



Mutual Evaluation Executive Summary

Anti-Money Laundering and Combating the
Financing of Terrorism

State of Kuwait

24 June 2011

The State of Kuwait is a member of the Middle East & North Africa Financial Action Task Force (MENAFATF). It is also a member of the Gulf Co-operation Council, which is a member of the Financial Action Task Force (FATF). This evaluation was conducted by the International Monetary Fund and was adopted as follows:

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MUTUAL EVALUATION OF THE STATE OF KUWAIT: EXECUTIVE SUMMARY

Key Findings

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

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

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

Legal Systems and Related Institutional Measures

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

5. **The offense of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.** Kuwaiti criminal legislation does not require that a person be convicted of a predicate offense to establish the illicit origin of proceeds. However, the authorities acknowledged that, in practice, a prior conviction for the predicate crime is used as a basis for bringing charges for ML. In the absence of a conviction for the predicate offense, prosecutors would sometimes be hesitant to bring charges for a stand-alone ML offense.

6. **The list of predicate offenses for ML covers most of the designated categories of offenses listed in the FATF Glossary to the 40 Recommendations.** However, the smuggling of migrants and terrorism financing are not covered.

7. **Self-laundering is criminalized in Kuwait.** Article 2 of the AML Law is indeed broad enough to allow for the prosecution of both the predicate offense and the subsequent laundering of the proceeds of the predicate offense.

8. **The AML Law explicitly provides for the possibility of both personal and corporate ML liability.** However, the notion of “company” contained in Article 12 of the AML Law does not include, for instance, public stockholding companies or non-profit organizations (NPOs) as required by the FATF standard, but only companies licensed by the Ministry of Commerce and Industry (MOCI). As a result, the PPO could not, for instance, charge an NPO for ML, but only the individual persons acting as managers or administrators of that NPO. This limits the scope of application of this provision.

9. **TF is not criminalized in Kuwait.** Kuwait is, however, a party to all the conventions listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism (TF Convention). All the offenses contained in the Annex to this convention are, therefore, criminalized under Kuwaiti criminal law.

10. **Kuwait has a comprehensive confiscation, freezing and seizing framework.** It applies to all offenses under Kuwaiti criminal legislation, including felonies and misdemeanours, and covers all predicate offenses for ML, as well as the ML offenses (as defined in the AML Law). However, there is no provision in Kuwaiti law allowing for the confiscation of property of corresponding value.

11. **There is no law in Kuwait that provides for the freezing of terrorist assets in the context of UNSCRs 1267 and 1373, and their respective successor Resolutions.** There is a process in place, which is not formally articulated in any legal text, to communicate freezing orders under UNSCRs 1267 and 1373. The Ministry of Foreign Affairs (MFA) is entrusted with the task of receiving notifications under UNSCRs 1267 and 1373, and of transmitting those to the relevant agencies within Kuwait. There is no legal provision, however, specifically entrusting the MFA with this role.

12. **The KFIU does not have the legal and operational independence to carry out its functions effectively.** According to the AML Law, the PPO is the sole body authorized to receive STRs. In 2003, a Ministerial Decree gave the Governor of the Central Bank of Kuwait (CBK) the authority to establish the KFIU in the CBK. The powers of the KFIU to collect information and analyze STRs are derived solely from the powers extended to it from the PPO via “report-by-report” memoranda. The onsite supervision department of the CBK has assumed the duties of the KFIU Secretariat and, thus, provides day-to-day

support for the KFIU. The KFIU is not efficient in its operation due to the central role of the PPO in receiving the STRs directly from the FIs and in granting the KFIU specific powers to review each STR.

13. **Criminal financial investigations are directed and authorized by the PPO and are carried out by a specialized division at the Ministry of Interior (MOI), the general Directorate for Criminal Investigations (CID) for ML cases and the State Security Bureau (SSB) for FT cases.** It appears that the CID concentrates its investigations solely on the predicate crime and does not follow the proceeds and examine potential ML activity. Furthermore, all the AML investigations conducted by the CID were initiated based upon the request of the PPO upon receiving STRs from the KFIU. Even though the SSB is investigating TF cases as crimes against the State, in the absence of an autonomous FT offense, there have been no convictions. Finally, law enforcement and prosecution personnel would benefit from more frequent and in-depth training.

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

Preventive Measures – Financial Institutions

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

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

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

- the timing for undertaking CDD measures;
- the identification and verification of some legal persons;
- the verification of persons purporting to act on behalf of certain type of legal persons;
- the identification and verification of beneficial owners;
- the conduct of ongoing due diligence on the business relationship;

- the review of existing records collected under the CDD process, particularly for higher-risk categories of customers or business relationships; and
- the application of enhanced measures for high-risk customers and the requirement to apply CDD measures on existing customers of exchange organizations, insurance companies and brokerage companies on the basis of materiality and risk.

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

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

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

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

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

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

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

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

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

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

27. **The secrecy provisions of Kuwaiti law inhibit the free and direct international sharing of information outside consolidated supervision.** While the secrecy provisions do not directly inhibit access and sharing of information on the domestic level, there is a need to go through the PPO to share information with foreign counterparts outside of the context of consolidated supervision.

28. **The regime in place with regard to shell banks fails to meet the FATF standards.** The measures in place to prevent the establishment of shell banks are not sufficient and fall short of requiring the physical presence of a FI in a way that would encompass the concept of “mind and management” of the institution. Also, there are no measures to prevent exchange companies to enter into or continue a correspondent relationship with shell banks.

29. **Implementation and effectiveness of preventive measures vary widely across financial sectors.** There are more stringent AML requirements for entities supervised by the CBK and less stringent requirements for those entities supervised by the MOCI and the MC/Kuwait Stock Exchange (KSE). In addition, where the requirements are the same, the requirements are more effectively implemented by banks, investment companies and to some extent by exchange companies. There is considerable concern regarding the implementation levels with respect to the AML requirements of brokerage companies, insurance companies and exchange organizations.

30. **The supervisory framework and powers of the supervisors are different across sectors.** There are three supervisory authorities in the financial sector; the CBK for banks, investment companies and exchange companies, the MOCI for the insurance sector and the exchange organizations, and the MC/KSE for the brokerage companies.

31. **The supervisory framework for the CBK over banks, investment companies and exchange companies is generally adequate, but is not for the MOCI and the MC/KSE.** The MOCI and the MC/KSE lack adequate authority and powers to supervise FIs and ensure compliance with existing AML/CFT laws and regulations. The inspection and surveillance powers of the MOCI and the MC/KSE are not adequate and lack a clear process. Moreover, the MOCI, and the MC/KSE lack resources to effectively conduct their AML/CFT tasks.

32. **The adequacy and effectiveness of supervision to ensure compliance with the AML/CFT requirements are different across sectors.** In particular, there is a lack of AML/CFT supervision by the KSE of brokerage companies and inadequate AML/CFT supervision by the MOCI of insurance companies and exchange organizations. In comparison, the supervision by the CBK is thorough and based on an off-site review, previous examinations and a review of the STRs the institution has filed. There is good communication between the CBK and the institutions it regulates. The CBK has acknowledged there is

room for improvement and is moving toward a risk-based approach to supervision, which they plan to have in place by the end of 2011.

33. **The powers of enforcement and sanction against FIs are not appropriate. The data on the sanctions applied by some regulators for AML/CFT deficiencies clearly indicate that the framework does not provide for effective, dissuasive or proportionate measures.** There is a limited range of formal sanctions available to the MOCI and the KSE, and no monetary sanctions are available. Neither of these two supervisors have adequate powers to supervise or sanction FIs for non-compliance with their AML/CFT obligations. No sanction has yet been applied by the KSE for non-compliance with AML/CFT matters, and the sanctions applied by the MOCI are not effective. Further, the application of sanctions does not extend to all members of supervisory boards and senior management of FIs under the supervision of the MOCI and the MC/KSE. Lastly, the involvement of the MOF, over certain specific actions of the CBK, in particular over its decision to delete a bank from the CBK's register, undercuts the effectiveness of its sanction regime.

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

Preventive Measures – Designated Non-Financial Businesses and Professions

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

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

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

Legal Persons and Arrangements & Non-Profit Organizations

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

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

National and International Co-operation

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

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

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

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

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

Other Issues

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

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating ¹
Legal systems		
1. ML offense	LC	<ul style="list-style-type: none"> Smuggling of migrants and terrorism financing are not predicate offenses for ML. Reluctance to undertake ML prosecutions without prior convictions for the predicate offense.
2. ML offense—mental element and corporate liability	LC	<ul style="list-style-type: none"> Criminal liability only applies to companies, and not to other legal persons.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> Impossibility to confiscate property of corresponding value. Lack of evidence of the effectiveness of the AML confiscation framework.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> The financial secrecy law for the CBK impedes regulatory cooperation and sharing at the international level outside of the context of consolidated supervision and criminal cases.
5. Customer due diligence	NC	<p>Lack of explicit obligations imposed by law or regulation (primary or secondary legislation) for:</p> <ul style="list-style-type: none"> Undertaking customer due diligence measures when: <ul style="list-style-type: none"> Carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR.VII; There is suspicion of ML or TF, regardless of any exemptions or thresholds; The FI has doubts about the veracity or adequacy of previously obtained customer identification data. Identifying and verifying the identity of any person purporting to act on behalf of a legal person (not only for companies and institutions). Identifying all types of legal persons, using reliable, independent data or information (identification data).

¹ These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<ul style="list-style-type: none"> • Taking reasonable measures to determine, for all customers, whether the customer is acting on behalf of another person, who are the natural persons who ultimately own or control the customer, and also those persons who exercise ultimate effective control over a legal person or arrangement. • Conducting ongoing due diligence on the business relationship, including the scrutiny of transactions undertaken through the relationship. <p>Lack of measures in law, regulation or other enforceable means that require FIs to:</p> <ul style="list-style-type: none"> • Verify the legal status of all legal persons. • Understand the ownership and control structure of the customers. • Obtain information on the purpose and intended nature of the business relationship with regard to insurance companies and exchange organizations and the intended nature of the business relationship with regard to banks, investment companies, and brokerage companies. • Undertake reviews of existing records collected under the CDD process, particularly for higher-risk categories of customers and business relationships. • Ensure that documents, data, and information collected by insurance companies, exchange organizations, and brokerage companies under the CDD process are kept up-to-date and relevant. • Perform enhanced due diligence for higher-risk categories of customer, business relationships, and transactions. • Consider making a suspicious transaction report when FIs are unable to comply with Criteria 5.3 to 5.6. • Terminate the business relationship and consider making a suspicious transaction report after the business relationship has commenced, but the FI is not longer satisfied with the veracity or adequacy of previously obtained customer identification data. • Apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times (insurance companies, exchange organizations and brokerage companies). <p>Effectiveness issues:</p> <ul style="list-style-type: none"> • The effective implementation of the requirements is undermined by factors, such as: <ul style="list-style-type: none"> ○ The lack of evidence supporting that implementation is effective, especially for exchange companies, insurance companies,

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<p>exchange organizations, and brokerage companies.</p> <ul style="list-style-type: none"> ○ The lack of effective supervision of insurance companies, exchange organizations, and brokerage companies.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> ● No clear definition of PEPs under the legal framework. ● Lack of requirements for exchange companies, insurance companies, exchange organizations, and brokerage companies with respect to PEPs. ● Lack of requirements for banks and investment companies to perform CDD measures or to put in place appropriate risk management systems to determine whether a potential customer, a customer, or a beneficial owner is a PEP. ● Lack of requirements for banks and investment companies to obtain senior management approval to continue a business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP. ● Lack of requirement for banks and investment companies to take reasonable measures to establish the source of wealth of customers and the source of wealth and the source of funds of beneficial owners identified as PEPs. ● Lack of requirement for banks and investment companies to conduct enhanced ongoing monitoring when they are in a business relationship with a PEP. ● Limited effectiveness in the implementation of the measures undertaken by FIs with regard to PEPs.
7. Correspondent banking	PC	<ul style="list-style-type: none"> ● Lack of requirements for banks, exchange companies, and investment companies to gather sufficient information about the respondent institutions in order to be able to fully understand the nature of the respondents' business and to determine from publicly available information the reputation of the institution or the quality of supervision, including whether the institution has been subject to ML investigation or regulatory action. ● Lack of requirements for banks, exchange companies, and investment companies to document the respective AML/CFT responsibilities of each institution.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> ● No requirements for exchange companies, insurance companies, exchange organizations, or brokerage companies regarding the misuse of new technologies. ● No requirements for FIs to have policies and procedures in place to address any specific risks associated with

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		non face-to-face business relationships or transactions. <ul style="list-style-type: none"> ● Limited effectiveness in the implementation of requirements related to modern technologies and non-face to face transactions.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> ● While in practice some financial institutions do rely on third parties to perform some CDD measures, there is no requirement in law, regulation or OEM to regulate the conditions of this reliance.
10. Record-keeping	LC	<ul style="list-style-type: none"> ● The requirement in law and regulation to maintain records of identification data, account file and business correspondence is tied to a transaction, not to the termination of an account or business relationship. ● There is no requirement for brokerage companies, insurance companies or exchange organizations to provide information on a timely basis to domestic competent authorities with appropriate authority. ● FIs are only required to extend the record-keeping requirement if requested by a criminal investigator in specific cases upon proper authority. This requirement does not extend to a request by other competent authorities, such as financial supervisors.
11. Unusual transactions	PC	<ul style="list-style-type: none"> ● There are no requirements for insurance companies, exchange organizations, or brokerage companies regarding unusual transactions.
12. DNFBP–R.5, 6, 8–11	NC	<p><i>Applying R.5:</i></p> <ul style="list-style-type: none"> ● Lack of explicit obligations imposed by law (primary or secondary legislation) for undertaking customer due diligence measures when: <ul style="list-style-type: none"> ○ Carrying out occasional transactions above the applicable designated threshold. ○ There is suspicion of ML or TF, regardless of any exemptions or thresholds. ○ The FI has doubts about the veracity or adequacy of previously obtained customer identification data. ○ Identifying and verifying the identity of all occasional customers. ○ Identifying and verifying the identity of any person purporting to act on behalf of a legal person (not only for companies and institutions). ○ Identifying all types of legal persons, using reliable, independent data or information. ○ Taking reasonable measures to determine who are the natural persons that ultimately own or control the customer, and also those persons who exercise ultimate effective control over a legal

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<p>person or arrangement.</p> <ul style="list-style-type: none"> ○ For lawyers, conducting ongoing due diligence on the business relationship. ● Lack of measures in law, regulation or other enforceable means that require DNFBPs to: <ul style="list-style-type: none"> ○ Verify the legal status of all legal persons and legal arrangements (not only for companies and institutions). ○ Understand the ownership and control structure of the customer. ○ Perform enhanced due diligence for higher risk categories of customer, business relationships or transactions. ○ Consider filing an STR when DNFBPs are unable to comply with criteria 5.3 to 5.5. ● Lack of measures in law, regulation or other enforceable means that require lawyers to: <ul style="list-style-type: none"> ○ Obtain information on the purpose and intended nature of the business relationship. ○ Conduct ongoing due diligence and scrutinize transactions undertaken through the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of their customers, their business and risk profile, and where necessary, the source of funds. ○ Ensure that documents, data and information collected under the CDD process is kept up-to-date, particularly for higher risk categories. ○ Satisfactorily completing CDD or applying CDD measures to existing customers. ● Lack of or inadequate implementation by DNFBPs. <p><i>Applying R.10:</i></p> <ul style="list-style-type: none"> ● The recordkeeping requirement in law and regulation is tied to the transaction, not to the termination of an account or business relationship. ● There is no requirement for DNFBPs to provide information on a timely basis to domestic competent authorities with appropriate authority. ● Lack of or inadequate implementation by DNFBPs. <p><i>Applying R.6, 8-9, and 11:</i></p> <ul style="list-style-type: none"> ● No requirements for DNFBPs related to PEPs, payment technologies, introduced business and unusual transactions.

Forty Recommendations	Rating	Summary of factors underlying rating ¹
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • There is no requirement in law or regulation that STRs be filed with the FIU. • Due to the lack of an autonomous TF offense, there is no obligation in law or regulation to make an STR when there are reasonable grounds to suspect that funds are related to TF. • There is no requirement in law or regulation to report attempted transactions. • Lack of effective implementation of the requirement to report suspicious transactions.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • There is no prohibition against banks, investment companies, or exchange companies from disclosing the fact that an STR or related information was reported or provided to the FIU or PPO. • There is no prohibition against brokerage companies, insurance companies, and exchange organizations, their directors, officers, or employees from disclosing the fact that an STR or related information was reported or provided to the FIU or PPO.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • Brokerage companies are not required to establish and maintain internal procedures, policies, and controls for the prevention of TF. • FIs are not specifically required to communicate their internal procedures, policies, and controls to their employees and are not specifically required to contain requirements on CDD, record retention, the detection of unusual transactions, and the STR reporting obligations. • There is no requirement for banks or investment companies that the compliance officer or the head of the compliance unit be at the management level. • There is no requirement for exchange companies, brokerage companies, insurance companies, or exchange organizations to develop appropriate compliance management arrangements, including, at a minimum, the designation of an AML/CFT compliance officer at the management level. • There is no requirement that FIs ensure that compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, transactions records, and other relevant information. • For banks, investment companies, and exchange companies: <ul style="list-style-type: none"> ○ There is no requirement that audits be adequately resourced and independent to test for compliance with internal procedures, policies, and controls.

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<ul style="list-style-type: none"> ○ It is unclear whether audits are required to perform sample testing of procedures, policies, and controls. ○ There is no requirement that brokerage companies, insurance companies, or exchange organizations maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls. ○ There is no requirement that banks, investment companies, exchange companies, brokerage companies, insurance companies, or exchange organizations put in place a screening procedure to ensure high standards when hiring new employees. ● There is a lack of effective implementation by brokerage companies, insurance companies, and exchange organizations of requirements to: <ul style="list-style-type: none"> ○ Establish and maintain internal procedures, policies and controls to prevent ML and TF; ○ Establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and, in particular, the requirements concerning CDD and suspicious transaction reporting.
16. DNFBP–R.13–15 & 21	NC	<p><i>Applying R.13:</i></p> <ul style="list-style-type: none"> ● There is no requirement in law or regulation that DNFBPs report to the FIU. ● Due to the lack of an autonomous TF offense, there is no obligation in law or regulation to file an STR when there are reasonable grounds to suspect those funds are related to TF. ● There is no requirement in law or regulation to report attempted transactions. <p><i>Applying R.14:</i></p> <ul style="list-style-type: none"> ● There is no prohibition against DNFBPs disclosing the fact that an STR or related information is being provided to the competent authorities. <p><i>Applying R.15:</i></p> <ul style="list-style-type: none"> ● Other than for the detection of suspicious transactions, there are no requirements for real estate agents and lawyers to establish and maintain internal procedures, policies, and controls to prevent ML and TF and to communicate these to their employees. ● There is no requirement for lawyers or real estate

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<p>agents to establish and maintain internal procedures, policies, and controls to prevent ML and TF, and to communicate internal procedures, policies, and controls to prevent ML and TF to their employees.</p> <ul style="list-style-type: none"> • There is no requirement for DNFBPs to develop appropriate compliance management arrangements. • There is no requirement for DNFBPs to maintain an adequately resourced and independent audit function to test compliance with internal procedures, policies, and controls. • There is no requirement for DNFBPs to establish ongoing employee training. • There is no requirement for DNFBPs to put in place procedures to ensure high standards when hiring employees. <p><i>Applying R.21:</i></p> <ul style="list-style-type: none"> • There is no requirement for DNFBPs related to countries which do not or insufficiently apply the FATF recommendations. • There is no requirement for DNFBPs to examine transactions that have no apparent economic or visible lawful purpose.
17. Sanctions	NC	<ul style="list-style-type: none"> • Lack of a clear designation of the authorities empowered to apply sanctions. • Absence of a clear basis for the MOCI to apply sanctions to insurance companies and exchange organizations for not complying with AML/CFT requirements. • Lack of a sanction regime with respect to directors and senior management of insurance companies, exchange organizations, and brokerage companies. • Lack of a sufficient range of sanctions. Sanctions are not proportionate and dissuasive (MOCI, KSE). • The involvement of the Minister of Finance in applying one of the sanctions set forth under the CBK Law (deletion from CBK's Register), undermines the effectiveness of the sanctioning regime. • Lack of penalties/sanctions in the securities sector despite the low level of compliance of the sector with AML/CFT provisions. • The sanctioning regime, especially for the MOCI and KSE, is not effective.
18. Shell banks	PC	<ul style="list-style-type: none"> • There are not sufficient legal provisions preventing the establishment or continued operation of shell banks. There is no requirement that banks seeking a license

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<p>have or maintain a physical presence in Kuwait in accordance to the FATF standard.</p> <ul style="list-style-type: none"> There is no prohibition on exchange companies from entering into or continuing correspondent banking relationships with shell banks.
19. Other forms of reporting	C	<ul style="list-style-type: none"> The Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> No consideration has been given to applying Recommendations 5, 6, 8–11, 13–15, 17 or 21 to NFBPs that are at risk of being misused for ML and TF. Although Kuwait has taken some important steps to reduce the reliance on cash as a payment method, there is still a very high reliance on cash, especially among the large expatriate community.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> There are no requirements for exchange companies, insurance companies, exchange organizations, or brokerage companies regarding business relationships and transactions with persons from or in countries which do not, or which insufficiently, apply the FATF recommendations. There are no effective measures to ensure that FIs are advised of concerns about the weaknesses of the AML/CFT systems of other countries. There are no requirements for banks or investment companies to examine and prepare written findings with regard to transactions involving non-compliant countries that have no apparent economic or visible lawful purpose. Kuwait has not applied appropriate counter measures to countries that continue not to apply or to insufficiently apply the FATF Recommendations.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> There are no requirements for FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (<i>i.e.</i>, host country) laws and regulations permit. There is no requirement that, where the minimum AML/CFT requirements of the home and host countries differ, the branches and subsidiaries in host countries apply the higher standard. There is no requirement that investment companies, exchange companies, brokerage companies, insurance companies, or exchange organizations inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

Forty Recommendations	Rating	Summary of factors underlying rating ¹
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> ● Lack of a clear basis for the MOCI to supervise the insurance sector and the exchange organizations to ensure compliance with AML/CFT requirements. ● Lack of provisions related to the control by supervisory authorities of the ownership structure of FIs to prevent criminals and their associates from holding or being the beneficial owners of a significant controlling interest. ● Lack of ability for the CBK, MOCI, and KSE to apply fit and proper test on directors and senior management of investment companies, exchange companies, insurance companies, exchange organizations, and brokerage companies. ● No supervision of brokerage companies for compliance with AML/CFT obligations. ● The insurance sector and the exchange organizations are not effectively supervised for compliance with AML/CFT requirements. ● Low awareness by the FIs under the supervision of the MOCI of the AML/CFT requirements.
24. DNFBP—regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> ● DNFBPs are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. ● Absence of a clear legal framework for monitoring and ensuring compliance of real estate agents or dealers in precious metals and stones.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> ● Lack of guidelines for brokerage companies, insurance companies or exchange organizations. ● Limited guidelines on STR reporting provided by the CBK to relevant institutions. ● Lack of adequate and appropriate feedback from competent authorities. ● There is an insufficient amount of guidance by the CBK for FIs on how to implement and comply with their AML/CFT obligations. ● Lack of guidelines for DNFBPs to assist in implementing and complying with AML/CFT obligations. ● Lack of adequate and appropriate feedback from competent authorities to DNFBPs.
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> ● Absence of a clear legal basis for establishing the KFIU and providing it with its powers and functions.

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<ul style="list-style-type: none"> • No clear guidance on filing STRs has been issued by the KFIU. • Insufficient tactical, operational and strategic analysis of STRs and other related information. • Absence of a legal basis to request additional information from FIs and DNFBPs. • The KFIU is not authorized to disseminate financial information to domestic agencies for investigation or when there are grounds to suspect ML or TF. • Inadequate operational independence and autonomy to ensure that the KFIU is free from undue influence or interference. • Inadequate protection of information and premises. • No publication of periodic reports.
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • No autonomous or predicate TF offense as legal basis for investigative/compulsory measures. • Overall, investigation and prosecution authorities do not appear to adequately pursue ML cases. • Shortage of evidence as to the effectiveness of law enforcement authorities and the lack of statistics.
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> • No autonomous or predicate TF offense as a legal basis for investigative/compulsory measures. • Shortage of evidence as to the effectiveness of law enforcement authorities and the lack of statistics.
29. Supervisors	NC	<ul style="list-style-type: none"> • Lack of a clear basis and supervisory authority/powers for the MOCI to ensure compliance by the insurance companies and the exchange organizations with AML/CFT requirements. • Lack of powers to monitor compliance and conduct inspections of the FIs subject to the MOCI's control. • The supervisory powers of the KSE to monitor and inspect are not adequate and lack a clear process. • Lack of AML/CFT inspections of brokerage companies to monitor compliance. • AML/CFT inspections on exchange organizations and insurance companies are limited in scope and are not effective. • Lack of examination procedures in place for the supervision of the insurance companies, exchange organizations, and brokerage companies • MOCI and KSE do not have adequate powers of

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		enforcement and sanction against FIs, their directors, and senior management. <ul style="list-style-type: none"> • The CBK’s power with respect to the revocation of licenses is dependent on the decision of the Minister of Finance. • Lack of effectiveness.
30. Resources, integrity, and training	NC	<ul style="list-style-type: none"> • Overall, the allocation of resources is uneven, particularly in view of the rapid development and diversification of the economy. • Overall, professional standards, including confidentiality standards are not fully developed. • Lack of specialist skills training in law enforcement authorities including prosecution agencies, FIU, supervisors (MOCI and KSE), and other competent authorities involved in combating ML/TF.
31. National co-operation	PC	<ul style="list-style-type: none"> • Lack of effective mechanisms in place which enable the concerned authorities to coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF. • Absence of coordination and mechanisms between the CCT members for the implementation of UNSCR 1267 and 1373.
32. Statistics	NC	<ul style="list-style-type: none"> • Competent authorities have yet to develop comprehensive statistics in all relevant areas of the fight against ML and TF (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation, on-site examinations conducted by supervisors, and sanctions applied). • Overall, there are no statistics available on formal requests for assistance made or received by supervisors, relating to or including AML/CFT. • No evidence of reviews of effectiveness of Kuwait’s AML/CFT system.
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> • Changes in ownership and control information of corporations are not kept up-to-date. • Absence of adequate, accurate, and current information related to corporations that can be obtained in a timely fashion by competent authorities.
34. Legal arrangements – beneficial owners	NA	Not applicable. There are no legal arrangements such as trusts in Kuwait.

Forty Recommendations	Rating	Summary of factors underlying rating ¹
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> ● Kuwait has not ratified the 1999 TF Convention. ● The Vienna and Palermo Conventions are not fully implemented: <ul style="list-style-type: none"> ○ Smuggling of migrants and terrorism financing are not predicate offenses for ML. ○ Criminal liability only applies to companies, and not to other legal persons.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> ● International cooperation in the area of search or seizure of property, proceeds or instrumentalities is slowed down, or hampered, as requests can be executed only when emanating from a competent “judicial” authority in another country. ● MLA is not provided, in most cases, in a rapid manner.
37. Dual criminality	LC	<ul style="list-style-type: none"> ● Lack of clarity in internal Kuwaiti law as to manner in which it gives effect to Article 18, paragraph 9 of the Palermo Convention.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> ● No value-based confiscation.
39. Extradition	LC	<ul style="list-style-type: none"> ● Impossibility of assessing the effectiveness of the extradition system in the ML/TF area.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> ● FIU is not able to exchange information with its counterparts. ● Lack of controls and safeguards to ensure that information received by LEAs is used only in an authorized manner. ● Outside the context of consolidated supervision: <ul style="list-style-type: none"> ○ International cooperation by the CBK is limited and the PPO’s approval is required. The necessity for the CBK to go through the PPO in certain situations represents an undue restriction to sharing. ○ There is a lack of clear gateways for sharing by the CBK, except in criminal matters. ○ There is a lack of spontaneous sharing by the CBK. ○ There are secrecy constraints against the CBK sharing confidential information. ○ There is a lack of clear authority for the CBK to conduct inquiries for foreign counterparts without the authority of the PPO.

Forty Recommendations	Rating	Summary of factors underlying rating ¹
		<ul style="list-style-type: none"> ● International cooperation by the KSE is insufficient. ● For the MOCI and the KSE, there is a lack of: <ul style="list-style-type: none"> ○ clear gateways for international sharing; ○ proven spontaneous sharing; ○ proven ability to conduct inquiries for foreign counterparts; and ○ clear safeguards for maintaining the confidentiality of information. ● Lack of clear authority for competent authorities to share with regard to fiscal matters. ● Lack of clear prohibition against supervisors using information for unauthorized purposes. ● Lack of statistics and overall effectiveness.

Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> ● Kuwait is not party to and has not implemented the TF Convention. ● Kuwait has not implemented the UNSCRs 1267 and 1373.
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> ● No specific provision criminalizing TF.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> ● There is no law and procedure in place to implement UNSCRs 1267 and 1373, or to handle freezing requests from other countries. ● There is no authority responsible for the designations, or a legal basis for the freezing/seizing orders. ● Implementation of freezing orders, when it occurs, takes more than “a matter of hours.” ● No coordination mechanism in place for the implementation of UNSCRs 1267 and 1373. ● No communication mechanisms or guidance for institutions not subject to the CBK supervision. ● Lack of an appropriate review mechanism. ● Lack of clear monitoring and sanctioning procedures to verify implementation of freezing requests. ● No criminalization of TF.
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> ● Due to the lack of an autonomous TF offense, there is no obligation in law or regulation for FIs to report to the

Nine Special Recommendations		
		<p>FIU when they suspect or have reasonable grounds to suspect funds are related to, or are being used for, terrorism, terrorist acts, or by terrorist organizations or those who finance terrorism.</p> <ul style="list-style-type: none"> • There is no requirement in law or regulation for FIUs to report attempted transactions, regardless of amount, when there are reasonable grounds to suspect those funds are related to, or are being used for, terrorism, terrorist acts, or by terrorist organizations or those who finance terrorism.
SR.V International cooperation	NC	<ul style="list-style-type: none"> • Lack of criminalization of TF. • Impossibility to assess the effectiveness of the mutual legal assistance and extradition regimes relating to TF due to the limited number of cases. • Lack of FT criminalization limits the ability to provide cooperation by all concerned authorities. • Lack of overall effectiveness of the exchange of information relating to TF. • Lack of statistics.
SR.VI AML/CFT requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • Lack of effective monitoring of a potential small informal money/value transfer system operating in Kuwait. • The application of the FATF Recommendations to MVTs providers suffers from the same deficiencies identified in relation to the rest of the financial sector (see Sections 3.1 to 3.10 of this report).
SR.VII Wire transfer rules	LC	<ul style="list-style-type: none"> • The shortcomings identified under Recommendations 17 (sanctions) and 23 (monitoring and supervision) have a negative impact on this Special Recommendation. The applicable shortcomings include: <ul style="list-style-type: none"> ○ It is not clear if the sanctions applied by the CBK are effective in all cases; and ○ The lack of statistic regarding the violations, penalties or the application of sanctions with regard to wire transfers.
SR.VIII Non-profit organizations	PC	<ul style="list-style-type: none"> • The supervision of associations and foundations is not as comprehensive as the one in place for charities. • Absence of requirement to maintain records for five years. • Lack of outreach to the NPO sector. • Sanctions for non-compliance with registration requirements are not effective and dissuasive.

Nine Special Recommendations

SR.IX Cross-Border Declaration & Disclosure

PC

- Absence of requirement of the declaration system for outbound cross-border transportation of cash and bearer negotiable instruments.
- Absence of clear definition of bearer negotiable instruments.
- Absence of implementation of the system for outbound transportation of currency and bearer negotiable instruments.
- Lack of clear powers to request and obtain further information from the carrier with regard to the origin of the currency or the bearer negotiable instruments and their intended use.
- No specific powers to be able to stop or restrain currency and bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found.
- Lack of proportionate sanctions for false disclosure, failure to disclose, or cross-border transportation for ML and TF purposes.
- Lack of requirement for the retention of records.
- The absence of criminalization of TF as autonomous or predicate offense will affect the effectiveness of the implementation of SR.IX.
- Insufficient statistics upon which to assess the effectiveness of the measures in place.