait issued to the local banks, the instructions of exchange companies, and Article 5 of the regulations and instructions organizing the businesses of exchange companies and institutions, and the regulations and instructions organizing the businesses of insurance companies and their agents and brokers. Besides Article 6 of the AML/CFT instructions issued by the CMA. All such provisions obligated FIs to implement the due diligence procedures and set and implement the appropriate risk management systems to identify if the person is a potential customer, a customer, or beneficial owner who represents a PEP. The provisions also obligate obtaining an approval from the senior management to continue in a business relationship when later discovering that the customer or the beneficial owner is a PEP or when the customer or the beneficial becomes a PEP. In addition, the reasonable measures shall be taken to identify the source of the wealth and funds of the beneficial owners who are identified as PEPs, and enhanced ongoing monitoring shall be conducted when the FI is in a business relationship with a PEP.

R7: Rating (PC):

119. Kuwait addressed the deficiency pertaining to this recommendation by obligating the FIs in relation with banking relationships with the external correspondent banks or other relationships to collect enough information, specify the nature of the business of this institution, and evaluate the reputation of the correspondent institution and the supervision type to which they are subject, including its submission to investigation or regulatory measure in AML/CFT field. Besides, the controls applied in the correspondent institution shall be evaluated, and the approval of senior management shall be obtained before

establishing a new correspondent relationship. The responsibilities of each institution in AML/CFT field shall be identified and documented. Moreover, such measures shall be implemented on the relationships that existed when the law and the executive regulations were issued. Article 7 of the law included a provision that stipulates the executive regulation that specifies the measures that shall be taken by FIs before establishing a banking relationship with the external correspondent banks or other similar relationships, in addition to the regular due diligence measures implemented according to Article 5. In addition to the implemented regular due diligence measures, Article 9 of the executive regulations includes a provision that obligates FIs to take the following measures before establishing a correspondent banking relationship with external correspondent banks or other similar relationships:

- a) Collecting information about the responsive institution
- b) Understanding the business nature of the responsive institution
- c) Evaluating the reputation of the responsive institution and supervision type to which they are subject, including if it was subject to investigation or regulatory measure in AML/CFT field
- d) Evaluating the controls implemented by the responsive institution for the AML/CFT
- e) Obtaining the approval from the senior management before establishing new correspondent relationships
- f) Clearly identifying and documenting the responsibilities of every institution in AML/CFT field

120. Such measures shall also be implemented on cross-border correspondent banking service providers and all the similar relationships established before the law became in force and the issuance of this executive regulation. The instructions issued for all the banks and the other instructions issued for exchange and investment companies includes provisions obligating such institutions to consider the abovementioned requirements when dealing with correspondents.

R8: Rating (NC):

121. Kuwait addressed the deficiencies related to obligating FIs to take proper measures to prevent misuse of modern technology in ML/FT, as well as to obligate FIs to apply specific measures sufficient to counter the risks of ML/FT in cases of account opening, initiating business relationships, or executing transactions without face to face interaction. Both Articles 9 and 11 of the executive regulation of the AML/CFT law, previously mentioned in recommendation 7, obligate FIs and DNFBPs to define and evaluate risks of ML/FT and take necessary measures accordingly, which may result from processes related to development of new products and professional practices, including automated methods of providing new products and services and the use of new or developed technologies concerning existing products or when presenting new products.

122. Article 5 of the law stipulates that FIs and DNFBPs shall apply specific measures sufficient to counter the risks of ML/FT when opening accounts, entering business relationships, or executing transactions with clients who are not present in person for identity verification purposes. Furthermore, the article includes the instructions issued by the regulatory entities; such as, Article 14 of instructions No. 2/BS/IBS/308/2013 issued to local banks, Article 13 of ministerial decision No. 409 for 2013 of the Ministry of Commerce and Industry concerning the controls and instructions regulating the work of exchange companies and institutions, and Article 15 of the ministerial decree No. 412 for 2013 concerning the controls and instructions regulating the work of insurance companies, their agents, and brokers which obligate their dependent units to set work policies and procedures for AML/CFT, provided that such policies are based upon the results of the study that each institution must conduct in order to determine related risks, as well as on the main elements of the study: types of clients, executed transactions, and other relevant factors that should be taken into consideration including any transaction where the client is not present face to face. In addition, FIs are obligated to take necessary procedures to determine whether clients act on behalf of an actual beneficiary or more, in order to verify the identity of the actual beneficiary or beneficiaries.

R9: Rating (NC):

123. Kuwait addressed the deficiencies concerned with FIs hiring a third party to conduct CDD measures. The regulation has clearly stated the conditions to consider when hiring a third party for that particular end. It is mandatory for any FI to obtain the approval of the respective supervisory entity of the measures taken by the FI in this regard. Those conditions accommodate instant access to specific information in CDD measures; obligate the third party to provide copies of identification data upon request and without delay; and verify that the third party is under the regulation, supervision, or inspection in order to adhere to the specific requirements of CDD measures, while the FIs hold the final responsibility of identifying and confirming the customer's identity. The last paragraph of Article (5) of the law states that FIs and DNFBPs may hire third parties to conduct certain elements of CDD processes according to the executive regulation. Article 15 of the executive regulation included the conditions that shall be considered when hiring a third party. It is also necessary to obtain the supervisory entity's approval of such measures and ensure their fulfillment, such as: immediate access to all data stipulated in the second paragraph of Article 5 upon request; obligating the third party to provide copies of identification data upon request and without delay, as well as other documents related to CDD measures; and ensuring that the third party is subject to the regulation, supervision, or inspection in order to comply with the requirements stipulated in Articles 5 and 11 of the law and that it adopts measures aiming to complying with such requirements, provided that FIs and DNFBPs, for which the supervisory entity has approved hiring a third party, bear the ultimate responsibility of identifying and confirming the customer's identity.

R11: Rating (PC):

124. Kuwait addressed the deficiencies pertaining to this recommendation by expanding the requirements of recommendation 11 to include insurance, exchange, and brokerage companies. Accordingly, all FIs (including insurance, exchange, and brokerage companies) are obligated to pay special attention to handling all unusually complex and large transactions, unusual patterns of transactions, and cases where there is no apparent legitimate economic reason, as well as to examine and research the background of such transactions, confirm the purpose thereof, record them, and make them available to the competent authorities when appropriate. FIs are therefore obligated to practice enhanced due diligence in all transactions that are complex, unusually large, or of unusual patterns that do not have clear legitimate purpose or economic objectives, and to examine the backgrounds and purposes of such transactions. They are also obligated to record all information related to it and to the identity of all participating parties, and keep such records according to the provisions of Article 11 of the law. FIs are obligated to make such information available for the competent entities upon request.

R12: Rating (NC):

125. Kuwait has largely addressed the deficiencies related to this recommendation by enlisting explicit obligations on NFBPs according to the law and the executive regulation to conduct CDD measures for such entities. NFBPs are identified to include: real-estate brokers; sole proprietorships and companies working in gold, gem stones and precious metals when making transactions in cash; lawyers; independent legal professionals; and independent accountants when setting up, executing, or conducting transactions on behalf of clients related to buying or selling real-estate, managing the clients funds including stocks, bank accounts, or other assets, as well as when establishing, operating or managing a legal person, organizing subscriptions related thereof, or buying or selling companies. Also included are agencies providing services to companies and trusts preparing or conducting transactions related to acting on behalf of a client to establish a legal person, or acting as, or arranging for another to act as a manager, trustee, or partner in a company or in a similar capacity related to other legal persons; as well as other businesses stipulated by law and any other activity or profession stipulated in the executive regulation.

126. The law obligates DNFBPs to comply with certain CDD measures, including identifying and verifying the identities of customers and beneficial owners using reliable independent documents, data, or information. DNFBPs are also obligated to understand the purpose and nature of the business relationship, conduct ongoing monitoring to everything related to the business relationship, and examine ongoing transactions to guarantee their compliance with what they know of the customer's business activities and transactions. Generally speaking, we can say that DNFBPs are obligated to take the same measures required from FIs when dealing with customers, including politically exposed persons, as well as to define and evaluate risks. In addition, such entities are obligated to take the necessary measures that may arise from developing new products and professional practices

including: automated methods to provide new products and services, using modern technology when it comes to existing or novel products, and applying specific measures in dealing with customers or transactions remotely without face to face interaction. The regulation has also addressed the deficiencies related to these entities hiring a third party to conduct some CDD measures, and obligated these entities to lay proper procedures for the evaluation and identification of ML/FT risks that may arise under their relevant business activities; in addition to evaluating, monitoring, managing, abating their consequences; and regularly document, update, and review any risk evaluation processes conducted. However, the supervisory entities (Ministry of Commerce and Industry, Lawyers Association) have not issued any procedures related to CDD measures adopted by such entities other than what is stipulated in the law.

R11: Rating (PC):

127. Kuwait addressed the deficiencies related to obligating FIs to report to the FIU when suspecting, or having enough evidence to suspect ban of disclosure to such entities concerning the reports presented to the Unit; or any other related information or with regards to ML/FT investigation. FIs and DNFBPs are obligated to present the documents and information to the competent entities, respectively, upon request. The law protects DNFBPs, their managers, and employees against any criminal, civil, disciplinary, or administrative liability for violating any ban of disclosure of information imposed by any law or contract.

R15: Rating (PC):

128. Kuwait addressed the deficiencies pertaining to this recommendation. The law and executive regulation have obligated FIs to set forth internal policies, procedures, systems, and controls including proper procedures of managing the compliance and examination procedures sufficient to guarantee high standards when hiring employees; continuously implement programs for employees to ensure their awareness of the requirements of AML/CFT; establish independent internal audits to ensure compliance with internal policies, procedures, systems, and controls and guarantee their efficiency and compliance with the provisions of the law. The instructions of the supervisory entities included special stipulations that shall be present in compliance managers, in addition to providing supervisory entities with detailed data of the compliance observer. The instructions also stipulate on the independency of the compliance officer; provided that they are accountable to the higher management and hold the power to directly view the customer data, other information related to CDD measures, and records of transactions and other information. FIs conduct independent audits and inspections to ensure that the compliance officer and staff of FIs perform their tasks according to internal policies, work procedures, and systems of the FIs related to ML/FT.

R16: Rating (NC):

129. Kuwait has addressed the deficiencies related to obligating DNFBPs to report suspicious transactions or any attempts to execute such transactions; the ban of disclosure for such entities and their managers and employees to clients or third parties related to presenting notifications or any other information relevant to the Unit; and indemnify these entities and their officials against any criminal, civil, or administrative liability for violating any legally or contractually imposed ban of disclosure if such entities report any notifications or any other form of information to the Unit. Kuwait has also addressed the deficiencies related to demanding DNFBPs the establishment of internal policies, procedures, systems, and controls related to AML/CFT, which shall be implemented in all local and foreign branches and subsidiary companies; obligating local and foreign branches and subsidiary companies to set forth compliance management measures and examination procedures to ensure high standards when hiring new employees; putting special procedures related to conducting independent internal audits to ensure compliance with internal policies, procedures, systems, and controls; and putting regular training programs for staff to ensure their knowledge and awareness of any new requirements and developments related to AML/CFT. But Kuwait still has to ensure that supervisory entities over DNFBPs give the instructions to help these institutions proceed with their work, as well as to ensure their compliance with enforcing those requirements.

R17: Rating (NC):

130. Kuwait has addressed the deficiencies pertaining to this recommendation by identifying the supervisory entities and giving them the authority to impose administrative measures and penalties on DNFBPs for not complying with the provisions of this law and informing the Unit thereof. The law has stipulated a series of measures and penalties of which the supervisory entities can impose one or more on members of the boards of directors; members of executive or supervisory administrations; managers; and any institution that violates the provisions of the law, the executive regulation, ministerial decisions or instructions. The law also included criminal penalties on DNFBPs that violate the provisions of this system, including managers or members of the supervisory or executive boards. Imposing criminal penalties does not prevent the imposition of penalties by supervisory entities.

R18: Rating (PC):

131. Kuwait has addressed the deficiencies pertaining to this recommendation by not allowing the licensing of a shell bank or allowing shell banks to practice business on Kuwaiti territories; preventing FIs from entering in or continuing with correspondence or business relationships with shell banks or any correspondent foreign FI that allows any shell bank to use its accounts. The law also imposes criminal penalties on any legal or natural person who establishes or attempts to establish a shell bank or enters in a business relationship with a shell bank.

R20: Rating (PC):

132. The authorities stated that the national committee had created a working group for national risk assessment, and the team will commence its duties in 2015. They also stated that the law allowed for adding other entities when necessary, or if other sectors were found to have activities relating to ML/FY operations.

R21: Rating (NC):

133. Article 17 of the law stipulates that the Kuwaiti FIU is the competent entity authorized to define high-risk countries and the measures FIs and DNFBPs shall follow concerning such countries, while the supervisory entities shall ensure FIs and DNFBPs compliance with such measures. Article (8) of the executive regulation lists the measures which the Unit may adopt, for example: implement certain elements of enhanced CDD measures; obtain the approval of the senior management to continue with the relationship; reinforce monitoring of the transactions; review, amend, or terminate the relationship with corresponding banks; and other measures the Unit may impose on FIs and DNFBPs. The Unit may also demand that the supervisory entities take the necessary procedures similar to presenting additional reports on FIs and DNFBPs; prohibiting the establishment of branches, representative offices, or subsidiaries to FIs and DNFBPs; and other procedures.

R22: Rating (NC):

134. Article 10 of the law stipulates that FIs shall implement the provisions of that article on all local and foreign branches, and subsidiaries when possible. Article 14 of the law stipulates that supervisory entities are obligated to ensure that subsidiaries and foreign branches of FIs and DNFBPs adopt and implement measures compatible with the provisions of the law according to the local laws of the host country.

R24: Rating (NC):

135. It has been previously mentioned that Kuwait shall apply the AML/CFT law on DNFBPs. Paragraph 5 of the first article of the executive regulation of the law no (106) has defined the supervisory entities, while the Ministry of Commerce and Industry is the designated authority that shall supervise and monitor real-estate brokers, gem stones and precious metals merchants, accountants, and the lawyers association - as supervision and monitor are conducted over lawyers.

136. Article 15 of the law no (106) stipulated that the supervisory entities have the authority to impose adequate penalties, progressively, in the case of FIs and DNFBPs committing any violations of the duties stipulated by law; including the penalty of written warnings, issuing an order of compliance to certain procedures, submitting regular reports,

imposing a monetary penalty, prevention from practicing business, and terminating and revoking the license

R25: Rating (NC):

137. The Kuwaiti FIU has provided guiding principles and circulated them among all sectors regarding reporting suspicious transactions, including reporting forms. Authorities have reported that the Unit has provided feedback to financial and non-financial institutions concerning reported cases and informed them of the results of report analysis. The Unit has also issued a guide for FIs and DNFBPs concerning filling out the form for reporting suspicious transactions. The Unit has also issued indicators to identify suspicious transactions for the following sectors: banks; insurance companies; exchange companies and institutions; investment companies; sole proprietorships; accountants; lawyers; and companies working in trading gold, gem stones, and precious metals.

R27: Rating (PC):

138. Article 21 of the amended law gave the public prosecutor the exclusive right to investigate, take action with, and prosecute the crimes listed. The criminal court has jurisdiction to consider such crimes..

R28: Rating (PC):

139. It was previously mentioned that Kuwait has addressed deficiencies regarding criminalization of FT. Investigative authorities (the Public Prosecutor) now have the jurisdiction to investigate, take actions with, and prosecute FT crimes. Article 22 of the law authorizes the Public Prosecutor or his representatives of public attorneys to order freezing or confiscating funds and instruments prescribed in the law, in the case of having sufficient evidence suggesting that they are related to an ML/FT crime or another predicate crime.

R29: Rating (NC)

140. The first article of the law defined the supervisory entities as: the entities authorized to ensure the compliance of FIs and DNFBPs with the provisions of the law. The fifth paragraph of the first article of the executive regulation of the law defined the supervisory entities as: 1) CBK concerned with supervising banks and exchange and financing companies; 2) the Ministry of Commerce and Industry concerned with supervising insurance companies, agents and brokers, exchange institutions, real-estate brokers, and precious metals and gem stone merchants; 3) CMA, concerned with supervising investment companies, securities exchange companies, financial brokerage, assurers, asset managers, mutual funds, and custodians; 4) self-supervisory entities, such as: the lawyers association, which is concerned with supervising lawyers.

141. Article 14 of the law stipulated the obligations and jurisdictions of the supervisory entities, represented in handling regulation, monitoring and supervision actions concerned with the compliance of FIs and DNFBPs with the conditions stipulated in the law, its executive regulation, and the relevant instructions and ministerial decisions. Such supervisory entities shall have certain authorities, including:

- Collecting data and information from FIs and DNFBPs, and conducting field inspection; it is permissible to use the services of a third party in this regard
- Obligating FIs and DNFBPs to provide any information and make copies of documents, regardless of their storage method, or any other documents outside the premises
- Implementing measures and imposing penalties on FIs and DNFBPs for noncompliance with the provisions of the law, in addition to reporting them to the Unit
- Issuing instructions and ministerial decisions to assist FIs and DNFBPs in fulfilling their obligations

142. Article 15 of the law included a statement of measures and penalties imposed by the supervisory entities on their respective institutions. Such measures and penalties range from written warnings to revoking the license. The executive regulation may include other measures.

R30: Rating (NC)

143. Kuwait has taken many steps in order to increase the human and financial resources of the institutions working in AML/CFT and take part in specialized training courses in AML/CFT. Article 10 of the amended law obligates FIs and DNFBPs to implement an ongoing training program to train employees in order to ensure their complete awareness of the requirements of AML/CFT, the new developments, and the dominant trends.

144. The authorities stated that the supervisory entities held a number of seminars, courses, and awareness conferences on AML/CFT. They also issued awareness publications in this regards. The Central Bank organized 2 training courses for the entities subject to its supervision, which were attended by representatives of the banks. The CMA organized one awareness seminar for the entities subject to its supervision on AML/CFT and issued 3 awareness publications to emphasize on the importance of compliance with obligations mentioned in law No. 106 for 2013 and instructions issued with regards to AML/CFT. The Ministry of Commerce and Industry organized 2 conferences on AML/CFT.

R31: Rating (PC)

145. Article 24 of the law defines the rules that allow the competent authorities to cooperate and coordinate on a national level concerning setting and implementing the policies and activities of AML/CFT and financing of proliferation of weapons of mass destruction. The second chapter of the executive regulation included instructions to establish

the National AML/CFT Committee while the Ministry of Finance shall provide the funds needed for its operation. The Committee shall be presided by the Kuwaiti FIU and shall include several entities. It shall also be the authorized entity to set and develop national strategies for AML/CFT and anti financing of proliferation of weapons of mass destruction. The committee shall coordinate with the competent entities; follow up the implementation of such strategies; ensure the presence of effective mechanisms for local cooperation and coordination between the competent entities related to putting and developing policies; following up the global developments in AML/CFT; coordinate with the relevant committees in order to develop general policies; and collect statistics related to AML/CFT. The committee shall also form a national working group that comprises the committee members. The group shall have the task of developing any required technical studies, or any other task entrusted to it by the National Committee.

R32: Rating (NC):

146. The authorities provided a number of statistics related to AML/CFT aspects. Such statistics provide indicators to the effectiveness of implementing some of the law requirements with regards to the number of notices incoming to the Unit and the number of reports submitted to the Public Prosecution with regards to ML/FT cases. However, there is still more need for regulating obtaining sufficient statistics and information, and providing them in details and in a more organized manner, to help in reviewing the effectiveness of AML/CFT system. Kuwait provided statistics on the reports submitted to the Public Prosecution with regards to ML/FT as follows:

Table showing the number of reports submitted to the Public Prosecution with regards to AML/CFT cases from August 2013 to 31/1/2015

Number of Received Reports	Pending Investigations	Dismissal of Referral to other Jurisdictions	Cases Referred to the Public Prosecution
48	24	16	8

R33: Rating (NC):

147. The deficiencies pertaining to this recommendation were addressed. Article (156) of the decree of law No. 25 for 2012 related to the issuance of the companies law stipulated for the setting of a special register for the company to be kept at the clearing agency. The register shall include the names, nationalities, and residences of the shareholders, in addition the number of stocks they own and the value paid. The shareholder register shall also include any changes that occur on the data registered therein according to the data received by the company or the clearing agency. All stakeholders have the right to request the data registered in the registered from the company or the clearing agency.

148. Article 101 of the executive regulation for law No. 7 for 2010 of the establishment of the Capital Markets Authority and Regulating Securities' Activities included the same requirements. The law obligated every Kuwaiti joint-stock company to deposit their stockholder register at a clearing agency authorized by the Authority following the establishment of the company, while existing companies shall deposit their shareholder register at an authorized clearing agency within 6 months of the publishing of this regulation.

SR6: Rating (PC):

149. The deficiencies pertaining to this recommendation were addressed. Article 9 of the law obligated FIs which work in e-transfers to obtain any information related to each transaction and the recipient thereof when completing a transaction, and ensure the information remains included in the money orders or the related messages through the payment chain. The same article also prohibited any FI ordering an e-transfer from continuing with it if the required information is not available.

150. Article 10 of the executive regulation of the law stipulated for the same conditions obligating FIs working in cross-border e-transfers to obtain accurate information concerning the originator, the beneficiary, and all related messages, as well as to ensure such information remain attached to the e-transfer in every stage of the payment chain. The previously mentioned article also obligated the inclusion of the data listed hereunder with the information attached to each e-transfer:

- A. The originator's full name
- B. The originator's account number; this account shall be used to complete the transaction
- C. The address of the originator, and the customer's civil ID number or the place and date of birth
- D. The name and account number of the beneficiary; this account shall be used to complete the transaction

151. The previous article also included the obligations enforced on any FI involved in any local e-transfers: ensuring that the message relevant to the payment chain includes the originator's data listed above; and monitoring all e-transfers in order to spot the transfers that do not include information about the originator or the beneficiary and take the proper measures.

SR8: Rating (PC):

152. The Kuwaiti authorities stated that the National Plan includes detailed tasks and responsibilities of the Ministry of Social Affairs and Labor. Fulfilling such tasks will address all the deficiencies in the above recommendation.

SR9: Rating (PC):

153. Article 9 of the law obligated every individual entering or exiting Kuwait carrying currency or bearer negotiable instruments or making arrangements for transferring currency or bearer negotiable instruments to or from Kuwait using the services through another individual, a posting service, a courier, or any other means. Every individual is also obligated to inform the General Administration of Customs of the value of the currency or bearer negotiable instruments and to enable the Unit from viewing such information upon request. The General Administration of Customs also has the right to request information from the carriers regarding the source and purpose of the transferred currency or bearer negotiable instruments. The General Administration may also seize the currency or the bearer negotiable instruments, or some of any, in the following two cases:

- If there was enough evidence to suspect that the currency or instruments are proceeds of a crime or related to, or will be used in, ML/FT operations
- In case of refraining from disclosing information; when giving false information upon request; or if the disclosure or information are false

154. In addition to the above, the customs instruction No. 73 for 2014 issued by the Ministry of Finance included the customs procedures and controls demanded by law under article 20 setting the disclosure limit to KWD 3,000 or more, or its equivalent in foreign currency. It is noteworthy that the law included a definition of the bearer negotiable instruments according to FATF assessment methodology. The instructions granted the General Administration of Customs the right to issue a customs disclosure form at entry or exit, and included a number of executive rules and procedures: providing the customs disclosure form by the competent official; travelers fill in all the required data mentioned in the form; collecting the customs disclosure forms by the Administration collects and handing them to the Administration's secretariat to record them, and referring the disclosure forms to the Customs Search and Inspection Office which enters the data from the forms in a special Administration database. The Kuwaiti FIU shall have access to such data.

155. Article 37 of the law stipulates that any person who violates the provisions of article 20 gives a false disclosure of currency or bearer negotiable instruments, or purposefully or in gross negligence withholds events that must be disclosed is punishable by imprisonment for a period not exceeding one year and/or a fine of a value not less than half the amount in question and not exceeding the full amount. If the violating party is a legal person, the legal person shall be punished by a fine of not less than the amount in question and not more than twice the amount.

Anti-Money Laundering and Combating The Financing of Terrorism Law No. (106) of 2013

After reviewing the Constitution,

- Law No. 16 of 1960 Promulgating the Penal Code and laws amending it;
- Law No. 17 of 1960 Promulgating the Criminal Procedures Code and laws amending it;
- Law No. 24 of 1961 on Insurance Companies and Agents and laws amending it;
- Law No. 24 of 1962 on Public Benefit Clubs and Associations and laws amending it;
- Law No. 42 of 1964 on the Regulation of the Practice of Law before the Courts and laws amending it;
- Law No. 32 of 1968 on Money, the Central Bank of Kuwait, and Regulation of the Banking Profession and laws amending it;
- Law No. 20 of 1976 on Fraud in Commercial Transactions and laws amending it;
- Law No. 32 of 1980 on Protection of the Environment;
- The Civil Law issued by Decree Law No. 67 of 1980 and laws amending it ;
- Decree Law No. 68 of 1980 Promulgating the Commercial Code and laws amending it;
- Decree Law No. 5 of 1981 on the Practice of the Profession of Auditing;
- Law No. 74 of 1983 on the Combating of Narcotics and the Regulation of their Use and Trafficking and laws amending it;
- Law No. 35 of 1985 on Explosives;
- Decree Law No. 48 of 1987 on Combating Psychotropic Substances and the Regulation of their Use and Trafficking ;
- Decree Law No. 23 of 1990 on the Law on the Regulation of the Judiciary and laws amending it;
- Decree Law No. 31 of 1990 on the Regulation of Securities Trading and the Establishment of Investment Funds;
- Decree Law No. 13 of 1991 on Weapons and Ammunition;
- Law No. 1 of 1993 on the Protection of Public Funds and laws amending it;
- Law No. 64 of 1999 on the Protection of Intellectual Property Rights;
- Law No. 25 of 2000 adopting the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- Law No. 35 of 2002 on Combating Money-Laundering Operations;
- Law No. 10 of 2003 Promulgating the Unified Customs Law for the Cooperation Council for the States of the Arab Gulf;
- Law No. 5 of 2006 adopting the United Nations Convention against Transnational Organized Crime and the two Protocols Thereto;
- Law No. 47 of 2006 approving the United Nations Convention against Corruption;
- Law No. 7 of 2010 on the Establishment of the Securities Commission and the Regulation of Securities Activity;

- Decree Law No. 24 of 2012 setting up the Public Authority to Combat Corruption and the pertinent provisions for financial disclosure; and
- Decree Law No. 25 of 2012 on Commercial Companies,

The National Assembly has approved, ratified and passed the following Law:

Definitions

Article 1

The following words and expressions shall have the following meaning in implementing the provisions of this Law:

Funds: any kind of assets or property, whether money, financial or commercial papers, whether immovable or movable properties, corporeal or incorporeal, or related rights thereto however acquired, and documents, legal instrument in any form, including electronic or digital form, or banking credit facilities, checks, payment orders, stocks, bonds, promissory notes, and letters of credit, whether inside or outside the State of Kuwait.

Person: natural or legal person.

Transaction: any purchase, sale, loan, mortgage, gift, financing, transfer, delivery, deposit, withdrawal, transfer through remittance, or any other disposition of funds in any currency, whether in cash or checks, payment orders, stocks, bonds or any other financial instruments, or the use of safe deposit boxes or other forms of safe deposit; or any other disposition of funds as specified in the Executive Regulation.

Financial institution: any person who conducts as a business one or more of the following activities or operations for or on behalf of a customer in the following manner:

- a. Acceptance of deposits and other repayable funds from the public, including private banking;
- b. Lending;
- c. Financial leasing;
- d. Money or value transfer services;
- e. Issuance and managing means of payment (e.g. credit and debit cards, traveler's checks, financial leasing, payment orders and bankers' drafts, electronic money);
- f. Financial guarantees and commitments;
- g. Trading in:
 - i. money market instruments including checks, bills, and certificates of deposit;
 - ii. foreign exchange;
 - iii. exchange, interest rate and financial index instruments;
 - iv. negotiable securities and financial derivatives;
 - v. commodity futures trading;
- h. Foreign exchange transactions;

- i. Participation in securities issuing, and provision of financial services related to such issuing;
- j. Individual and collective portfolio management;
- k. Safekeeping and administration of cash or liquid securities on behalf of other persons;
- l. Concluding life insurance contracts and other types of investment related insurance as a provider or a broker of the insurance contract;
- m. Investing, administering or managing funds on behalf of other persons;
- n. Any other activity or transaction specified by the Executive Regulation of this Law.

Designated non-financial businesses and professions:

- a. Real estate agents;
- b. Sole-proprietors and commercial companies dealing in gold, precious stones, and precious metals when engaging in any cash transaction as determined by the Executive Regulation of this Law;
- c. Lawyers, independent legal professionals and accountants, when they prepare, execute, or conduct transactions for customers in relation to any of the following activities:
 - i. Purchase or sale of real estate.
 - ii. Management of a customer's funds, including securities, bank accounts, and other assets.
 - iii. Establishment, operation, or management of legal persons or legal arrangements and the organization of related subscriptions.
 - iv. Buying and selling of legal persons.
- d. Company and Trust Service Providers when they prepare for or carry out transactions for a customer concerning any of the following activities:
 - i. Acting as a formation agent of legal persons.
 - ii. Acting as or arranging for another person to act as a director, secretary of a company, or partner in a partnership or in a similar position with respect to other legal persons.
 - iii. Providing a registered office, business address, or accommodation, correspondence or administrative address for a legal person or legal arrangement.
 - iv. Acting as or arranging for another person to act as trustee or an equivalent function for a trust fund or any other legal arrangement.
 - v. Acting as, or arranging for another person to act as a nominee shareholder; or
- e. Any other activity or profession stipulated by the Executive Regulation of this Law.

Business relationship: any business, professional or commercial relationship connected with the professional activities of a financial institution or designated non-financial business and profession, and which is expected to have an element of duration.

Account: any facility or arrangement by which a financial institution accepts deposits of funds or monetary or negotiable instruments or permits withdrawals or transfers; pays the value of checks or payment orders drawn on a financial institution or another person; or

collects checks and payment orders, bankers drafts, travelers checks, or electronic money on behalf of a person; or provides facilities or arrangements for the lease of safe deposit boxes or any other form of safe deposit.

Customer: any person that undertakes any of the following with a financial institution or a designated non-financial business and profession:

- a. Any person for whom a transaction, business relationship or account is arranged, opened or undertaken.
- b. Any signatory to a transaction, business relationship or account.
- c. Any person to whom an account, rights or obligations under a transaction have been assigned or transferred.
- d. Any person who is authorized to conduct a transaction, or to control a business relationship or an account.
- e. Any person who initiates any of the actions referred to above.

Beneficial owner: any natural person who ultimately owns or exercises direct or indirect control over a customer or the person on whose behalf a transaction is being conducted. It also includes those persons who ultimately exercise ultimate control over a legal person or legal arrangement.

The Unit: the Kuwait Financial Intelligence Unit.

Supervisory authority: The authority with responsibility to ensure compliance by a financial institution or designated non-financial business and profession with the requirements under this Law, including the Central Bank of Kuwait, the Capital Market Authority, the Ministry of Commerce and Industry, and any other person designated by the Executive Regulation of this Law.

Competent authority: All public authorities in Kuwait with designated responsibilities for combating money laundering or terrorism financing, including the Unit, supervisory authorities, the General Administration of Customs, and the Ministry of Interior.

Freezing: Temporary restraint of funds under the management of their holder and the prohibition of their transfer, conversion, disposition, movement or transportation based on a decision by the prosecutor's office or any of his attorney generals.

Seizing: detention and temporary restraint of funds by the prosecutor's office or any other legal person based on a decision by the prosecutor's office or any of his attorney generals.

Legal arrangements: express trusts or other similar arrangements.

Politically exposed person (PEP): any natural person who is or has been entrusted with a prominent public function in the State of Kuwait or a foreign country; or with a high-level management position in an international organization, including family members. The

Executive Regulation shall define the persons covered by this definition without conflicting with this Law.

Money laundering: any of the acts described under article 2 of this Law.

Terrorism Financing: any of the acts described under article 3 of this Law.

Predicate offense: any act constituting a crime under the laws of the State of Kuwait, and any act committed outside the State of Kuwait if it constitutes a crime according to the laws of the country where it occurred and that would have constituted a crime in the State of Kuwait.

Proceeds of crime: funds derived or obtained directly or indirectly through the commission of a predicate offense, including other yields, interest, gains or profit from such funds whether it remained as is or it was converted wholly or partially into other funds.

Instrumentalities: all means of whatever kind that were used or that were intended to be used in any form, wholly or partially, to commit a money laundering, terrorism financing or predicate offense.

Terrorist act: Any act or initiation of an act, whether in the State of Kuwait or in any other place, as follows:

- a. An act intended to cause death or serious bodily injury to a civilian, or to any other person not taking part in the hostilities in a situation of armed conflict, when the purpose of such act, in its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act; or
- b. An act which constitutes an offense within the scope of the definitions set forth in any of the following international conventions or protocols:
 - i. Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 as implemented by Law No. 19 of 1979;
 - ii. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1975 as implemented by Law No. 62 of 1979;
 - iii. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973 as implemented by Law No. 72 of 1988;
 - iv. International Convention against the Taking of Hostages, 1971 as implemented by Law No. 73 of 1988;
 - v. Protocol for 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 as implemented by Law No. 71 of 1988 and Law No. 6 of 1994;

- vi. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 as implemented by Law No. 15 of 2003;
- vii. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988 as implemented by Law No. 16 of 2003;
- viii. Convention on the Physical Protection of Nuclear Material, 1980 as implemented by Law No. 12 of 2004;
- ix. International Convention for the Suppression of Terrorist Bombings, 1997 as implemented by Law No. 27 of 2004; or
- x. Any other international convention or protocol concerning terrorism or terrorism financing that the State of Kuwait ratified and published as law in the Official Gazette.

Terrorist: any natural person, whether located inside or outside Kuwait, who:

- a. Commits a terrorist act, directly or indirectly, as per the provisions of this Law;
- b. Acts as an accomplice in a terrorist act;
- c. Organizes or directs others to commit a terrorist act;
- d. Contributes intentionally to the commission of a terrorist act by a person or a group of persons acting with a common purpose, with the aim of furthering the terrorist act or with the knowledge of the intent of the person or group of persons to commit the terrorist act.

Terrorist organization: any group of terrorists, whether located inside Kuwait or outside who commits any of the acts mentioned in the previous definition.

Bearer Negotiable instrument (BNI): monetary instruments in bearer form such as: travelers checks; negotiable instruments including checks, promissory notes and money orders that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; and incomplete instruments signed but with the payee's name omitted.

Wire transfer: A financial transaction carried out on behalf of an originator through a financial institution by electronic means with the view to making an amount of funds available to a beneficiary at another financial institution, irrespective of whether the originator and the beneficiary are the same person.

Shell Bank: a bank that is incorporated or licensed in a country or jurisdiction in which it has no physical presence and that is not affiliated with a regulated financial group subject to effective consolidated supervision.

CHAPTER 1 – OFFENSES AND PREVENTIVE MEASURES
Section 1 – Money Laundering and Terrorism Financing Offenses

Article 2

Any person who knows that funds are the proceeds of crime and who has done the following voluntarily shall be considered to have committed a money laundering offense:

- a. converts or transfers or substitutes such funds with the purpose of disguising or concealing the illicit origin thereof, or helping a person involved in the commission of the predicate offense evade the legal consequences for his/her acts; or
- b. disguises or conceals the true nature, source, location, disposition, movement or ownership of such funds, or rights pertaining thereto.
- c. Acquires, possesses or uses such funds.

A legal person shall be held liable for a money laundering offense if it were committed in its name or to its credit.

Punishment of the person for a predicate offense shall not preclude conviction of that same person for a money laundering offense.

When establishing that funds are proceeds of crime, a conviction for the commission of a predicate offense shall not be required.

Article 3

Any person who by any means, directly or indirectly, unlawfully and willfully, collects or provides funds, with the knowledge that they will be used or with the intent that they should be used, in full or in part, in order to carry out a terrorist act or for the benefit of a terrorist organization or of a terrorist shall be considered to have committed a terrorism financing offense.

Any of the acts mentioned in paragraph (1) shall be considered a terrorism financing offense even if the terrorist act does not occur, or if the funds are not actually used to commit or attempt to commit the act or if the funds are not linked to a specific terrorist act.

Section 2 – PREVENTIVE MEASURES

Article 4

Financial institutions and designated non-financial businesses and professions shall assess their money laundering and terrorism financing risks, including of new products or technologies. The risk assessment and any underlying information shall be documented in writing, be kept up-to-date and readily available for the supervisory authority to review at their request.

Financial institutions and designated non-financial businesses and professions shall conduct enhanced due diligence measures where the risk of money laundering or terrorism financing is identified as being higher. Financial institutions and designated non-financial businesses and professions may conduct simplified due diligence measures where the risk of money laundering or terrorism financing is identified as being lower.

Simplified due diligence measures may not be applied where there is a suspicion of money laundering or terrorism financing.

Article 5

Financial institutions shall not maintain or open an account of unknown identity or in fictitious names.

Financial institutions and designated non-financial business and professions shall carry out the following due diligence measures, taking into account the outcome of the risk assessment required to be carried out under Article 4:

- a. Identify and verify the identity of the customer and beneficial owner using reliable, independent source documents, data or information.
- b. Understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship.
- c. Monitor the business relationship on an ongoing basis and examine any transactions carried out to ensure they are consistent with their knowledge of the customer, commercial activities and risk profile, and where required, the source of funds.
- d. Understanding the ownership and control structure of the customer.

Due diligence measures under paragraph (2) of this Article shall be carried out:

- a. Before or during the course of opening an account or establishing a business relationship with a customer;

- b. Before carrying out a transaction above the threshold set by the Executive Regulation of this Law for a customer with whom it is not in an established business relationship, whether conducted as a single transaction or several transactions that appear to be linked;
- c. Before carrying out a domestic or international wire transfer for a customer;
- d. Whenever there is a suspicion of money laundering or terrorism financing;
- e. Whenever doubts exist about the veracity or adequacy of previously obtained customer identification data.

The supervisory authority may prescribe the circumstances in which a financial institution or designated non-financial business and profession can delay the verification of the customer or beneficial owner identity until after the establishment of the business relationship or the carrying out of the transaction.

Where a financial institution or designated non-financial business and profession is unable to comply with obligations under paragraph (2) of this Article, it shall refrain from opening the account or commencing the business relationship or carrying out the transaction; or it shall terminate the business relationship. The financial institution or designated non-financial business and profession shall also consider filing a report to the Unit under the provisions of Article 12 of this Law.

Financial institutions and designated non-financial businesses and professions shall implement specific and adequate measures to address the risks of money laundering and terrorism financing in the event that they open an account or establish a business relationship or execute a transaction with a customer that is not physically present for the purpose of identification.

Financial institutions and designated non-financial businesses and professions shall establish appropriate risk-management systems to determine whether a customer or beneficial owner is a politically exposed person and if so, apply additional measures to those under paragraph (2) of this Article . The Executive Regulation will prescribe these measures.

Financial institutions and designated non-financial businesses and professions shall exercise enhanced due diligence for all complex, unusual large transactions and all unusual patterns of transactions for which there are no clear economic or visible lawful purposes or objectives, examine as far as reasonably possible the background and purpose of such transactions, document all information concerning the transactions and the identity of all parties participating in such transactions, and retain such records in accordance with Article 11 of this Law. The records shall be made available upon request by a competent authority or the Public Prosecutor's Office.

Financial institutions and designated non-financial businesses and professions shall apply enhanced due diligence measures to business relationships and transactions with persons or financial institutions from or in countries that were identified as high risk under Article 4.

Accounts and customers existing prior to the implementation of this Law shall be subject to due diligence measures under this Article at appropriate times and based on materiality and risk, or as prescribed by supervisory authorities.

Financial institutions and designated non-financial businesses and professions shall review existing records and documents on an ongoing basis to ensure that any information collected is kept up-to-date and relevant.

Financial institutions and designated non-financial businesses and profession may rely on third parties to perform some elements of the due diligence process as prescribed by Executive Regulation.

Article 6

Provisions of Articles 4, 5 and 11 of this Law apply to real estate agents and brokers when they are involved in transactions concerning the buying or selling of real estate.

Article 7

The Executive Regulation will prescribe the measures to be taken by financial institutions before entering into a cross-border correspondent banking or other similar relationship, in addition to applying ordinary due diligence measures as prescribed under Article 5.

Article 8

No shell bank may be licensed or operate in the State of Kuwait.

Financial institutions shall not enter into or continue a correspondent or business relationship with a shell bank or a correspondent financial institution in a foreign country that allows its accounts to be used by a shell bank.

Article 9

Financial institutions that engage in wire transfers shall obtain information on the originator and recipient when carrying out such transactions and ensure that such information remains with the wire transfer or related message throughout the payment chain. A financial institution seeking to order a wire transfer that is unable to obtain such information shall not execute the transfer.

Article 10

Financial institutions and designated non-financial businesses and professions shall:

- a. Establish internal policies, procedures, systems, and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees;

- b. Implement an ongoing training program to ensure that employees are kept informed of all the aspects of the anti-money laundering and combating terrorism financing requirements, new developments, money laundering and terrorism financing techniques, methods and trends, and concerning due diligence measures and suspicious transaction reporting;
- c. Establish an independent audit function to verify compliance with the internal policies, procedures, systems and controls and to ensure that such measures are effective and consistent with the provisions of this Law;
- d. Put in place mechanisms for the sharing with other members of the financial group of information obtained under Articles 4 and 5, and to protect the confidentiality and use of exchanged information; and
- e. Designate a compliance officer at the senior management level to be responsible for the implementation of the requirements of this Law.

As appropriate, the measures under this Article shall apply to all domestic and foreign branches and their subsidiaries.

Article 11

Financial institutions and designated non-financial businesses and professions shall maintain records of the following information and ensure that such records and underlying information are available to competent authorities:

- a. copies of all records obtained through the due diligence process under Article 5, including documents evidencing the identities of customers and beneficial owners, account files and business correspondence, for at least five years after the business relationship has ended or a transaction under Article 5 (3)(b) has been carried out;;
- b. all records of transactions, both domestic and international, attempted or executed for at least five years following the attempt or execution of the transaction. Such records must be sufficiently detailed to permit the reconstruction of each individual transaction;
- c. Copies of transaction reports sent under Article 12 and related documents for at least five years after the date the report was made to the Unit; and
- d. The risk assessment under Article 4 and any underlying information for a period of five years from the date it was carried out or updated.

A competent authority may require in specific cases that records be maintained for longer than the periods prescribed under this Article.

Section 3 – REPORTING OBLIGATIONS

Article 12

Financial institutions and designated non-financial businesses and professions shall report to the Unit without delay any transaction or attempted transaction, regardless of the value thereof, if they suspect or have reasonable grounds to suspect that such transaction involves proceeds of crime or funds related or linked to or to be used for money laundering or terrorism financing.

Attorneys and other independent legal professionals and accountants are not required to report a transaction under the previous Article if the relevant information was obtained in circumstances where they are subject to professional secrecy.

Article 13

Financial institutions and designated non-financial businesses and professions, their directors and employees are prohibited from disclosing to a customer or any other person the fact that a report under the previous Article or any information related to the unit or to any money laundering or terrorism financing investigation. This shall not preclude disclosures or communications between and among directors and employees of the financial institution or designated non-financial business and profession, in addition to lawyers, competent authorities, and the public prosecution.

There shall be no penal, civil, disciplinary or administrative liability for a financial institution or a designated non-financial business and profession or its directors or employees for breach of any restriction on disclosure of information imposed by contract or law if it is established that a report under Article 12 or any other information was provided to the Unit in good faith.

Financial institutions and designated non-financial businesses and professions are bound to provide information and documents to the relevant competent authorities upon request.

Professional secrecy or privilege shall not constitute a ground not to comply with the obligations under this Law except in the case of lawyers, independent legal professionals and accountants according to the provisions of Article 12 (2).

CHAPTER 2 – COMPETENT AUTHORITIES
Section 1 – Competence of Supervisory Authorities

Article 14

Supervisory authorities shall regulate, supervise and monitor compliance by financial institutions and designated non-financial businesses and professions with the requirements set forth in this Law, its Executive Regulation or any relevant Ministerial decisions or instructions and shall have the following powers and duties:

- (1) to collect information and other data from financial institutions and designated non-financial businesses and professions and to conduct on-site examinations. Supervisory authorities may delegate the powers under this paragraph to third parties;
- (2) to compel financial institutions or designated non-financial businesses and professions to provide any information and copies of documents and files however and wherever stored, including documents held outside their buildings.
- (3) to apply measures and impose sanctions against financial institutions and designated non-financial businesses and professions for non-compliance to the provisions of this Law and to report them to the Unit.
- (4) to issue ministerial decisions and instructions to assist financial institutions and designated non-financial businesses and professions in complying with their obligations;
- (5) to cooperate and share information with other competent authorities or any foreign authority concerned with combating money laundering or terrorism financing;
- (6) to verify that foreign branches and majority owned subsidiaries of financial institutions and designated non-financial businesses and professions adopt and enforce measures consistent with this Law to the extent permitted by the laws of the host country;
- (7) to promptly notify the Unit of transactions or facts that could be related to money laundering, terrorism financing or predicate offenses;
- (8) to establish and apply efficiency and adequacy processes, including standards relating to the experience and integrity of board members, executive or supervisory management members or directors of financial institutions;
- (9) to establish and apply standards for owning or controlling significant shares of financial institutions and designated non-financial businesses and professions, including the beneficial ownership or the direct or indirect participation in the management, administration or operation thereof;
- (10) to maintain statistics concerning measures adopted and sanctions imposed as prescribed by supervisory authorities; and
- (11) to determine the type and extent of measures to be taken by financial institutions and designated non-financial businesses and professions under Article 10, according to the risk of money laundering and terrorism financing and the size of the business.

Article 15

If a financial institution or designated non-financial business and profession or any of its directors, board members, executive or supervisory management members is found to have

failed to comply with the provisions of this law, its Executive Regulation or any Ministerial decisions or instructions , the supervisory authority may impose one or more of the following measures or sanctions:

- (1) Issue written warnings;
- (2) Issue an order to comply with specific instructions;
- (3) Issue an order to provide regular reports on the measures taken to address the identified violation;
- (4) Impose a fine on the violating financial institution not to exceed Dinars 500,000 per violation;
- (5) Ban individuals from employment within the relevant sectors for a period to be determined by the supervisory authority;
- (6) Restrict the powers of directors, board members, executive or supervisory management members, and controlling owners, including appointing a temporary controller;
- (7) Dismiss or replace the directors, members of the Board of Directors or of executive or supervisory management;
- (8) Suspend, restrict or prohibit the continuation of the activity, business or profession;
- (9) Revoke the license;
- (10) Withdraw the license;

The Executive Regulation may provide for other measures.

Section 2 – KUWAIT FINANCIAL INTELLIGENCE UNIT

Article 16

A Unit called the "Kuwait Financial Intelligence Unit" shall be established. It shall be an independent legal person and serve as the agency responsible for receiving, requesting, analyzing, and disseminating information concerning suspected proceeds of crime or funds related, linked to or to be used for money laundering or terrorism financing according to the provisions of this Law.

The Council of Ministers, based on the recommendation of the Minister of Finance, shall issue a Resolution forming the Unit and determining its affiliation, organization, and resources.

The staff of the unit shall keep confidential any information obtained within the scope of their duties, even after cessation of those duties within the FIU. Such information may only be used for the purposes provided for under this Law.

Article 17

The Unit shall identify high-risk countries and prescribe the measures to be applied in relation to such countries. Supervisory authorities shall ensure compliance by financial

institutions or designated non-financial businesses and professions with the prescribed measures.

Article 18

In relation to any information it has received in accordance with its functions, the unit is authorized to obtain from any person subject to the reporting obligation set forth under Article 12 any additional information it deems necessary to carry out its functions. The information requested shall be provided within the time limits specified by the unit and in the form prescribed in the Executive Regulation of this Law.

The unit may, in relation to any report or information it has received, obtain from competent authorities or other public bodies any information it deems necessary to carry out its functions.

Article 19

Whenever the unit has reasonable grounds to suspect that funds are proceeds of crime or are related, linked to or to be used for money laundering or terrorism financing, it shall notify the public prosecutor's office and forward the relevant information to competent authorities.

The Unit shall notify the relevant supervisory authority if a financial institution or designated non-financial business and profession, or an employee thereof fails to comply with the requirements contained in this Law.

The unit may, spontaneously or upon request, make its information available to any foreign authority upon reciprocity or mutual agreement on the basis of cooperation arrangements entered into between the unit and such foreign authority.

Section 3 – CROSS BORDER TRANSPORTATION OF CASH AND BEARER NEGOTIABLE INSTRUMENTS

Article 20

Any person who enters or leaves the State of Kuwait in possession of currency or bearer negotiable instruments or arranges for the transportation of such items into or out of the State of Kuwait through a person, cargo, postal service or through any other means shall disclose the value of such currency or bearer negotiable instruments upon request to the General Administration of Customs. The Unit shall have access to such information upon request.

The General Administration of Customs may request information from couriers about the origin of such currency or bearer negotiable instruments and the intended use thereof. The General Administration of Customs may also seize or restrain some or all of the amount of currency or bearer negotiable instruments in the following two cases:

- a. If there are sufficient indications for a suspicion that such currency or bearer negotiable instruments are proceeds of crime or funds or instrumentalities related, linked to or to be used for money laundering or terrorism financing .
- b. If there has been a lack of disclosure, or provision of information when requested, or false disclosure or information.

The Minister of Finance shall issue an Executive Regulation on the rules and procedures related to the implementation of this Article.

CHAPTER 3 – MISCELLANEOUS

Article 21

The Public Prosecutor's Office shall have exclusive authority to investigate, act upon and prosecute the offenses mentioned in this Law. The criminal court shall have jurisdiction to examine such offenses.

Article 22

Without prejudice to the rights of third persons in good faith, the public prosecutor, or any public attorney whom he authorizes, may order the freezing or seizure of funds or instrumentalities mentioned in Paragraph 1 of Article 40 if there are reasonable grounds to believe they are related to a money laundering, terrorism financing or a predicate offense.

The Public Prosecutor's Office shall be responsible for the management and administration of such funds as it sees fit.

Any concerned party may file an appeal to the competent court within one month from the date on which the order was issued. The court must decide on the appeal promptly, either by rejecting it or by canceling or amending the order and establishing the necessary guarantees if necessary. An appeal may not be made again until three months from the date of the decision on the first complaint.

The public prosecutor, or any public attorney whom he authorizes, shall have the discretion to rescind or amend an order.

Article 23

The Public Prosecution Office shall exchange international cooperation requests with competent foreign authorities in criminal matters related to money laundering , predicate, or terrorism financing offenses with respect to assistance, letters rogatory, extradition of suspects and convicted persons, and requests to identify, trace, freeze seize or confiscate funds, all in accordance with the rules established under bilateral or multilateral agreements ratified by the State of Kuwait or in accordance with the principle of reciprocity.

Article 24

The Executive Regulation shall set the mechanisms for competent authorities to cooperate and coordinate at the national level concerning the development and implementation of policies and activities to combat money laundering, terrorism financing and the financing of proliferation of weapons of mass destruction.

Article 25

The Council of Ministers, based on a recommendation by the Minister of Foreign Affairs, shall issue the necessary decisions to implement United Nations Security Council Resolutions issued under Chapter VII of the United Nations Charter and related to terrorism, terrorism financing or proliferation of weapons of mass destruction.

Article 26

Any contract or act shall be null if all or any party thereto had knowledge or reason to believe that the objective of the contract or agreement was to prevent confiscation measures set forth in Article 40 of this Law, without prejudice to the rights of third persons in good faith.

CHAPTER 4 – SANCTIONS

Article 27

Without prejudice to any more severe sanctions stipulated in the penal code or any other law, the offenses mentioned in the articles of this Law shall have respective sanctions.

Article 28

Any person who commits a money laundering offense under Article 2 of this Law shall be punished by imprisonment for up to ten years and a fine of no less than half and up to the full value of the funds that were the objects of the offense if the offender knew that these funds and instrumentalities were the proceeds of crime.

In all cases, the funds and instrumentalities detained shall be confiscated.

Article 29

Any person who commits a terrorism financing offense under Article 3 of this Law shall be punished by imprisonment for up to fifteen years and a fine of no less than and up to twice the value of the funds that were the objects of the offense and by confiscation of seized funds and instrumentalities.

Article 30

The penalties stipulated in Articles 28 and 29 of this Law may be increased to imprisonment for up to twenty years and a fine of up to twice the amounts, if the following conditions are met:

- a. The offense was committed by an organized criminal or terrorist organization.
- b. The perpetrator of the offense exploited the authority or influence of his position.
- c. The offense was committed through public benefit clubs and associations and charitable organizations.
- d. The perpetrator repeated the commission of the offense.

Article 31

The Court can exempt the perpetrator of the offense of the penalties stipulated in Articles 28 and 29 if he/she provides the Police, Public Prosecution or competent court with information they would not have otherwise obtained so as to assist them in:

- a. preventing the commission of money laundering or terrorism financing offenses;
- b. Helping authorities to arrest and prosecute other perpetrators of the offense;
- c. obtaining evidence;
- d. preventing or limiting the effects of the offense;
- e. depriving organized criminal or terrorist organizations of funds over which the defendant has no right or control.

Article 32

Without prejudice to the penal liability of a natural person, any legal person that commits a money laundering or terrorism financing offense shall be punished by a fine of no less than 50,000 Dinars and no more than 1 million Dinars, or the equivalent of the full value of the funds that were the objects of the offense, whichever is greater.

A legal person may also be punished by permanently or temporarily, for no less than five years, prohibiting it from continuing to engage in certain commercial activities directly or indirectly, or by permanently or temporarily closing its offices that were used to commit the offense, or by liquidating its business, or by assigning a receiver to manage its funds. The final Court verdict shall be published in the official gazette.

Article 33

A financial institution or designated non-financial business and profession or any of its board members or executive or supervisory management members that deliberately or through gross negligence violates or fails to comply with the provisions of Articles 5, 9, 10, or 11 of

this Law, shall be punished by a fine of no less than 5,000 Dinars and up to 500,000 Dinars per violation.

Article 34

Whoever deliberately or by gross negligence establishes or attempts to establish a shell bank in the State of Kuwait in violation of Article 8 (1) or enters into a business relation with such bank in violation of Article 8 (2) shall be punished by imprisonment for up to three years and a fine of no less than 5,000 Dinars and up to 500.000 Dinars, or by one of these two sanctions. In the case where the offender is a legal person, a fine of no less than 5,000 Dinars and up to 1 million Dinars shall be imposed.

Article 35

Whoever deliberately or by gross negligence:

- (1) fails to make a report under Article 12 or presents false statements of facts or conceals facts which should be disclosed; or
- (2) discloses information to a third party in violation of Article 13 (1);

shall be punished by imprisonment for up to three years and a fine of no less than 5,000 Dinars and up to 500.000 Dinars, or by one of these two penalties. In the case where a legal person commits any of the offenses stated in (1) and (2), a fine of no less than 5,000 Dinars and up to 1 million Dinars shall be imposed.

Article 36

Whoever violates Article 16 (3) shall be punished with imprisonment for up to three years and a fine of no less than 1,000 Dinars and up to Dinars 10,000, or with one of these two sanctions and shall in all cases be dismissed.

Article 37

Whoever violates or fails to comply with Article 20, or makes a false disclosure of currency or bearer negotiable instruments, or conceals deliberately or by gross negligence facts which should be disclosed shall be punished with imprisonment for up to one year and a fine of no less than half and no more than the full value of the funds that were the objects of the offense, or by one of these penalties. In the cases where the offender is a legal person, a fine of no less than the full value of the funds that were the objects of the offense is imposed and no more than twice that value.

Article 38

Without prejudice to the penalties stipulated in this Chapter, the Court may prohibit the perpetrator of any offense permanently or temporarily from engaging in or continuing to carry out any business or profession that provides an opportunity to commit such an offense.

Article 39

The imposition of any sanction under this Section shall not preclude the imposition on financial institutions or designated businesses and professions of supervisory penalties or measures under Article 15.

Article 40

Without prejudice to the provisions of Articles (28) and (29) and to the rights of third persons in good faith, the Court shall, in the event of a conviction for any of the other offenses mentioned in this Law, order the confiscation of the following funds and instrumentalities:

- a. proceeds of crime, including funds intermingled with, derived from or exchanged for such proceeds;
- b. income and other benefits obtained from proceeds of crime;
- c. funds objects of the offense; or

The Court shall rule on the equivalent in value to funds and instrumentalities mentioned in subparagraphs (a), (b) and (c) that cannot be located or are no longer available for the purpose of confiscation.

Funds referred to in paragraph (1) may not be confiscated if their owner can establish good faith showing that funds were acquired by paying a fair price or in return for the provision of services corresponding to the value of such funds, or based on other legitimate grounds, and that he/she was unaware of their illicit origin.

Death of the perpetrator shall not impede confiscation of the funds and instrumentalities under the provision mentioned in paragraph (1) of this Article.

Article 41

Unless the law stipulates otherwise, funds that are confiscated shall accrue to the Public Treasury. These funds remain bearing any rights lawfully adjudicated in favor of third parties acting in good faith.

CHAPTER 5 – FINAL PROVISIONS

Article 42

Lapse of time shall not cause the dismissal of the criminal case or the penalty related to crimes mentioned in this Law.

The provisions of articles 81 or 82 of the Penal Code may not be applied to such offenses.

Article 43

The Minister of Finance shall issue the Executive Regulation within six months following the publication of this Law.

Article 44

The abovementioned Law No. 35 of 2002 shall be repealed and decisions currently in effect that do not conflict with the provisions of this Law shall remain in effect until the issuance of the Executive Regulation.

Article 45

The Prime Minister and Ministers shall, each within their purview, implement this Law, which shall enter into force upon its publication in the Official Gazette.

Emir of Kuwait

Subah Al Ahmad Al Subah

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