



# G20 LEADERS OR LAGGARDS?

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Reviewing G20 promises on  
ending anonymous companies



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# HIGHLIGHTS

Eleven G20 countries have “weak” or “average” beneficial ownership legal frameworks. This has dropped from 15 in 2015, but progress is too slow. ....Read more on page **10**

Eight G20 countries (**Argentina, Australia, Brazil, Germany, India, Saudi Arabia, South Africa** and **Turkey**) have still not conducted an anti-money laundering risk assessment within the last six years. ....Read more on page **24**

**Canada**, the **United States** and **China** all score zero points on requiring companies to collect and maintain accurate and up-to-date beneficial ownership information. ....Read more on page **28**

Six countries now have central beneficial ownership registers: G20 countries **Brazil, France, Germany, Italy**, the **United Kingdom** and G20 guest country **Spain**. Only in the **United Kingdom** is the register publicly available. In **France**, public authorities still have to request access to the data ....Read more on page **30**

No G20 countries require register authorities to verify the information collected in company registers as standard. Only in three countries (**Argentina, Italy** and guest country **Spain**) might information be verified in suspicious cases. ....Read more on page **32**

All 23 countries analysed now require financial institutions to identify the beneficial ownership of customers. All countries, with the exception of **Switzerland**, also require financial institutions to verify the beneficial owner's identity, although requirements are limited in **Canada, Italy, Germany** and the **United States**. ....Read more on page **41**

Only eight G20 countries (**Australia, China, France, India, Indonesia, Japan, Mexico** and the **United Kingdom**) require financial institutions to use independent and reliable sources to verify the beneficial owner in cases considered to be high risk. ....Read more on page **43**

In nine G20 countries (**Australia, Brazil, Canada, Germany, Indonesia, Russia, South Korea, Turkey** and the **United States**), financial institutions can still proceed with a transaction even if they cannot identify the beneficial owner. ....Read more on page **43**

**Lawyers** are not required to identify the beneficial owner of clients in nine countries, (**Argentina, Australia, Brazil, Canada, China, India, Japan, South Korea** and the **United States**). **Real estate** agents in five G20 countries (**Australia, Canada, China, South Korea** and the **United States**) are not required by law to identify the beneficial owners of clients buying and selling property, despite major corruption scandals involving high-end real estate.....Read more on page **44**

Eight G20 countries (**Australia, Canada, China, Korea, Mexico, South Africa, Saudi Arabia** and the **United States**) still permit people to act as nominee shareholders without any requirement to disclose on whose behalf they are actually working. ....Read more on page **52**



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## ABBREVIATIONS

<b>DNFBPs</b>	Designated non-financial businesses and professions
<b>EU AMLD</b>	EU Anti-Money Laundering Directive
<b>FATF</b>	Financial Action Task Force
<b>G20</b>	Group of 20
<b>OCCRP</b>	Organized Crime and Corruption Reporting Project
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>TCSP</b>	Trust or Company Service Provider



# GLOSSARY

**Beneficial owner:** the natural, living person who ultimately owns, benefits from or controls (directly or indirectly) a company or legal arrangement

**Bearer share:** a stock certificate that is the property of whoever happens to be in possession of it at any given time.

**Competent authority:** public authorities with designated responsibilities for combating money laundering and/or terrorist financing, such as the Financial Intelligence Unity, law enforcement that investigate and/or prosecute money laundering and related offences, and supervisory bodies that have anti-money laundering responsibilities to ensure compliance by financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) with anti-money laundering/CFT requirements, as well as tax authorities.

**DNFBPs:** DNFBPs subject to customer due diligence obligations, as per the Financial Action Task Force (FATF) terminology. They include trust and corporate service providers (TCSPs), real estate agents, notaries, dealers in precious metals, lawyers and accountants when carrying out certain activities on behalf of clients.

**Financial institutions:** any natural or legal person who conducts as a business one or more activities or operations for or on behalf of a customer – for example, activities or operations conducted by banks, securities dealers, currency exchange and money services businesses, life insurance, and others.

**Legal arrangement:** an express trust or other similar arrangement, including *fiducie*, *treuhand* and *fideicomiso*.

**Legal person or entity:** any entity, other than a natural person, that can establish a permanent customer relationship with a financial institution or otherwise owns property. This can include companies, bodies corporate, foundations, *anstalt*, partnerships or associations, and other relevantly similar entities that have legal personality. This can include non-profit organisations that can take a variety of forms that vary between jurisdictions, such as foundations, associations or cooperative societies.

**Nominee:** an individual or entity who has been appointed to act as a director or a shareholder on behalf of another person. Nominees are usually bound by contract or other instruments, such as power of attorney granting authorisation to represent or act on behalf of their nominator.

There are two broad categories of nominees: **professionals**, such as lawyers or corporate service providers offering nominee services; and **informal** nominees, such as family members, friends or associates who play the role of front men for the beneficial owner.

**Obligated entity:** a professional subject to customer due diligence obligations when entering into business with a customer or carrying out a transaction, that is making the necessary verifications on the identity of their customer and the origins of the funds. Those include financial institutions and DNFBPs, as per FATF terminology.

**Politically exposed persons:** individuals who hold or held a prominent public function, such as the head of state or government; senior politicians; senior government, judicial or military officials; senior executives of state-owned corporations; or important political party officials. The term often includes their relatives and close associates.

**Trust:** a relationship whereby the assets of one individual (the settlor) are conferred on one individual or entity (a trustee) to manage on behalf of others (the beneficiaries). The terms of the arrangement are set out in a trust instrument, typically drafted by a lawyer or notary. The term express trust is used to designate trusts clearly created by the settlor, usually in the form of a document (such as a written deed of trust). They are to be contrasted with trusts which come into being through the operation of the law and do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (such as a constructive trust).


**Trust and Company Service Providers:** all persons or businesses that provide certain services to third parties, such as: (i) acting as a formation agent of legal persons; (ii) acting as director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons; (iii) providing a registered office; business, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; (iv) acting as a trustee of an express trust or performing the equivalent function for another form of legal arrangement; (v) acting as a nominee shareholder for another person.





# EXECUTIVE SUMMARY





**Major cross-border “Grand Corruption” scandals have embroiled Group of 20 (G20) countries in recent years. In 2017, Brazilian engineering company Odebrecht received a US\$2.6 billion fine for bribery.<sup>1</sup> The company was charged with paying around US\$788 million in bribes, some of which flowed through United States banks to 12 countries between 2001 and 2016, including fellow G20 members Argentina and Mexico.<sup>2</sup> In the “Russian Laundromat” scandal, exposed in 2017, a group of individuals in G20 member Russia allegedly created 21 shell companies, which then moved and laundered ill-gotten money out of the country, making more than 26,000 payments to 96 different countries including every G20 country aside from Brazil.<sup>3</sup> We increasingly see how anonymous companies that hide the identity of the person at the source of the funds have been used either to launder and transfer stolen money, or to operationalise corrupt deals – using the companies and offshore accounts to pay bribes or buy influence.**

Rightly, the issue of anonymous companies has risen in prominence on the global agenda. Yet, in 2015, our analysis of how well G20 members were implementing the G20 Beneficial Ownership Principles showed that 15 of the G20 members had weak or average beneficial ownership legal frameworks. This publication *G20 Leaders or Laggards?* updates that assessment.



# COUNTRY RESULTS

This assessment finds that the majority of countries have improved over the last two years, but that progress has been slow. In 2015, 15 G20 countries had weak or average beneficial ownership legal frameworks. Today, 11 G20 countries still have weak or average beneficial ownership legal frameworks, more than three years after the G20 Beneficial Ownership Principles were adopted and despite the increasing understanding of how secrecy around ownership and control of legal entities is used to facilitate corruption at the global level.

France, Germany and Italy have seen noticeable improvements since 2015. Their score increases have been largely due to the countries adopting central beneficial ownership registers to move towards implementation of the fourth European Union Anti-Money Laundering Directive (EU AMLD). Their progress has only been matched by Brazil, which has jumped two categories and has independently seen some major regulatory change in the last two years driven by recommendations put forward by the National Strategy Against Corruption and Money Laundering (ENCCLA). Four G20 guest countries, Spain, Norway, Switzerland and the Netherlands – which did not participate at the Brisbane Summit in 2014 when the G20 Beneficial Ownership Principles were adopted, and which we assess for the first time – compare relatively well to their G20 counterparts.

Major changes appear to have originated through regional or domestic pressure, suggesting that membership of the G20 is not in and of itself a major driver for change. This leads us to wonder whether the G20 is leading from behind – if at all. The G20 has been keen to take a strong vocal stance on tackling beneficial ownership secrecy. In the G20 Anti-Corruption Action Plan 2015-16,<sup>4</sup> the G20 stated that “preventing the abuse of legal persons and arrangements is a critical issue in the global fight against corruption”.

## 2015 Results

Very weak framework	Weak framework	Average framework	Strong framework	Very strong framework
-	Australia	Germany	Argentina	UK
	Brazil	India	France	
	Canada	Indonesia	Italy	
	China	Japan		
	South Korea	Mexico		
	United States	Russia		
		Saudi Arabia		
		South Africa		
		Turkey		



They committed to taking “concrete action” to implement the G20 Beneficial Ownership Principles. Two years later, the G20 Anti-Corruption Action Plan 2017-18 re-stated that “transparency over beneficial ownership is critical to preventing and exposing corruption and illicit finance”. They underscored their commitment to “fully implement ... our Action Plans to implement the G20 High Level Principles on Beneficial Ownership Transparency ... and promote the identification of the true beneficial ownership and control of companies and legal arrangements, including trusts, wherever they are located”.<sup>5</sup>

And yet, progress across the board has been slow. G20 countries should be at the forefront of change, but little by way of monitoring or reporting on progress has been conducted. In the meantime, other countries from Afghanistan to Ghana and Nigeria have been moving forward with legislation and plans to adopt their central, public beneficial ownership registers. This will dramatically improve collection and access to information, following commitments made at the Anti-Corruption Summit in 2016. The Ukraine has already published a beneficial ownership dataset online.<sup>6</sup>

# G20

The G20 is a group of leading economies, but it seems that their leadership is slow-paced when it comes to seriously cracking down on the abuse of legal entities that are incorporated or operating in their own territories.

## 2017 Results

Very weak framework	Weak framework	Average framework	Strong framework	Very strong framework
-	Canada	Australia	Argentina	France
	South Korea	China	Brazil	Italy
		India	Germany	UK
		Indonesia	Japan	Spain (Guest)
		Russia	Mexico	
		Saudi Arabia	Norway (Guest)	
		South Africa	Switzerland (Guest)	
		Turkey		
		United States		
		Netherlands (Guest)		



# KEY FINDINGS

## 1 G20 Countries are starting to tackle anonymous company ownership – but progress is slow

Three years have passed since the G20 adopted their High-Level Beneficial Ownership Principles at the Brisbane G20 Summit. In 2015, we cautioned that we found it worrying that 15 G20 countries had weak or average frameworks. That number has dropped to 11 this year, but there are still big weaknesses across the principles. Every country has the scope to improve their legislative framework.

Some countries have barely moved since 2015 and still have major weaknesses. It is concerning that the overall legal framework of Canada and South Korea is still considered “weak” and ten G20 countries (and two of the four guest countries) have “very weak” legal frameworks in place to provide law enforcement, supervisors, tax authorities and financial intelligence units with access to any beneficial ownership information.

## 2 The majority of countries still do not know who own and controls companies in their territories and do not keep up to date information on them

The G20 Principles took an important step by encouraging legal entities to require beneficial ownership information when recording information about their shareholders. Legal entities are now expected to understand their ownership and control structure and keep track of individuals who have an interest in a company but are represented through nominee shareholders or other legal entities.

Sadly, the great majority of countries assessed still do not require legal entities to maintain beneficial ownership information themselves. Beneficial ownership information is only analysed and collected by financial institutions and other DNFBPs within the framework of anti-money laundering and counter-terrorism financing rules. All countries do have some sort of shareholder register, but the information rarely includes beneficial ownership information.

Central (unified) beneficial ownership registers improve collection of beneficial ownership information and access to law enforcement, supports domestic and international cooperation between authorities and allows them to do their job quicker. The good news is that six assessed countries now have central beneficial ownership registers: G20 countries **Brazil, France, Germany, Italy, the United Kingdom** and guest country **Spain**. This was a requirement for European countries under the fourth EU AMLD.

Weaknesses still remain in those registers, hindering their ability to ensure that accurate and up-to-date information on beneficial owners is available in a timely manner to all relevant competent authorities (for example Financial Intelligence Units). Only in the **United Kingdom** is the register publicly available. In **France**, public authorities still have to request access to the data.

In other countries where beneficial ownership information is at least collected during registration of the company (such as **Argentina** and **India**), access to that information is inhibited by the lack of a central and complete online database that would make the data far more useful.



In March 2018, Indonesia adopted new rules requiring companies to collect and report beneficial ownership information to an authorised agency and verify the identity of the beneficial owners. Given the law was adopted when this publication was being finalised, the findings and scores do not reflect these changes.

In countries where there are no central registers, competent authorities face great challenges when they try to investigate and identify the final beneficiary of a company. Information, when it is collected, is often incomplete, difficult to access or fragmented across different databases, as in **Canada** and the **United States**, where requirements differ across provinces and states. In some United States state registers (for example, Delaware), even information on shareholders or directors goes unrecorded.

Central registers also help collect vital information that banks and business can use during their due diligence processes. Without these registers, and without the information being checked and verified, identifying a client's beneficial ownership information will remain a difficult process. Sadly, in nine G20 countries (**Australia, Brazil, Canada, Germany, Indonesia, Russia, South Korea, Turkey** and the **United States**), financial institutions can still proceed with a transaction even if they cannot identify the beneficial owner.

### **3** Verification of information is weak across the board. This undermines the ability of competent authorities to investigate suspicious cases, and the ability of banks and businesses to carry out proper due diligence

Verification is important to ensure the quality of data being provided, but also for assessing if companies are fulfilling their duties (or if front men are being used to disguise ownership).

The good news is that all 23 countries analysed now require financial institutions to identify the beneficial ownership of customers, including **South Korea, South Africa** and the **United States**, countries where such a requirement was non-existent or inadequate two years ago. All countries, with the exception of **Switzerland**, also require financial institutions to verify the beneficial owner's identity, although requirements are limited in **Canada, Italy, Germany** and the **United States**.

Unfortunately, in high-risk cases, only eight G20 countries (**Australia, China, France, India, Indonesia, Japan, Mexico** and the **United Kingdom**) require financial institutions to use independent and reliable sources to verify the beneficial owner of their customers. That means that financial institutions often take for granted customers' own declarations regarding beneficial ownership information. This is problematic because competent authorities in 15 of G20 and G20 guest countries rely on the information collected by financial institutions to identify beneficial owners.

Finally, no register authority in any G20 or guest country verifies information collected in company registers at the moment. In only three countries – **Argentina, Italy and Spain** – might information be verified by a notary in suspicious cases.



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## 4 Rhetoric does not always translate into action

Governments are frequently aware of the weaknesses in their systems, but in many cases fail to implement key measures they know will help mitigate those problems.

For example, in **Canada**, the 2015 national risk assessment highlights the use of shell companies by criminal groups and individuals to launder money, and identifies real estate agents and developers as being exposed to high or very high money laundering risk. Despite these findings, the current legal framework does not include adequate mitigation measures, such as making it mandatory for these professionals to identify customer's beneficial owners. Similarly, many vulnerabilities identified in the United States 2015 assessment of money laundering risks have not yet been addressed in the legal framework.

**Brazil's** regulation on financial institutions is also notable for sending conflicting messages. It states, on the one hand, that financial institutions should only initiate or continue "commercial relations" provided all register data (which includes beneficial ownership information) is collected and up-to-date. On the other hand, it also states that financial institutions should pay special attention to clients and operations whose data on the ultimate beneficiary is impossible to obtain, suggesting that it is possible to proceed with the transaction without this information.<sup>7</sup>

In **Australia**, financial institutions' directors and senior managers cannot be held personally responsible for non-compliance with the anti-money laundering rules. In all other countries, sanctions for non-compliance (including penalties, fines, suspension or warnings) apply to financial institutions themselves as well as to directors and senior managers.

**Argentina** has not conducted a money laundering risk assessment for more than three years, despite a commitment in 2014 to conduct one every two years.

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## 5 Gatekeepers such as lawyers, accountants, real estate agents, and trusts and company service providers remain money laundering weak-spots

Despite improvements since our last analysis, serious weaknesses remain regarding the obligations of professionals with money laundering obligations to identify the beneficial owners of their clients. Four G20 countries (**Australia, Canada, South Korea**, and the **United States**), have no legal provisions requiring DNFBPs to identify the beneficial owners of their clients. Lawyers are not required to identify the beneficial owner of clients in nine countries (**Argentina, Australia, Brazil, Canada, China, India, Japan, South Korea** and the **United States**), although **Indonesia** and **South Africa** adopted new rules extending anti-money laundering obligations to lawyers since our last assessment. In Switzerland, lawyers are only required to identify the beneficial owner of clients under limited circumstances. Real estate agents in five G20 countries (**Australia, Canada, China, South Korea and the United States**) are not required by law to identify the beneficial owners of clients buying and selling property.



# RECOMMENDATIONS

- » Governments should establish a central register of beneficial ownership information and make it publicly available in open data format.
- » Governments should resource and establish mechanisms to ensure that at least some verification of beneficial ownership information takes place, such as cross-checking the data against other government and tax databases, or conducting random inspections.
- » Financial institutions or DNFBPs should not be allowed to proceed with transactions if the beneficial owner of their customer cannot be identified.
- » Governments should undertake national money laundering risk assessments on a regular basis. These should include an analysis of the risks posed by domestic and foreign legal entities and arrangements. Key stakeholders, including obliged entities and civil society organisations should be consulted. The results of the assessment should be published online.
- » Governments should consider prohibiting nominee shareholders. If they are allowed, they should be required to disclose their status upon the registration of the company and registered as nominees. Nominees should be licensed and subject to strict anti-money laundering obligations.
- » Governments should require the registration of both domestic and foreign trusts operating in their country. Information on all parties to the trust (trustee, settlor and beneficiaries), and the real individuals behind them should be recorded.

Our full recommendations can be found in our *Technical Guide on Implementing the G20 Beneficial Ownership Principles*.<sup>8</sup>





# INTRODUCTION



**Grand corruption, the trafficking of people and drugs, terrorism, tax and sanctions evasion, environmental crime, and money laundering are perpetrated or enabled on a global scale through the creation and use of anonymous companies and trusts. The United Nations Office on Drugs and Crime estimates that up to 5 per cent of global GDP – between US\$800 billion and US\$2 trillion – is laundered each year.<sup>9</sup> Secrecy around ownership and control of legal entities makes it easy for the perpetrators to hide their connection to the corrupt or criminal source of funds, and hard for law enforcement to follow the money trail.**

Countries are increasingly aware of this challenge. The G20 leaders adopted Beneficial Ownership Principles in 2014<sup>10</sup> building upon FATF recommendations, which set the current global standards for anti-money laundering<sup>11</sup> and the 2013 G8 action plan principles to prevent the misuse of companies and legal arrangements.<sup>12</sup> More recently, a large proportion of the more than 600 commitments made by more than 40 countries at the Anti-Corruption Summit held in London in 2016 were on enhancing beneficial ownership transparency.<sup>13</sup>

In 2015, Transparency International assessed how well the G20 countries were fulfilling the commitments made under the Beneficial Ownership Principles. The report found that the great majority of G20 countries had an overall weak understanding of beneficial ownership transparency and the risks posed by anonymous companies and trusts. The assessment also found that the great majority of countries relied on financial institutions to collect information on beneficial ownership. In turn, financial institutions had inadequate measures to identify and verify the beneficial owner of customers. Moreover, DNFBPs, such as lawyers, accountants and real estate agents, had weak requirements to identify the beneficial owner of customers across countries.<sup>14</sup>

At the time, we noted how a complex web of shell companies were involved in major corruption scandals in the news: Brazil's largest ever corruption scandal involving state-owned oil company Petrobras;<sup>15</sup> former President of Ukraine Viktor Yanukovich, who fled the country having allegedly concealed his involvement in syphoning off of at least US\$350 million of Ukraine public funds for his personal benefit;<sup>16</sup> and the indictment of Fédération Internationale de Football Association officials for allegedly funnelling at least US\$150 million in bribes through the United States.<sup>17</sup> Sadly, the major corruption scandals in the news today still show just how prevalent the use of anonymous companies remains, and how the weaknesses we highlighted in 2015 continue to allow corrupt individuals and companies to launder their illicitly-acquired money, shifting profits abroad or buying luxury goods and properties.



**More recent scandals** also show how the lack of beneficial ownership transparency allows companies and officials, not only to hide and launder funds, but also to operationalise corrupt deals, using shell companies and offshore accounts to make bribe payments, illegally finance electoral campaigns or buy influence.

- » In the Russian Laundromat, a group of individuals in Russia allegedly created 21 shell companies with hidden ownership that were incorporated in the United Kingdom, Cyprus and New Zealand. These companies were then used by Russian companies to move ill-gotten money out of Russia in a scheme that relied upon implicated individuals and judges in Moldova to launder the money. From there, these 21 shell companies made more than 26,000 payments to 96 different countries.<sup>18</sup> According to Organized Crime and Corruption Reporting Project (OCCRP) investigations, all 21 shell companies appeared to be owned by fronts. Even directors and shareholders of the companies were fake. Yet, they managed to open several bank accounts and transfer vast quantities of money through the world's biggest banks without raising suspicions.<sup>19</sup>
- » The Brazilian conglomerate Odebrecht admitted to paying bribes to politicians and public officials to win public procurement contracts in Brazil and abroad<sup>20</sup> and to influence policy-making.<sup>21</sup> The company operated a web of shell companies and offshore accounts that were used to pay bribes to Brazilian and foreign officials.<sup>22</sup> The scheme was only possible thanks to the support of many enablers along the way: corporate service providers, such as Mossack Fonseca (who reportedly helped open offshore companies to executives of Petrobras and public officials;<sup>23</sup> financial institutions in countries such as Panama,<sup>24</sup> Antigua,<sup>25</sup> Andorra<sup>26</sup> and Switzerland,<sup>27</sup> which allegedly turned a blind eye<sup>28</sup> or failed to verify the beneficial owner of accounts and report suspicious transactions; and lawyers who served as a front to politically exposed persons so that bank accounts could be opened to channel illicit funds without raising red flags.<sup>29</sup>
- » Similarly, in the "Azerbaijani Laundromat",<sup>30</sup> OCCRP uncovered a network of illicit financial payments that used reputable banks and anonymous companies to funnel payments from a US\$2.9 billion slush fund to buy political influence and launder Azerbaijan's international image, as well as to buy luxury goods and launder money.<sup>31</sup> It is estimated that seven million pounds was spent in the United Kingdom on luxury goods and private school fees.<sup>32</sup> The scheme relied on four United Kingdom limited liability companies owned by other

companies from anonymous tax havens such as the British Virgin Islands, Seychelles and Belize. These four companies reportedly used the Estonian branch of Danske Bank<sup>33</sup>, a major European financial institution, to make more than 16,000 covert payments, moving billions of dollars without raising red flags. The investigation shows that the majority of payments went to other secretive shell companies similarly registered in the United Kingdom. Large amounts also went to companies in the United Arab Emirates and Turkey, but it is not yet clear who the real beneficiaries were.<sup>34</sup>

These recent cases confirm that it remains crucial for member countries to transpose the G20 principles into law and implement them effectively. The current report assesses how much progress has been made in G20 countries since the adoption of the principles and Transparency International's first assessment. As such, this assessment identifies areas of strength and weakness in the current beneficial ownership transparency framework of each G20 country, as well as progress made since the last assessment conducted in 2015. This report also looks at how well recent G20 guest countries (Norway, Netherlands, Spain and Switzerland) have implemented the G20 Beneficial Ownership Principles. It draws on data collected from expert questionnaires focusing on key components of each G20 principle.

While almost every country assessed has improved, some countries have actually declined in score against some specific principles. This is because there have been minor changes to the methodology to provide additional intermediary scores where there were none before. This does not mean that changes to the legal framework have had a negative impact on beneficial ownership transparency, but rather that some features of the legal framework are no longer considered under the scoring criteria for that question.

This report aims to encourage a conversation in each country on where laws can be improved to strengthen beneficial ownership transparency. Alongside this report, individual summaries for each G20 member and guest country will be published. The country profiles provide more detailed analysis on an individual basis. The combined findings should be used to help identify concrete measures to be taken by countries to adhere to commitments within the G20 principles. Transparency International also encourages competent authorities (such as tax, supervisory bodies and law enforcement agencies) to ensure the strong legal basis is effectively enforced to close the tap on illicit financial flows to and from their jurisdiction.





## CASE STUDY

### THE UK OVERSEAS TERRITORIES AND CROWN DEPENDENCIES: STILL A PROBLEM

In the last assessment, we highlighted that despite the United Kingdom's commitment to corporate transparency, a number of the United Kingdom Overseas Territories (such as the British Virgin Islands and the Cayman Islands, and Crown Dependencies such as the Isle of Man and Jersey) operate a legal system that creates a veil of secrecy to obscure the identity of those establishing companies, usually for the benefit and use of people or companies that are not resident there. This still remains a problem.

Recent corruption scandals<sup>35</sup> and analysis show that the United Kingdom Overseas Territories continue to attract individuals interested in using secret and anonymous companies to disguise their identity.

In the United Kingdom, Transparency International UK (TI UK) found that more than 75 per cent of corruption cases involving property investigated by London's Metropolitan police involved anonymous companies registered in secrecy jurisdictions. Of these, 78 per cent of the companies involved were registered in either the United Kingdom's overseas territories or crown dependencies.<sup>36</sup>

In 2017, TI UK identified £4.4 billion worth of property in the United Kingdom bought with suspicious wealth, based on publicly available information between 2000 and 2016. Of the companies used, 90 per cent were incorporated in the British Virgin Islands.<sup>37</sup>

Considering the large number of properties owned by offshore companies in the United Kingdom, this is alarming news. Research by TI UK showed that 36,342 properties in London alone are held in offshore companies in secret jurisdictions, particularly in the British Virgin Islands, Jersey and the Isle of Man. More recent analysis by the BBC on real estate ownership in England and Wales revealed that a quarter of property in England and Wales owned by overseas firms is held by entities registered in the British Virgin Islands.<sup>38</sup>

Recently, the British Virgin Islands took steps in the right direction by adopting the Beneficial Ownership Secure Search System (BOSS) Act. The Act requires registered agents providing corporate services to maintain and report to law enforcement authorities on the ultimate beneficial owners of certain companies. A new database containing this information was also created. The database is not open to the public, but is available to law enforcement authorities in the British Virgin Islands and in the United Kingdom. While the act is seen as a positive development, there are significant loopholes regarding the types of companies that are subject to the rules, and therefore beneficial ownership information of key types of legal entities and arrangements continue not to be collected.<sup>39</sup>

The United Kingdom needs to do more to ensure that the Overseas Territories and Crown Dependencies are not used as a safe haven for laundering illicit and corrupt wealth. In January 2018, the United Kingdom House of Lords voted against proposals to require the establishment of public beneficial ownership registers in the United Kingdom overseas territories.<sup>40</sup> The proposal will still be considered by the United Kingdom House of Commons. If action is not taken, the United Kingdom's strong domestic implementation of the G20 Beneficial Ownership Transparency Principles risks being overshadowed, and the corrupt will continue to find alternative options that help them to launder criminal proceeds just next door.



# METHODOLOGY

**Questions were designed to capture and measure the necessary components that should be in place for a G20 member to have an adequate beneficial ownership transparency legal framework according to each of the 10 G20 principles. The assessment framework is based on the Technical Guide: Implementing the G20 Beneficial Ownership Principles published by Transparency International in 2015.<sup>41</sup> The number of questions per principle dictates the number of points available. The total points available varies according to the complexity and number of issues covered in each original principle. We do not rate whether one principle is more or less important than another.**

The 2017 assessment also analyses the beneficial ownership transparency legal framework of four recent G20 guest countries: the Netherlands, Norway, Spain and Switzerland.<sup>42</sup>

The European Union, a full G20 member, was not included in this year's assessment because the negotiations of the fifth EU AMLD were concluded at the time of writing, and its final approval is still pending. However, if the directive is confirmed by Parliament as approved during the negotiations, it is expected that the European Union beneficial ownership transparency framework will improve significantly; consequently, the framework of EU member countries will also improve after they transpose the rules into their legal system.

In March 2018, Indonesia adopted new rules requiring companies to collect and report beneficial ownership information to an authorised agency. Companies that are already registered have one year to comply with the law. The new law also establishes the “know your beneficial owner” rules, requiring companies to verify the identity of the beneficial owners. Given the law was adopted when this publication was being finalised, the findings and scores do not reflect these changes. However, these rules would likely improve the country's performance under Principles 3 and 4.

Questionnaires were completed by pro bono lawyers or Transparency International chapters, and reviewed by Transparency International for the following G20 members: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey,

the United Kingdom and the United States, as well as for G20 guest countries the Netherlands, Norway, Spain and Switzerland.

Additional questions aimed at better understanding the context in these countries were also asked, but not scored. Data was peer-reviewed by in-country experts. During the last quarter of 2017, completed questionnaires were shared with government officials from all G20 countries and guest countries, who were given the opportunity to review the data and to provide feedback or propose corrections. Eighteen governments provided feedback.

In countries with federal governance systems, where answers could differ across federal units, the responses refer to the state/province where the largest numbers of legal entities are currently incorporated. Questions related to legal entities took into consideration rules regulating private – that is, non-listed legal entities – as those listed in the stock exchange are often subject to stricter transparency and accountability rules.

For each principle, the scores were averaged across questions and then transformed into percentages. Countries were grouped into five bands (very weak: 0–20 per cent; weak: 21–40 per cent; average: 41–60 per cent; strong: 61–80 per cent; very strong: 81–100 per cent) according to their level of compliance with each of the principles. Finally, countries were also grouped according to the overall adequacy of their beneficial ownership transparency framework based on the G20 principles along the same overall bands.

## Changes in the questionnaire

Some adjustments in the methodology were made for the 2017 assessment. In particular, changes were made to some of the possible answers to questions under Principle 3 (Question 10), Principle 4 (Questions 16 and 18), Principle 5 (Questions 19 and 20) and Principle 6 (Question 21) to better reflect the guidance provided under these principles and emphasise the importance of access to beneficial ownership information. As a result of these changes, the performance of some countries under these specific principles may have worsened in comparison to the 2015 assessment. This does not mean that there were changes to the legal framework that had a negative impact on beneficial ownership transparency, but rather that some features of the legal framework were no longer considered (for example, availability of information on shareholders) under the scoring criteria for that question.

The full methodology, questionnaire and scoring criteria for each of the questions are available in Annexes 1 and 2.



## Limitations

In this report, Transparency International assesses national legal frameworks related to beneficial ownership transparency and other areas covered by the G20 principles. It is, however, beyond the scope of the report to analyse how laws and regulations have been implemented and enforced in practice. Such research would be an important follow-up to this assessment. Our detailed recommendations on this and other issues can be found in the Technical Guide.<sup>43</sup>

Transparency International has not undertaken to verify whether the information disclosed on government websites or in reports is complete or accurate. Moreover, this assessment focuses on what we consider to be the key issues necessary to implement the G20 principles and to ensure an adequate beneficial ownership transparency framework. There may be other issues that are also relevant but not covered by this assessment.

### BOX 1

## The fifth EU AMLD

The European Union was not included in this assessment because the negotiations of the fifth EU AMLD were concluded at the time of writing, and its final approval is still pending. It is expected that the European Union beneficial ownership transparency framework will improve significantly, and that, consequently, the framework of European Union Member Countries will also improve after they transpose the rules into their legal system.

In December 2017, European Union institutions reached an agreement<sup>44</sup> on reinforcing beneficial ownership transparency within the European Union. Its final adoption in plenary is currently scheduled for 16 April 2018.

The revisions to the fourth EU AMLD<sup>45</sup> made in the wake of the Panama Papers establish public access to beneficial ownership information as a principle, addressing some of the issues pointed out by the 2015 assessment carried out by Transparency International.<sup>46</sup> The new agreement enables citizens to access beneficial ownership registers without having to demonstrate a “legitimate interest”. The text also addresses previous shortcomings in relation to trusts and other legal arrangements. Trusts will now have to meet full transparency requirements including the need to identify beneficial owners.

This new legislation will move the European Union one step closer towards complying with the G20 principles, particularly Principles 4, 5 and 6.

It is also worth noting that the European Union will see significant improvement on the second principle with the release of the first European Union-wide Supranational Risk Assessment<sup>47</sup> in June 2017. The report is a sector-by-sector assessment of money laundering and terrorism financing risks within the

European Union. However, the risk assessment still lacks country-specific analysis and subsequent recommendations for European Union Member States.

While this major legislative breakthrough is very much welcome, a number of loopholes still remain and will need to be addressed at the national level during the transposition for Member States to be fully in line with highest standards and practices of beneficial ownership transparency.

For example, the revised EU AMLD does not set any minimum standard in terms of conditions of access to the data. The minimum should have been to provide free access and in open data to allow for easy data harmonisation and cross-referencing across European Union registers and other relevant domestic and foreign databases (tax registers, land registers, politically exposed person lists and sanctions lists, among others).

Transparency of trust ownership, as addressed by Principles 5 and 6, also remains an issue. The newly-created central beneficial ownership registers will not cover all arrangements operating within European Union borders. Foreign trusts set up by European Union citizens would not all be covered by the new rules. Furthermore, only information on trusts owning a controlling interest in foreign companies will be made accessible through written requests. Access to data on other trusts will be limited to those whom can demonstrate a ‘legitimate interest’, an ill-defined notion which leaves room for quite restrictive interpretation by Member States.

Finally, the new rules overlook a number of high-risk instruments commonly used to disguise the identity of beneficial owners such as nominees and bearer shares, covered by Principle 10.



# G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

“Countries should have a definition of ‘beneficial owner’ that captures the natural person(s) who ultimately owns or controls the legal person or arrangement.”<sup>48</sup>

A beneficial owner is the natural, real person who ultimately owns, benefits from or controls, directly or indirectly, a company or legal arrangement.<sup>49</sup>

An adequate legal definition of beneficial ownership covers the natural (not legal) persons who actually own and take advantage of the capital or assets of the legal person or arrangement, rather than just the persons who are legally (on paper) entitled to do so. It should also cover those who exercise de facto control, whether or not they occupy formal positions or are listed in the corporate register as holding controlling positions.<sup>50</sup>

Having an adequate definition is the first step for building a strong beneficial ownership transparency framework. A clear and strong definition assists relevant stakeholders, such as competent authorities or entities with reporting obligations, to understand the scope of their obligation and comply with their duties. It establishes the framework from which all legal responsibilities and obligations emerge.

## Findings

Since the last assessment was conducted in 2015, countries have improved the way in which they define beneficial ownership.

Sixteen G20 members now have a definition of beneficial ownership in line with the G20 principle, in comparison to 13 countries in 2015. Countries that adopted new rules establishing a definition or closing existing loopholes include **Brazil, China, Indonesia** and **South Africa**. All G20 assessed guest countries also have definitions in line with the principle. In all these countries, the beneficial ownership definition refers to a natural person who exercises direct or indirect ultimate control of a legal entity or arrangement.

None of the countries assessed score zero points for their definition, although **Canada, South Korea** and the **United States** still have weaknesses in their definition.

Most of the countries assessed have opted for a definition of beneficial owner based on a percentage of shares owned or controlled by the individual. In all European Union countries assessed (including **France, Germany, Italy, Netherlands, Spain** and the **United Kingdom**), the threshold used is in line with the fourth EU AMLD,<sup>51</sup> which suggests that a shareholding of 25 per cent plus one share or an ownership interest of more than 25 per cent in the customer held by a natural person shall be an indication of direct ownership.

## G20 SCORES

	◀ 2015 ▶ 2017	2015	2017
Argentina		100%	100%
Australia		100%	100%
Brazil		0%	100%
Canada		25%	25%
China		50%	100%
France		100%	100%
Germany		100%	100%
India		100%	100%
Indonesia		50%	100%
Italy		100%	100%
Japan		100%	100%
Mexico		100%	100%
Russia		100%	100%

	◀ 2015 ▶ 2017	2015	2017
Saudi Arabia		100%	100%
South Africa		0%	100%
South Korea		50%	50%
Turkey		100%	100%
UK		100%	100%
US		25%	25%

## GUEST SCORES

	▶ 2017	2017
Netherlands		100%
Norway		100%
Spain		100%
Switzerland		100%



The directive also suggests that European Union Member States could consider applying lower percentages to determine ownership or control, but none of the countries analysed have done so.

**Australia, Brazil, China, Japan, Norway, Russia, Switzerland and Turkey** also adopt the 25 per cent ownership threshold for beneficial ownership identification.

**Argentina** established a threshold of at least 20 per cent, **Saudi Arabia** a threshold of 5 per cent. **Indonesia, Mexico, and South Africa** have not established a threshold.

For the purposes of this assessment, countries that adopt a threshold definition of beneficial ownership or control are considered in line with Principle 1, but Transparency International believes a 25 per cent threshold is not adequate to ensure the accurate and meaningful identification of all individuals who may be the real owners behind companies and trusts.<sup>52</sup> Such a low threshold makes it easier for those wishing to remain anonymous to circumvent transparency rules. They only need four family members or associates to be registered as owners, and they no longer need to declare their controlling interests.

In **Canada**, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* – Canada's anti-money laundering legislation – does not define beneficial owner. Further regulations to the act provide what type of beneficial ownership information financial institutions (such as banks, life insurance, securities dealers, money services businesses) must collect, including the names of all natural persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation, or other entity. However, the regulations do not mention ultimate control and limits the exercise of direct or indirect control to the equivalent of a percentage of share ownership.

In the United States, the Department of Treasury in 2016 issued a new definition of beneficial ownership<sup>53</sup> that also adopts a 25 per cent threshold with regard to ownership of shares. As for the control element, the new definition simply states that the beneficial owner may be a single individual with significant responsibility to control, manage or direct a legal entity customer, including (i) an executive officer or senior manager or (ii) any other individual who regularly performs similar functions. By permitting an officer, manager, or "other individual" to be named as the beneficial owner of an entity, even if that person has no ownership interest in the entity or entitlement to its assets, the definition confuses and weakens the meaning of the term beneficial owner.

**South Korea** revised its definition of beneficial owner in December 2015 with the publication of the Presidential Enforcement Decree 1, which regulated the Act on Reporting and Use of Specific Financial Transaction Information. However, the revised definition still failed to address loopholes identified in Transparency International's 2015 assessment. The new rule requires financial institutions to identify the beneficial owner of a customer that is a legal person or an entity, and defines beneficial owner as: 1. The natural person who owns 25 per cent or more of shareholdings in a legal person or entity; 2. Where there is doubt as to whether the person

identified under 1. is the beneficial owner, or where there is no natural person who has 25 per cent or more of shareholdings, the natural person who exercises control of the legal person or entity through other means; 3. Where there is no natural person identified under 2., the chief executive of the legal person or entity.

In the great majority of countries assessed, beneficial ownership is defined within the context of anti-money laundering obligations. In **Argentina** and in the **United Kingdom**, recent laws and resolutions have included the concept of beneficial owner in company/company registration laws. This makes a clear distinction between legal ownership and control and extending the responsibility for having a clear understanding of a legal entity's ownership and control structure to companies themselves, in addition to obliged entities (financial institutions and DNFBPs). This is an important step, as in many countries shareholders and partners may be another legal entity, and they can be registered as such, making it very difficult, if not impossible, to find the actual beneficial owner – that is, the natural person – in the ownership and control chain.

Having an adequate beneficial ownership definition is the first step to a good framework; countries also need to adopt other provisions to prevent the misuse of companies and trusts by the corrupt.

## BOX 2

### Businesses back call for full beneficial ownership transparency

Since the G20 Beneficial Ownership Principles were adopted in 2014, business and investors have increasingly added their voices to the call for enhanced beneficial ownership transparency.

The business call is driven by emerging international practices and norms around due diligence, foreign bribery obligations on multinationals and the ever-growing complexity of managing international supply chains. However, their incentives also include managing risk and making good commercial decisions. Businesses state they need access to high quality beneficial ownership data to assess suppliers, avoid doing business with politically exposed persons, identify conflicts of interest, engage with confidence in public procurement and assess the opportunity and risks of doing business in new markets.

These emerging business cases were collected and compiled in a 2015 BTeam publication from 2015.<sup>54</sup> In 2016, Clearing House, the largest banking association in the United States, publicly supported legislation requiring collection of corporate beneficial ownership information: "[W]e can see no justification for allowing corporations to shield their ownership".<sup>55</sup> Since 2016, investors managing over \$740 billion have been calling on the United States government<sup>56</sup> to require all United States companies to report ownership information; in 2017, multinational businesses such as HSBC<sup>57</sup> and BHP Billiton<sup>58</sup> have been vocal in their support for public beneficial ownership registers.



## G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

**“Countries should assess the existing and emerging risks associated with different types of persons and arrangements, which should be addressed from a domestic and international perspective.**

An effective anti-money laundering regime requires a good and current understanding of how the corrupt and other criminals might misuse domestic and/or foreign companies and other legal arrangements to operationalise bribe payments, hide the proceeds of corruption or launder money. It also requires an understanding of the areas or sectors that pose greater money laundering risks. If countries do not understand where the risks lie, they are not able to effectively regulate and detect money laundering-related offences.

Risk assessments are important because the results help to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies, increasing the effectiveness of anti-money laundering rules. A national risk assessment is also a requirement within the latest strengthened FATF recommendations, adopted in 2012.

- » Appropriate information on the results of the risk assessments should be shared with competent authorities, financial institutions and designated non-financial businesses and professions (DNFBPs) and, as appropriate, other jurisdictions.
- » Effective and proportionate measures should be taken to mitigate the risks identified.
- » Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors.”

Risk assessments should be undertaken on a regular basis (at least every three years), with the consultation of external stakeholders, such as financial institutions, non-financial professionals such as lawyers, accountants, real estate agents and others with anti-money laundering obligations, as well as civil society. Financial institutions and DNFBPs should be informed of the findings and high-risk areas identified, and the final assessment published online. Moreover, the risk assessment should identify specific sectors or areas of high risk that require enhanced due diligence measures.

### G20 SCORES

	◀ 2015 ▶ 2017	2015	2017
Argentina		10%	0%
Australia		0%	0%
Brazil		0%	0%
Canada		80%	80%
China		0%	100%
France		0%	80%
Germany		0%	0%
India		0%	0%
Indonesia		0%	60%
Italy		70%	90%
Japan		100%	100%
Mexico		40%	100%
Russia		20%	80%

	◀ 2015 ▶ 2017	2015	2017
Saudi Arabia		0%	0%
South Africa		0%	0%
South Korea		0%	50%
Turkey		0%	0%
UK		100%	100%
US		80%	80%

### GUEST SCORES

	▶ 2017	2017
Netherlands		100%
Norway		100%
Spain		60%
Switzerland		80%



## Findings

Ten countries have conducted and published in full their anti-money laundering risk assessments undertaken within the last three years: **Canada, China, France, Japan, Mexico, Netherlands, Norway, Switzerland, the United Kingdom and the United States**. This is a significant improvement since the last assessment, when only four countries had published their risk assessment online. It is important to note, however, that the extent to which these risk assessments analyse the money laundering risks posed by legal entities and arrangements vary. The analysis of the types of legal entities and arrangements, including their place of incorporation, that might be misused for corruption and money laundering should become an integral part of such assessment and undertaken systematically.

**Italy and South Korea** also conducted an anti-money laundering risk assessment, but published only an executive summary of the findings. **Indonesia, Spain and Russia** have undertaken an assessment but not published any of the results.

To better understand the risks, it is also important to consult relevant stakeholders, such as financial institutions, DNFBPs, professional and industry associations, and non-governmental organisations working on related topics. Ten countries consulted external stakeholders while undertaking their risk assessments: **Indonesia, Italy, Japan, Mexico, Russia, Netherlands, Norway, Spain and the United Kingdom**. In the majority of cases, there was no open consultation, and participation was limited to the private sector (for example, financial institutions). The **United Kingdom** seems to be the only country that included civil society among those consulted. In **Canada, France, South Korea, Switzerland and the United States**, no public consultation took place and there is no indication key stakeholders were consulted directly.

All published risk assessments identified higher risk areas where special measures should be implemented and enforcement efforts concentrated. Among others, common areas or sectors assessed as vulnerable to money laundering include DNFBPs (such as lawyers, accountants, notaries, dealers in precious metals and real estate) and the use of legal arrangements, such as trusts.

Along the same lines, the European Commission published a supranational assessment of the risks of money laundering and terrorist financing at the **European Union** level in June 2017.<sup>59</sup> The report identifies products and services considered particularly vulnerable to money laundering.

The European Commission stresses that the identification of the beneficial owner of the customer seems to be one of the main weaknesses of the anti-money laundering framework, especially for trust and company services providers, tax advisors, auditors, external accountants, notaries and other independent legal professionals. The analysis shows that, often, the concept of beneficial owner itself is either not properly understood or not correctly checked when entering into a business relationship.

Nevertheless, the level of depth and usefulness of these findings also vary across countries. While this assessment was not able to review the quality of all risk

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**The European Commission stresses that the identification of the beneficial owner of the customer seems to be one of the main weaknesses of the anti-money laundering framework**

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assessments undertaken by G20 countries, available evidence shows that national evaluations of risks often do not provide a lot of in-depth or data-driven analysis that can then be used to review rules and policies.<sup>60</sup>

The extent to which countries have applied the findings of risk assessment to their anti-money laundering strategies is also not always visible. In some cases, there is evidence the government has not acted, or that it has been very slow in reacting to findings of their own money laundering risk assessments. For example, in Canada, the 2015 national risk assessment highlighted the use of shell companies by criminal groups and individuals to launder money, and identified real estate agents and developers as being exposed to a high or very high money laundering risk. Despite these findings, the current legal framework does not include adequate mitigation measures, such as making it mandatory for these professionals to identify customer's beneficial owners. Similarly, in the United States, the 2015 assessment of money laundering risks identified areas of vulnerabilities that can be exploited by money launderers, including opening bank accounts in the names of businesses and nominees to disguise the identity of the individual who control the accounts, and creating legal entities without accurate information about the identity of the beneficial owner. As in Canada, however, the current legal framework fails to address many of the identified vulnerabilities.

Eight G20 countries (**Argentina, Australia, Brazil, Germany, India, Saudi Arabia, South Africa and Turkey**) have not conducted a risk assessment within the last three years. Many of them seem to have been relying on sector-specific assessments, or on assessments conducted by external organisations such as the FATF or the International Monetary Fund to review their policies or guide enforcement actions. However, many of them have publicly recognised the need and

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**Canada's 2015 national risk assessment highlighted the use of shell companies by criminal groups and individuals to launder money, and identified real estate agents and developers as being exposed to a high or very high money laundering risk, and yet the current legal framework does not include adequate mitigation measures, such as making it mandatory for these professionals to identify customer's beneficial owners**

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importance of such assessments and have launched (or are planning to launch) one. **Argentina** adopted a resolution in 2014 requiring a money laundering risk assessment to be conducted every two years. It is an important measure to institutionalise risk assessments and, because of that, Argentina had scored 10 per cent under this principle in 2015. However, since no money laundering risk assessment has been concluded until now, the country cannot be considered in compliance with this principle.

In **Brazil**, the National Strategy against Corruption and Money Laundering (ENCCLA) – an inter-agency and interdisciplinary group working on corruption and money laundering preventive measures – worked on a methodology to conduct a national risk-assessment on money laundering and terrorist-financing risks. The group is proposing to institutionalise the need for a risk-assessment, and is holding consultations on a regulation to this end.

In accordance with the fourth EU AMLD, **Germany** is also expected to conduct a comprehensive assessment of money laundering and terrorist-financing risks. According to the German government, the Federal Ministry of Finance (Bundesfinanzministerium) is currently undertaking the assessment and will publish a summary of the results in 2018.

**India** launched its National Risk Assessment exercise in 2016. According to experts, the assessment is going to be published before the FATF Mutual Evaluation Review, scheduled to take place in 2018.

**Australia** conducted its last comprehensive assessment on money laundering risks in 2011 (National Threat Assessment on Money Laundering, 2011). Since then, only sector specific assessments have been undertaken.

**Saudi Arabia** has not conducted a national anti-money laundering risk assessment. According to experts, the country relies on the MENA FATF mutual evaluation and follow-up rounds to review risks, identify deficiencies and enhance the effectiveness of the system. While these exercises are very important, they should not substitute a comprehensive analysis of money laundering risks. They should complement each other, and should be undertaken on a regular basis.

Similarly, **South Africa** has not conducted a national money laundering risk assessment. The government uses the recommendations made by the International Monetary Fund within the framework of the 2015 Financial Sector Assessment Program<sup>61</sup> to evaluate and propose changes to the current legal framework and enforcement efforts.

#### BOX 3

### Good rules - but what about effectiveness and enforcement?

This assessment focuses on whether G20 and G20 guest countries have brought their beneficial ownership transparency legal framework in line with the G20 High Level Principles on Beneficial Ownership. It does not, however, analyse how well these measures have been implemented or enforced.

Measuring the effectiveness of the rules in place is a challenge. In addressing this, the FATF has adopted a new methodology for its mutual evaluation assessments that includes an “effectiveness” component to analyse whether in practice the rules are working. To date, 46 countries<sup>62</sup> have been assessed. An analysis<sup>63</sup> conducted by Transparency International based on these assessments show a global average effectiveness rate of only 32%.

G20 countries and G20 guest countries already assessed by FATF include Australia, with an effectiveness rate of 52%; Canada 45%; Italy 58%; Mexico 36%; Norway 39%; Spain 61%; and the United States 67%.



A tropical beach scene at sunset. In the foreground, the dark silhouettes of palm trees frame the left and right sides. The sun is low on the horizon, creating a bright orange and yellow glow that reflects on the water. In the distance, an oil rig is visible on the horizon line.

## CASE STUDY

### BENEFICIAL OWNERSHIP SECRECY FACILITATES CORRUPTION BY HIDING CONFLICTS OF INTEREST

Procurement processes are at the core of physical and social infrastructure projects such as roads, railways, ports, power generation, water supply, sewage treatment, hospitals and schools. Every year, an estimated average of US\$9.5 trillion of public money is spent by governments through public procurement for these types of projects.<sup>64</sup> According to Organisation for Economic Cooperation and Development (OECD) estimates, corruption drains between 20 per cent and 25 per cent of national public procurement budgets,<sup>65</sup> which in turn limits innovation and competition and erodes trust in government, as well as leading to projects that are often unsuitable, defective or dangerous.

Conflicts of interest in the public sector are situations in which decision makers are required to decide between a public and a personal interest. Public funds should never be used to provide favours to specific individuals or companies, not least for the individual who has decision making powers over where the funds are allocated.

Competitive bids can lose out on public procurement contracts because corrupt officials award the contract to themselves or their family, friends or associates rather than to the company making the best bid. This is made possible by the individual disguising their identity or that of their family members behind a front or shell company, a corporation that has no physical presence, employees or commercial activity in the jurisdiction in which it is created.

#### NIGERIA OIL BLOCK OPL 245<sup>66</sup>

In 1998, Dan Etete, former Nigerian Oil Minister, awarded oil block OPL 245 to a company called Malabu Oil and Gas during the administration of General Abacha. This was later understood to be a front company<sup>67</sup>, of which Etete was widely believed to be the beneficial owner,<sup>68</sup> and the son of General Abacha one of the founding shareholders.<sup>69</sup> Malabu was awarded the block just five days after it was registered<sup>70</sup> for just US\$2 million, meaning the former Minister had effectively given himself one of the most lucrative oil blocks in the country at well below market value<sup>71</sup>. In 2011, Nigerian subsidiaries of Royal Dutch Shell and Italian ENI entered into an agreement with the Nigerian government to purchase this oil block for US\$1.3 billion,<sup>72</sup> but evidence shows that Malabu seems to have been one of the main beneficiaries of the agreement.<sup>73</sup> Shell and ENI are now facing trial in Italy.<sup>74</sup> According to Global Witness,<sup>75</sup> more than US\$800 million of the money transferred to Malabu Oil and Gas was later transferred to five more shell companies with hidden beneficial owners. Money laundering charges were filed against Dan Etete and the former Nigerian Attorney General and Justice Minister Mohammad Adoke in Nigeria in December 2016.<sup>76</sup>

Conflicts of interest are not of themselves evidence of wrongdoing; given that officials inherently occupy multiple social roles, they are almost bound to occur. With the right measures in place, conflicts of interests are quickly detected and easily defused. In many cases, a conflict of interest that has not been reported or adequately mitigated can be an indicator of, or a precursor to, other criminal offences.

Governments should require domestic and foreign companies to publicly disclose beneficial ownership information when bidding for public contracts and publish this information through a central portal.



# G20 PRINCIPLE 3: ACQUIRING BENEFICIAL OWNERSHIP INFORMATION

**“Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.”**

It is a common practice to require legal entities to maintain a list of shareholders that is either available to the public or can be consulted by authorities upon request. These shareholder registers usually include information on all shareholders or on all shareholders holding a certain percentage of shares that have legal ownership, which is different from beneficial ownership. In most countries, however, shareholders may be a natural/physical person or another domestic or foreign legal entity. There is also a possibility that a nominee may hold shares on behalf of a third person, who remains anonymous. This means that a shareholder register may not always be representative of the actual natural persons behind a company. Until very recently, the issue of understanding the ownership and control structure of a company was regulated through anti-money laundering rules and pretty much left in the hands of financial institutions to consider in their relationship with legal entity customers.

The G20 Principles take an important step by requiring legal entities<sup>77</sup> to consider beneficial ownership when recording information about their shareholders. Legal entities are now expected to understand their ownership and control structure and keep track of individuals who have an interest in a company but are represented through nominee shareholders or other legal entities.

Principle 3 further highlights that legal entities should maintain information on beneficial ownership that is adequate, meaning sufficient to identify the beneficial owner. The information also needs to be current, both at the time of the establishment of the legal entity and over time.<sup>78</sup> Companies should therefore be able to request information from shareholders to ensure that the information held is accurate and up-to-date to comply with these two stipulations, and shareholders should be required to inform the company of changes to beneficial ownership. The same holds true for nominees, who should be obliged to disclose their status and information on the identity of their nominator, and to indicate when changes occur in the beneficial ownership of the share (this is assessed under Principle 10).

The information must be available in the jurisdiction of incorporation of the company, even when, as is sometimes the case, a company does not have a physical presence there. An absence of information in the jurisdiction of incorporation makes it difficult for supervisors and law enforcement authorities to obtain information when necessary.

## G20 SCORES

	2015	2017	2015	2017
Argentina			50%	50%
Australia			13%	13%
Brazil			25%	75%
Canada			0%	0%
China			25%	0%
France			50%	100%
Germany			13%	88%
India			75%	75%
Indonesia			50%	38%
Italy			50%	100%
Japan			25%	38%
Mexico			25%	25%
Russia			31%	38%

	2015	2017	2015	2017
Saudi Arabia			25%	13%
South Africa			38%	25%
South Korea			25%	13%
Turkey			25%	38%
UK			100%	100%
US			0%	0%

## GUEST SCORES

	2017	2017
Netherlands		13%
Norway		38%
Spain		75%
Switzerland		100%



## Findings

The majority of countries assessed still do not require legal entities to maintain beneficial ownership information themselves. Beneficial ownership information is only analysed and collected by financial institutions and other DNFBPs within the framework of anti-money laundering and counter-terrorism financing rules. All countries assessed require companies to keep a shareholder or members' register. This register often only includes information on legal ownership and shares that may be registered in the name of another company or of a nominee, which makes it difficult (if not impossible) to identify the actual individual behind the company. This is the case, for instance, in Australia, Brazil,<sup>79</sup> Canada, China, Indonesia, Japan, Mexico, Netherlands, Norway, Russia, Saudi Arabia, South Africa, South Korea, Turkey and the United States.

Some of the countries listed above score relatively better than others because they prohibit nominee shareholders, or require shareholders (even when they are not the beneficial owner) to communicate changes in share ownership to the company.

Nevertheless, there are some positive changes in this years' assessment, driven mainly by the transposition into domestic law of the fourth EU AMLD, which contained the same requirement.<sup>80</sup> In addition to the **United Kingdom**, which had already received full score in the previous assessment, **France, Italy, Spain** and **Switzerland** have now adopted legislation requiring legal entities to maintain accurate and up-to-date beneficial ownership information themselves. In the case of **Germany**, according to recently approved legislation, beneficial owners are obliged to immediately provide the company with the required information on their person and on the nature and extent of the beneficial interest held. The company is obliged to collect, store and file this information with the Transparency Register. Nevertheless, questions remain regarding the role of the company in ensuring accurate information on beneficial ownership is collected.

**India's** Company Act, in theory, also requires companies to maintain information on beneficial ownership. However, the act does not include a definition of beneficial ownership, which hinders the actual implementation of this obligation. A bill to amend the act has been proposed but is still pending.

In **Argentina**, while there is no law requiring legal entities to maintain beneficial ownership information, there is a requirement for legal entities to declare this information when registering with the competent authority. This is a very important step in ensuring the future availability of information regarding the actual owners and controllers of companies. In **Brazil**, new regulations also require legal entities to disclose upon registration with the tax agency information on their ownership and control structure, but there remain some shortcomings. For instance, there is no explicit requirement for companies to maintain this information or for shareholders to communicate changes in share ownership to the company within a specific timeframe. Brazil does not allow nominee shareholders, and therefore the requirement for shareholders to declare if they own shares on behalf of someone else is not necessary.

**Existing registers often only includes information on legal ownership and shares that may be registered in the name of another company or of a nominee, which makes it difficult (if not impossible) to identify the actual individual behind the company"**

### BOX 4

## OpenOwnership: Civic tech initiative scaling up access to beneficial ownership information

Since our 2015 report, support for enhanced transparency around beneficial ownership has grown dramatically, including from the business and banking world. At the same time, new civic tech initiatives have been established to ensure that beneficial ownership data – when public – is actually useful for tackling corruption and financial crime.

At the Anti-Corruption Summit in 2016, 21 countries committed to establish public beneficial ownership registers or to explore doing so. In the public domain, this information will be most useful when combined with other national data sets, connecting individuals and companies – and their money flows – across borders.

In 2016, OpenOwnership was established by some of the world's leading transparency organisations: the World Wide Web Foundation, Transparency International, Global Witness, the ONE Campaign, the B Team, Open Contracting Partnership and OpenCorporates. OpenOwnership is creating two key technical tools: the OpenOwnership Register, which collects, combines and connects beneficial ownership information from across the world, and the Beneficial Ownership Data Standard, which will support governments with the technical requirements they need to have in place when collecting data to make it useful and to avoid reinventing the wheel. In April 2017, CEOs and global leaders (including Unilever's Paul Polman, Oliver Bäte, CEO of Allianz, François Henri-Pinault, CEO of Kering, and Dr. Mo Ibrahim, founder of Celtel) lent support to the new OpenOwnership platform, welcoming it as a vital tool for performing due diligence efficiently and effectively. OpenOwnership now contains data for more than 4.2 million companies.

OpenOwnership also provides technical assistance to governments and businesses who seek to proactively disclose beneficial ownership information as part of the pilot program. It is hoped this guidance will significantly reduce the costs and barriers to publishing beneficial ownership data and puts user needs at the centre of the process.

For more, see [www.openownership.org](http://www.openownership.org)



# G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

“Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.”

Government bodies responsible for anti-money laundering and control of corruption and tax evasion/avoidance, among other concerns, need timely access to sufficient, accurate and up-to-date information on beneficial ownership to conduct their work effectively. Obstacles to accessing information or delays in transferring the information make it harder for competent authorities to follow the money back to the source. This increases the likelihood of impunity for those that have engaged in corrupt or illegal acts.

The most common sources of information for competent authorities to consult when conducting investigations on company ownership are company registers and information recorded by financial institutions, such as banks and DNFBPs. However, there are significant challenges in the way of identifying, tracking and tracing illicit activities relying only on these sources.

First, the majority of company registers around the world do not include beneficial ownership information, and some of them (as the case state of Delaware in the United States) do not even include information on the shareholders. While company registers maintain information on shareholders and are an important instrument during investigations, this does not necessarily mean competent authorities will be able to fully understand a company control and ownership structure and identify the real individuals profiting from it. Shareholders might be another domestic legal entity, a foreign company or even a nominee (that is, someone who “rents” his/her name but acts according to instructions of the real owner, who chooses to remain hidden).

If the shareholder of a company is another foreign company registered offshore, finding the real beneficial owner might take years. Competent authorities will formally need to request information and depend on the cooperation of authorities in foreign jurisdiction where

## G20 SCORES

	◀ 2015 ▶ 2017	2015	2017
Argentina		46%	68%
Australia		14%	14%
Brazil		14%	54%
Canada		14%	18%
China		21%	29%
France		21%	64%
Germany		29%	75%
India		71%	57%
Indonesia		29%	18%
Italy		39%	61%
Japan		14%	11%
Mexico		18%	18%
Russia		32%	21%

	◀ 2015 ▶ 2017	2015	2017
Saudi Arabia		29%	18%
South Africa		21%	11%
South Korea		11%	11%
Turkey		7%	11%
UK		79%	82%
US		18%	18%

## GUEST SCORES

	▶ 2017	2017
Netherlands		18%
Norway		18%
Spain		71%
Switzerland		21%



the offshore company is registered. Worse, during all this process, the company might be tipped off that is under investigation and have time to move assets elsewhere.

Second, relying on information collected by financial institutions and DNFBPs provides another set of challenges. In some countries, financial institutions need to disclose all relevant information relating to account holders on an online database that can be accessed by authorities, sometimes directly, sometimes only after a court order. In other countries, authorities would need to know the name of the bank holding a company's accounts to request information. A further issue is that financial institutions and DNFBPs often record the beneficial ownership information as provided by customers. This information might not necessarily be accurate or the bank could be complicit, as many recent corruption cases have demonstrated.<sup>81</sup> A company might also be incorporated in one place and have bank accounts in another, which makes harder for authorities to access information. TI UK research shows that 90 per cent of UK firms involved in a scheme that moved £63 billion of illicit wealth out of Russia had bank accounts in Latvia or Estonia.<sup>82</sup> In the Azerbaijani Laundromat scheme, shell companies incorporated in the United Kingdom but owned by offshore companies used bank accounts in the Estonian branch of the Danske Bank to disguise transfers allegedly made by Azerbaijani officials to launder the country's reputation in Europe.<sup>83</sup>

Given these challenges, recording beneficial ownership as part of a company's incorporation process and making this information available to competent authorities, obliged entities (such as financial institutions and DNFBPs) and the public at large, is essential.

Reliability of the information is likely to remain an issue even with the adoption of beneficial ownership registers. Competent authorities responsible for maintaining such registers often do not have the capacity or the mandate to verify the information provided. The registers should be adequately resourced to verify the accuracy of information provided by companies. Making the register publicly available could help minimise risks, as external watchdogs and even obliged entities (such as financial institutions and DNFBPs) could help monitor the information provided by companies.

A public, central (unified) register is the most effective and practical way to record information on beneficial ownership and facilitate access to competent authorities.<sup>84</sup> A central register also supports the harmonisation of the country's legal framework, avoiding double standards, and facilitates cross-border investigations and international cooperation.

## Findings

In the 2015 assessment, compliance with this principle was the weakest overall among countries. There are some improvements in this year's assessment, but the existing measures and mechanisms remain largely insufficient to ensure that accurate and up-to-date information on beneficial owners is made available in a timely manner to all relevant competent authorities.

As such, this area remains an immediate priority for all G20 countries and guest countries.

In 15 of the 23 countries assessed, competent authorities rely almost solely on the information collected by financial institutions and DNFBPs to identify the beneficial owner of companies. They can also use other sources to investigate beneficial ownership information, such as shareholder registers kept by legal entities themselves or company register information. However, these sources at most provide information solely on shareholders, which refers to the natural or legal persons exercising legal ownership, and cannot be considered sufficient to identify the beneficial owner of a company.

Central beneficial ownership registers are available for competent authorities in six countries: **Brazil, France, Germany, Italy, the United Kingdom** and G20 guest country **Spain**. Only in the **United Kingdom** is the register open to the public. In **France**, competent authorities need to request access to the register. According to the law, access should be granted "in due course".

## Easy access to a central register

In the **United Kingdom**, companies need to provide beneficial ownership information (called persons with significant control) upon registration with Companies House. The register is public and thus all relevant competent authorities have direct access to it.

**France, Germany, Italy**<sup>85</sup> and **Spain** also established central beneficial ownership registers as part of the transposition of the fourth EU AMLD.<sup>86</sup> In all these countries, with the exception of France, competent authorities have direct access to the information. Financial institutions and DNFBPs with anti-money laundering obligations also have access for due diligence purposes. Unfortunately, none of these countries opted for a public register. Only individuals or organisations that can prove "legitimate interest" may have access to the beneficial ownership information recorded.

If the fifth EU AMLD is adopted as proposed, then European Union countries will be obliged to make their registers public by the end of 2019.

In **Germany**, legal representatives of legal persons under private law and incorporated partnerships, trustees and custodians are required to disclose their beneficial owners immediately to the Transparency Register (Transparenzregister), unless information on such beneficial owners is already evident via other public registers (such as the commercial register, the partnerships register, the register of cooperatives, the register of associations or the business register).

In **Spain**, beneficial ownership information is also available via the notary profession's Single Computerised Index, which includes information on all acts authorised by notaries since 2004, and is available to competent authorities.

In other countries where beneficial ownership information is collected during the registration of the company (such as **Argentina** and **India**), access is still restricted due to the non-existence of a central and complete online database. In **Argentina**, while a legal



## BOX 5

### Do obliged entities know their customer?

There is plenty of anecdotal evidence from around the globe showing the challenges of gathering information and evidence from obliged entities.

For instance, according to good practice, professionals offering trust and corporate services should be licensed and subjected to anti-money laundering obligations, including identifying and keeping records of the beneficial owners of clients. In addition to reporting suspicious transaction reports, they should make this information available to the financial intelligence unit and law enforcement authorities upon request.

Nevertheless, a 2016 analysis conducted by the Guardian<sup>87</sup> suggests that, despite Mossack Fonseca failing to fulfil its anti-money laundering obligations in the British Virgin Islands for almost a decade, authorities renewed its license on several occasions. The Guardian shows that, out of a hundred requests sent by the British Virgin Islands Financial Investigation Agency (FIA) to Mossack Fonseca between 2005 and 2008 to request information about the beneficial owners of companies administered by the firm, the firm was only able to name a company's real owner for five. The analysis says that, even after the British Virgin Islands strengthened its legal framework in 2008, Mossack Fonseca was still unable to name its companies' beneficial owners in more than 70 of about 500 official requests for information. However, this did not prevent the firm from continuing to operate and to offer services in the British Virgin Islands. Performance only improved after 2015, when the firm provided a name in response to all but one of the 90 requests in the Panama Papers leak.

framework exists at the federal level, many provinces still need to adopt laws requiring company ownership information to be published in the central database. In **India**, the information collected is available in person/ upon request at registers at the subnational level or from legal entities themselves. The existing central database, which can be accessed online, does not contain detailed information on company ownership and control. Moreover, as the company law does not define beneficial ownership, it could be that companies do not even provide this information upon registration.

In **Brazil**, companies are required to register with subnational Trade Boards and with the Federal Tax Authority (Receita Federal do Brasil). Trade board registers are public and contain information on shareholders, and, while nominee shareholders are not allowed in Brazil, shareholders might be another company, including a foreign company, which means that this information may not be sufficient to identify the beneficial owner. Nevertheless, access to beneficial ownership information by competent authorities improved with the adoption of new rules in 2016. Companies registering with the Federal Tax Agency, including foreign companies, are now required to provide beneficial ownership information. Companies that were already registered prior to 1 July 2017 have

until 31 December 2018 to provide beneficial ownership information. This information is recorded in the National Register of Legal Persons (CNPJ) and is currently available to federal, state and municipal governments, the financial intelligence unit and the judiciary system. As required by the Open Data Policy Decree,<sup>88</sup> the National Register of Legal Persons has been made available to the public since December 2017. Nevertheless, beneficial ownership information does not seem to be included among the published data.<sup>89</sup> It is unclear whether this is because this type of information has not yet been collected or whether it simply has not yet been disclosed by the authorities, as the layout template does not mention beneficial ownership as the type of information to be disclosed.<sup>90</sup>

In countries where beneficial ownership information is not directly available, the quality and ease of access to basic legal ownership information available in company registers also poses challenges to competent authorities when they try to investigate and identify the final beneficiary of a company. One major challenge is that information, when collected, is often incomplete, difficult to access or fragmented across different databases.

As an example, **Canada** does not have a central company register, and information collected in the majority of provinces is insufficient to support the identification of the beneficial owner. In the majority of provinces, with some exceptions (such as Alberta, Manitoba and Quebec), company registers do not even include information on shareholders. Only the names of directors are recorded. Similarly, in the **United States**, there are no state or federal requirements for legal entities to disclose the identity of the beneficial owners at the time of creation and rules on company incorporation are defined at the state level. As such, each state has a separate company register and requires different information from legal entities. In some of the registers (for example, Delaware), information on shareholders or directors is not even recorded, making the identification of the beneficial owner more difficult.

### Insufficient verification

A second problem is that, across the G20 and guest countries, information collected in company registers is not verified by register authorities. Even in countries where beneficial ownership information is recorded, no verification takes place. In the **United Kingdom**, for example, the register authority, Companies House, does not investigate fraud or wrongdoing. Verification should be required in both public and non-public registers to ensure the data accessed by law enforcement and obliged entities is accurate and up-to-date.

In some countries, such as **Argentina**, **Italy** and **Spain**, notaries play a role in the registration process and conduct due diligence themselves with some criteria to independently verify the information provided by the beneficial owner. However, it is not clear how and if information is de facto independently verified.

Without some sort of verification, it is difficult to assess whether companies are fulfilling their duties, or whether front men are being used to disguise ownership. Governments need to resource and establish mechanisms to ensure that at least some verification takes place (such as cross-checking the data against other government and tax databases, or conducting random inspections).





## CASE STUDY

### LEGITIMATE INTEREST: HOW EASY IS IT TO ACCESS GERMANY'S TRANSPARENCY REGISTER?

By Christoph Trautvetter and Markus Henn,  
Netzwerk Steuergerechtigkeit Deutschland

Following the fourth EU AMLD, Germany introduced the so-called "Transparenzregister"<sup>90</sup> (Transparency Register), which has been accessible since 27 December 2017. This register was to contain ownership information for foundations for the first time, and was designed to complement the company register that already makes legal ownership information for companies publicly available. To gain access, the law requires proof of "legitimate interest". This, for example includes non-governmental organisations to demonstrate a proven track record of working on money laundering, or to demonstrate links to fighting money laundering, the constituent crimes of corruption or the financing of terrorism (even though concrete proof of money laundering is not explicitly required).

Netzwerk Steuergerechtigkeit Deutschland, a German non-governmental organisation that fulfils the criteria, tried to obtain information on two foundations possibly involved in tax avoidance, and on a company for which press reports had implied a money laundering risk. The information in the company register led them to Luxembourg and, from there, through several twists and turns, to a law firm in Cyprus. Both requests were eventually granted, but only after the organisation had provided additional information. In one case, a two-page explanation of the reasons for the request was not sufficient; in the other, a journalist ID was requested, even though the request was not framed as a journalistic one. Furthermore, both requests were treated on a case-by-case basis and no general access to the register was granted despite the non-governmental organisation's proven track record of working on money laundering.

The results, when access was finally granted, were disappointing. For one foundation (which does exist, according to the company register) there was no information available at all; for three others, most of the information was blacked out (due to the exception clause for "blackmailing" threats); and the entry for the two foundations only contained managers but no beneficial owners. In the case of the company, the Transparenzregister simply stated there was no record of a beneficial owner, even though companies had had until October 2017 to comply with the new rules.

These two cases clearly demonstrate that the legitimate interest requirement in its current form creates unsustainable administrative burdens, and that the register's requirements are too weak to present real progress towards beneficial ownership transparency. The requests also turned out to be burdensome regarding time (it took more than three weeks to extract information on some of the foundations) and cost (€5.36 for each single foundation).



Public registers at least allow independent civil society watchdogs to verify the information. For example, a recent analysis conducted by Global Witness into the United Kingdom Persons with Significant Control Register found that five beneficial owners control more than 6,000 companies, thus raising red flags of being nominees. The analysis also found that 7,000 companies declared they are controlled by other companies registered in secrecy jurisdictions, without providing the identity of the natural person behind them, a clear violation of the legal requirements.<sup>92</sup>

## Reliance on financial institutions and DNFBPs to collect information

As mentioned, in the majority of countries, the main source of beneficial ownership information is the data collected and maintained by financial institutions and obliged DNFBPs. This may pose serious challenges in relation to the effective detection and investigation of corruption and money laundering by competent authorities. One challenge is related to the quality and accuracy of the information collected by financial institutions and DNFBPs. The other challenge is related to accessibility and the ability of competent authorities to access the information in a timely manner.

In relation to the latter challenge, in some countries banks are required to provide information on all account holders, including beneficial ownership, to the supervisory body, such as in **Spain**. Similarly, in the **United States**, under the 2001 USA PATRIOT Act, federal, state, local and European Union law enforcement agencies can ask FinCEN to issue an electronic request to more than 16,000 financial institutions to search for accounts or transactions involving specified targets suspected of engaging in terrorist acts or money laundering. Financial institutions receiving such a request are required to query their records for data matches and to provide responsive information within two weeks.

In **Germany**, this information is found an online database and can be accessed by competent authorities at any time. This is also the case in **China** after the adoption of new rules in 2017. Ensuring that all relevant authorities have access to all account holders in the country without having to request information to the bank is an important step contributing to timely and effective investigations, but it cannot be considered sufficient to ensure adequate transparency in all cases.

With regard to the first challenges mentioned, recent scandals show that financial institutions and some DNFBPs have failed on several occasions to effectively ascertain the identity of the beneficial owner. The extremely low number of suspicious transaction reports submitted by DNFBPs in the majority of countries also raises questions about their ability to identify wrongdoings.

Across the majority of G20 countries, financial institutions and DNFBPs usually take the information on the identity of the beneficial owner provided by customers for granted. Even in cases where independent verification takes place, it is likely that financial institutions will rely solely on the information collected by the government (such as information submitted by the client, recorded in

the company register) to verify the information provided by the customer.<sup>93</sup> As the information collected by the government does not usually include individuals exercising de facto control, their independent verification is also restricted. Within this framework, there is no guarantee that the beneficial ownership information available to competent authorities is reliable or relevant.

### BOX 6

## Beneficial owner or front?

An investigation conducted by the BBC<sup>94</sup> shows that, in addition to buying nominee services, it is also possible to buy a beneficial owner.

An e-mail from one of Mossack Fonseca's executives, to which BBC had access, advised a client on how she could remain anonymous: "We may use a natural person who will act as the beneficial owner ... and therefore his name will be disclosed to the bank. Since this is a very sensitive matter, fees are quite high." The exchange of messages continued until they finally agreed that a 90-year-old British citizen would act as the beneficial owner. For that, Mossack Fonseca charged US\$10,000 for the first year and US\$7,500 for subsequent years. Mossack Fonseca's executive also stressed the number of documents that needed to be arranged and signed by the "natural person nominee" to cover them, including proofs of domicile and his economic capacity to place that amount of money, and letters of reference.

Other recent schemes also show that fronts may be used to disguise the identity of the real owners. The Azerbaijani Laundromat<sup>95</sup> relied on mainly four companies to move US\$2.9 million through accounts they opened in the Estonian branch of Danske Bank. These four companies were incorporated in the United Kingdom where, at the time of incorporation, there was no need to provide information on the beneficial owner. The companies registered only the name of a director with the United Kingdom Companies House; upon opening their account at the Danske Bank Estonia, the companies had to provide information on their beneficial owners.

According to the OCCRP investigation, the information provided to register the company and to open the account had conflicting information. For instance, the four companies listed a British address when registering with the Companies House, while their records at Danske Bank list addresses in Baku, the capital of Azerbaijan. More importantly, however, the beneficial owners and directors listed in both cases were not real.

Two of the companies, for instance, listed Maharram Ahmadow as the beneficial owner of two bank accounts that transferred more than US\$1.7 billion. However, according to OCCRP, Ahmadow is unlikely to be the real beneficiary of the account. He is a working class driver and lives in a modest house in the outskirts of Baku. To OCCRP reporters, he denied having any knowledge about the transactions. He said he used to be a driver for a bank in Azerbaijan and some people had made him a director.

These examples demonstrate the need for independent verification of beneficial ownership information provided by companies by government authorities, financial institutions and DNFBPs. Otherwise, there is a risk the corrupt will continue to remain hidden.



## G20 PRINCIPLE 5: BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

**“Countries should ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any) trustees and beneficiaries. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.”**

Efforts to tackle corruption and money laundering must also tackle secrecy and misuse of trusts and other legal arrangements. In a trust, the original owner (the “settlor” or “grantor”) transfers assets into a trust, to be held and managed by the “trustee” or trustees for the benefit of the “beneficiaries”. Trusts enable property or assets to be managed by one person on behalf of another. One of the challenges in the way of tackling the misuse of trusts is that control and ownership are explicitly separate and multiple individuals with different statuses (settlor, beneficiary, trustee, for example) could qualify as beneficial owners, making it additionally difficult for law enforcement to follow money trails if not all relationships are captured.<sup>96</sup>

Another challenge is that, in most cases involving trusts, trustees are given detailed instructions on how to manage the assets or distribute income, for example through a Letter of Intent. These letters are usually

private documents and do not need to be deposited or registered with any government authority, adding an important layer of secrecy to this type of legal arrangement.

The level of secrecy involved in such trust arrangements is so high that the number of corruption cases revealed in the recent past involving trusts is significantly smaller than those involving shell companies, for example. This was also the conclusion of the study conducted by the Stolen Assets Recovery (StAR) Initiative in 2011. Investigators interviewed as part of the study reported that cases involving trusts are so much more difficult to investigate, prosecute or recover assets that they are seldom prioritised in corruption investigations. At the same time, service providers approached as part of the study often recommended the use of stand-alone trusts or a combination of a company and a trust for holding assets if the real owner wanted to distance himself from the assets.<sup>97</sup>

### G20 SCORES

	2015	2017	2015	2017
Argentina			100%	100%
Australia			33%	25%
Brazil			33%	25%
Canada			67%	50%
China			67%	25%
France			67%	75%
Germany			50%	75%
India			33%	25%
Indonesia			67%	25%
Italy			33%	75%
Japan			33%	25%
Mexico			67%	100%
Russia			33%	25%

	2015	2017	2015	2017
Saudi Arabia			50%	50%
South Africa			67%	25%
South Korea			33%	25%
Turkey			n/a	25%
UK			67%	88%
US			33%	25%

### GUEST SCORES

	2017	2017
Netherlands		25%
Norway		25%
Spain		100%
Switzerland		50%



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**The level of secrecy involved in such trust arrangements is so high that the number of corruption cases revealed in the recent past involving trusts is significantly smaller than those involving shell companies**

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One recent example of the use of anonymous companies combined with a trust is the case of the former Ukrainian president, Viktor Yanukovich. He allegedly used several shell companies, whose ownership chain ended up partly in a trust incorporated in Liechtenstein, to acquire the state-owned Presidential Palace. The trust also allegedly held or partly held a hunting lodge, presidential planes and helicopters.<sup>98</sup>

Since trusts and similar arrangements are rarely strongly regulated, and since there are often no specific registration requirements for their existence, this G20 principle seeks to guarantee that the trustee (regardless of which country he or she is in, or where the trust is located) is responsible for obtaining and maintaining accurate, current and adequate beneficial ownership information. As such, trustees should keep beneficial ownership information for the trusts they administer, including information on the settlor (who donates the assets), the trustee (who manages the arrangement and is the legal owner), the protector (who may act as an intermediary between the settlor and the trustee) and the beneficiaries (who receive the funds).<sup>99</sup>

In countries where domestic trusts are not allowed but the administration of foreign trusts is possible, a set of measures to ensure that trustees operating in that country are required to identify and maintain information on beneficial ownership should still be in place. These measures include, for example, requiring trustees to proactively disclose their status to financial institutions and DNFBPs when forming a business relationship, or requiring professional trustees to be licensed and subjected to money laundering obligations (covered by Principle 7). The obligations of professional trustees should be supervised and enforced by a competent authority, and trustees should be subject to dissuasive and proportionate sanctions for non-compliance.

## Findings

Domestic trusts are not available in all countries assessed, but all allow the administration of foreign trusts. In any case, anti-money laundering regulations and, in particular, beneficial ownership transparency rules related to trusts and other legal arrangements continue to be rather inadequate across G20 countries and guest countries.

There have been some improvements in European Union countries due to the implementation of the fourth EU AMLD, which establishes a similar requirement: trustees of any express trust are obliged to obtain and hold adequate, accurate and up-to-date information on beneficial ownership if the trust has tax consequences. The directive nevertheless has limitations, as it restricts the types of trusts covered. This is the case in the United Kingdom on domestic and foreign trusts, as well as in **Italy**, **Germany**, and **Spain** in relation to foreign trusts (domestic trusts are not available).

**Spain** has introduced an explicit obligation on trustees of express trusts to self-identify when dealing as such with obliged entities or participating in transactions.

**Argentina** also has similar rules that apply to domestic *fideicomisos* (an arrangement similar to a trust) and to foreign trusts requiring trustees to maintain beneficial ownership information related to all parties to the trust, including trustees, protectors and beneficiaries.

In some countries, the trustee needs to maintain information about the parties to the trust to fulfil its duties of administration of the trust or to register the trust for tax purposes. However, this does not necessarily mean the trustee needs to hold information on, or understand, the control structure of the trust, or know who the real beneficial owner is. Parties to the trust may be another legal entity, and this means the trustee would not have information about the natural person in control. Trusts are also not always subject to tax, limiting the obligation to file any related ownership information. This is the case for example in **Australia**,<sup>100</sup> **Canada**, **China**, **India**, **Japan** and **Korea** (for personal trusts; in the case of business trusts, regulated financial institutions must act as trustee and collect beneficial ownership information).

In **Brazil**, domestic trusts are not available, but the administration of foreign trusts is possible. There is no explicit obligation that a Brazilian trustee or the trustee of a foreign trust that holds assets in Brazil needs to keep records of all parties to the trust and the beneficial owner. According to new rules adopted by the Brazilian Tax Agency in 2016, they do need to register the beneficial owner if the trust has investments in Brazil, but not for all those with a local trustee. Financial institutions and DNFBPs are required to identify the beneficial owner of trusts. However, trustees are not required to declare, in a proactive manner, their status when entering into a business relationship with a financial institution or DNFBPs.



It is also not possible to create domestic trusts in **Indonesia** or in **Turkey**, but there is nothing in the current legal framework that restricts a resident of Indonesia or Turkey to act as a trustee of a foreign trust. In this case, there is no legal requirement that the trustee needs to maintain information about all parties to the trust and identify the beneficial owner.

In **Mexico**, domestic law allows for the establishment of fideicomisos. There are also no restrictions regarding the administration of foreign trusts in the country. In the case of the fideicomiso, only regulated financial institutions may act as trustees. They are subject to anti-money laundering obligations and, as such, they must collect information on all parties to the trust, including the beneficial owner. Foreign trusts also need to provide beneficial ownership information when entering into business relationship with a financial institution.

The **Netherlands** does not have a domestic trust law, but recognises foreign trusts. Trustees of foreign trusts operating in the country are not required to maintain information on all parties to the trust. According to anti-money laundering provisions, financial institutions and DNFBPs have to identify the beneficial owner of trusts when entering into a business relationship.

In **Russia**, while domestic trusts are not available, the law explicitly allows for the administration of foreign trusts. There is no registration requirement for foreign trusts, but financial institutions are obliged to identify the beneficial owner of trusts when entering into a business relationship.

In **Saudi Arabia**, in a *waqf* (a legal arrangement similar to trust), the deed needs to contain information to all parties to the trust. It is not fully clear whether it also should include beneficial ownership information. Saudi Arabian trustees of foreign trusts are required to identify the client under the anti-money laundering law. However, no clear guidance is provided on what information should be obtained by the trustee to satisfy this requirement.

In **South Africa**, trustees are required to keep information on all parties to the trust and this information is publicly available. However, beneficial ownership information is not collected.

Domestic trusts are not available in **Switzerland**, but foreign trusts are accepted as legal entities. The trustee is not legally required to maintain beneficial ownership information related to all parties to the trust, unless he/she is a professional trustee, in which case anti-money laundering obligations apply. **Norway** also does not have domestic trusts. Nevertheless, trustees of foreign trusts are required to maintain information on all parties to the trust and professional trustees should also identify the beneficial owner.

In the **United States**, trustees of some types of trusts are required to maintain information on all parties to the trust. There is no requirement that a trustee of a domestic or foreign trust should disclose its status upon starting a business relationship with a financial institution or DNFBPs; neither are there obligations on financial institutions or DNFBPs to consistently identify the beneficial owner of customers that are trusts.

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**There have been some improvements in European Union countries due to the implementation of the fourth EU AMLD, which establishes a similar requirement: trustees of any express trust are obliged to obtain and hold adequate, accurate and up-to-date information on beneficial ownership if the trust has tax consequences.**

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# G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

“Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal arrangements.”

As discussed under Principle 5, law enforcement authorities have reported challenges in the way of investigating cases of corruption involving trusts and similar legal arrangements. These challenges usually relate to the fact that very little information on the parties of a trust is available, and even less on the actual beneficial owner of trusts.

To guarantee that adequate information on trusts is recorded and made available to the competent authorities, domestic and foreign trusts should be required to register with the competent authorities and to disclose information on all parties to the trust (including the trustee, settlor, beneficiaries and protectors) when available, as well as the beneficial owners.

The law should also explicitly allow the competent authorities to request and access information on the ownership and control of trusts held by trustees and other parties, such as financial institutions or DNFPBs.

## Findings

In most of the countries assessed, domestic trusts or domestically managed foreign trusts are not required to register with a competent authority and disclose beneficial ownership information for it to be valid.

The fourth EU AMLD requires the registration of beneficial ownership information in relation to trusts with a tax consequence. To comply with this requirement,

## G20 SCORES

	◀ 2015 ▶ 2017	2015	2017
Argentina		75%	42%
Australia		50%	50%
Brazil		17%	42%
Canada		33%	33%
China		50%	33%
France		83%	83%
Germany		50%	83%
India		33%	25%
Indonesia		33%	33%
Italy		33%	83%
Japan		33%	33%
Mexico		50%	50%
Russia		33%	33%

	◀ 2015 ▶ 2017	2015	2017
Saudi Arabia		50%	50%
South Africa		83%	50%
South Korea		17%	33%
Turkey		n/a	33%
UK		50%	100%
US		25%	42%

## GUEST SCORES

	▶ 2017	2017
Netherlands		33%
Norway		50%
Spain		33%
Switzerland		33%



some European Union countries, which did not have registration requirements in place during the 2015 assessment, have now amended their legal framework. **Italy** and **Germany**, for example, have rules on the registration of foreign trusts that include the disclosure of beneficial ownership information (domestic trusts are not recognised). In the case of Germany, beneficial information related to foreign trusts only needs to be recorded in a transparency register if the trustee is located in Germany. If the trust operates or holds assets in Germany but the trustee is located elsewhere, there is no need to report it. In the **United Kingdom**, beneficial ownership information of domestic and foreign trusts related to the United Kingdom need to be registered. On the other hand, the **Netherlands** does not seem to have plans to include the registration of trusts as a requirement as part of the reforms to comply with the fourth EU AMLD. **Spain** also does not have a register.

**Brazil** also amended its legal framework in 2016. The country records beneficial ownership information of foreign trusts with investments in Brazil in a register administered by the federal tax agency.

In none of these countries is the information registered available to the public, but domestic competent authorities are able to access it.

**France** is the only country where the register of trusts was available to the public. However, in July 2016, the French Constitutional Court banned the public register on the basis of an individual's right to privacy. Competent authorities continue to have direct access to it.

Other countries such as **Argentina**, **Saudi Arabia** and **South Africa**, require the registration of trusts, but beneficial ownership information is not necessarily recorded.

Some countries, such as **China** and **Korea**, do not require trusts to register with a local authority, but they do require the registration of some of the assets managed by the trusts (such as real estate). In these cases, information on all parties to the trust is also recorded, but no beneficial ownership information is available. Others require trusts with tax obligations to register with tax authorities and ownership and control information might be collected.

Under **Australian** and **Canadian** law, there is no legislative federal obligation on the trustee to obtain and hold adequate, accurate and current information on the identity of settlors, trustees, protectors (if any) and beneficiaries of trusts, including any natural person who exercises ultimate effective control over a trust.

In most of the countries assessed, the competent authorities still rely on the information collected by professional trusts or financial institutions when conducting investigations into trust ownership. They may also use their powers to request information, but in very few cases they have guaranteed timely access to beneficial ownership data, particularly in cases that involve foreign trusts.

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**In most of the countries assessed, the competent authorities still rely on the information collected by professional trusts or financial institutions when conducting investigations into trust ownership.**

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# G20 PRINCIPLE 7: FINANCIAL INSTITUTIONS & DNFBPS

**“Countries should require financial institutions and DNFBPs, including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers.**

Corrupt individuals and companies require financial institutions to be willing to receive and transfer their money, and often seek out the help of professional intermediaries (such as accountants, lawyers and TCSPs) to facilitate the process. Corrupt money often then passes through the hands of another set of DNFBPs (such as real estate agents, casinos and luxury goods dealers) who can earn hefty fees and commissions on deals. This is for two purposes: corrupt individuals ultimately aim to enjoy the proceeds of their criminal activities; and to launder the money so that it enters the market later as seemingly “clean” assets.

All cross-border grand corruption cases need a combination of anonymous companies and bank accounts to succeed. Transparency International notes, for example, how the Brazilian construction company Odebrecht relied on banks in Antigua, Panama, Switzerland and the United States, among others, to make bribe payments to Brazilian and foreign public officials and politicians.<sup>101</sup>

Odebrecht also used anonymous bank accounts to pay unaccounted bonuses to its own executives.<sup>102</sup> To ensure the cooperation of banks, Odebrecht frequently paid remuneration fees and higher rates to the banking institutions, and even a percentage of each illicit transaction to certain complicit bank executives.<sup>103</sup> Similarly, the Azerbaijani Laundromat case in 2017 revealed how a combination of anonymous company and bank accounts allegedly allowed Azerbaijan’s ruling elite to operate a secret US\$2.9 billion scheme to buy political support across Europe and to launder money.<sup>104</sup>

Investments in real estate, precious stones (such as gold or diamonds) or luxury goods are also seen as an alternative for those who fear having offshore accounts frozen. They are particularly attractive as large amounts of money can be legitimised at once and transactions may also take place in cash, reducing checks.

For example, Teodorin Nguema Obiang Mangue, the son of the president of Equatorial Guinea, was accused of purchasing luxury cars and real estate in France with the proceeds of corruption.<sup>105</sup> He was sentenced to a three-year suspended sentence in 2017, a €30 million fine and confiscation of the seized goods, but has appealed the decision.<sup>106</sup> Teodorin Obiang also allegedly owned a luxury yacht, a private jet, expensive art collections and mansions in the United States, among other extravagances.<sup>107</sup>

- » Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs.
- » Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.”

In Brazil, the wife of the former governor of the state of Rio Janeiro was also accused of using public money to purchase jewellery worth a total amount of US\$1.3 million. The jewellery shop H. Stern signed a plea agreement with Brazilian authorities describing its relationship with the customers (the former governor and his wife) and how payments were made. For instance, for the purchase of a ring, a payment of US\$258,372,26 was made to a branch of H. Stern in Germany through an anonymous account at the BSI bank in Switzerland. According to information in the plea agreement, the couple also paid for jewellery in cash or used intermediaries to disguise the transactions and the origin of the funds.<sup>108</sup> To make it less lucrative and less easy for the corrupt to launder money, financial institutions and DNFBPs should be required by law to conduct customer due diligence, including identifying the beneficial owners of their customers in all cases. Financial institutions and DNFBPs should also be legally required to verify their identity, for example through photo identification. For moderate and higher risk relationships or transactions, independent verification using external and reliable sources should be required.

## BOX 7

### Who are Politically Exposed persons?

Politically exposed persons are individuals who hold (or held) a prominent public function, such as the head of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations or important political party officials. The term often includes their relatives and close associates. Banks and other financial institutions are supposed to treat these clients as high risk, applying enhanced due diligence at both the start of the relationship and on an ongoing basis, including at the end of a relationship, to ensure the money in their bank account is not the proceeds of crime or corruption.

This is because international standards, such as the one issued by FATF, recognise that a politically exposed person may be in a position to abuse their public office for private gain and use the financial system to launder the ill-gained proceeds.



DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, notaries, lawyers, accountants, and other independent legal professions when carrying out certain transactions on behalf of clients, as well as TCSPs providing services to legal entities.





















Enhanced due diligence, including the ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer or the beneficial owner is a domestic or foreign politically exposed person, or a close associate or family member of a politically exposed person.

Financial institutions or DNFBPs should not be allowed to proceed with the transaction if the beneficial owner is






**Financial institutions or DNFBPs should not be allowed to proceed with the transaction if the beneficial owner is not identified**

not identified. Countries should avoid permitting senior managers or directors who do not have de facto control over a company to be recorded as beneficial owners. In cases where the beneficial owner cannot be identified, obliged financial institutions and DNFBPs should consider submitting a suspicious transaction report.

## G20 SCORES

		Financial Institutions		DNFBPs		Sum	
		2015	2017	2015	2017	2015	2017
Argentina		66%	72%	92%	81%	82%	77%
Australia		50%	56%	0%	8%	19%	26%
Brazil		63%	56%	85%	77%	76%	69%
Canada		38%	50%	8%	8%	19%	24%
China		38%	69%	8%	23%	19%	40%
France		75%	94%	88%	92%	83%	93%
Germany		69%	69%	88%	81%	81%	76%
India		81%	78%	58%	58%	67%	65%
Indonesia		81%	69%	50%	65%	62%	67%
Italy		81%	75%	85%	92%	83%	86%
Japan		63%	75%	50%	69%	55%	71%
Mexico		69%	81%	77%	81%	74%	81%
Russia		50%	56%	69%	62%	62%	60%
Saudi Arabia		63%	69%	81%	81%	74%	76%
South Africa		6%	69%	4%	65%	5%	67%
South Korea		31%	50%	8%	8%	17%	24%
Turkey		50%	44%	58%	65%	55%	57%
UK		88%	94%	77%	92%	81%	93%
US		38%	47%	8%	17%	19%	29%

## GUEST SCORES

		Financial Institutions	DNFBPs	Sum
		2017	2017	2017
Netherlands		81%	85%	83%
Norway		75%	77%	76%
Spain		94%	88%	90%
Switzerland		56%	54%	55%



## CASE STUDY

### ODEBRECHT: IF YOU CAN'T BEAT THEM, BUY THEM

The corruption ring operated by Odebrecht in Brazil and in other countries in Latin America and Africa relied on accounts held offshore in the name of several shell companies. At least 42 offshore accounts<sup>109</sup> were used by Odebrecht in the scheme. A lot of the money used to pay bribes was passing through the Antigua Overseas Bank – this until 2010, when the Antigua Overseas Bank went bankrupt.

Odebrecht needed another reliable partner to continue moving dirty money. Why not buy a bank?

They heard the Austrian Meindl Bank AG had an Antigua branch that was largely inactive. In late 2010, two of the Odebrecht's executives responsible for running the "unofficial" international operations of the company decided to buy<sup>110</sup> 51 per cent<sup>111</sup> of the Meindl Bank Antigua. They paid US\$4 million for it and agreed with Odebrecht they would still get a commission of 2 per cent on the transactions carried out on behalf of the company through the bank.<sup>112</sup> According to information provided by the executives in their plea agreements with Brazilian authorities, they were running the bank from São Paulo and most (if not all) of the transactions made by the bank were related to Odebrecht.<sup>113</sup>

As highlighted in Odebrecht's plea agreement<sup>114</sup> with United States and Swiss authorities, "[B]y virtue of this acquisition, other members of the conspiracy, including senior politicians from multiple countries receiving bribe payments, could open bank accounts and receive transfers without the risk of raising attention. By acquiring the bank, members of the conspiracy, including Odebrecht Employee 4 and others, willfully facilitated the illegal payment scheme."

Money was transferred from the Meindl Bank Antigua to other banks such as the Andorra Private Bank [BPA], allegedly mainly to pay bribes to politically exposed persons, according to Odebrecht's former lawyer.<sup>115</sup>

There is no sign that authorities in the country (or in Austria, where the Meindl Bank is located) asked questions or investigated the bank at any time during the period Odebrecht used the Meindl Bank Antigua for money laundering. Only in December 2017 did the Antiguan Financial Services Regulatory Commission revoke the license<sup>116</sup> of the Meindl Bank Antigua.





To allow for the beneficial ownership information presented by companies to be cross-checked, it is important that financial institutions and DNFBPs have direct access to beneficial ownership information collected by governments, preferably through an online platform. Usually, as noted in several FATF mutual evaluation reports, they have been relying on information available through company registers, which do not necessarily include beneficial owners.

Financial institutions and DNFBPs must be supervised so as to not be complicit in money laundering. Supervisory bodies also play an important role in providing guidance and awareness raising among obliged entities. Financial institutions and DNFBPs must face sanctions if they do not comply with their obligations under the law. Sanctions to directors and senior management should also be possible.

Currently, there are significant differences between the way financial institutions and non-financial DNFBPs are regulated, supervised and sanctioned by competent authorities across the G20. As a result, we have separated the findings into two sections.

## Findings – Financial Institutions

Financial institutions can play a key role in facilitating money laundering. For years now, they have been at the centre of multiple anti-money laundering regulations. From know your customer rules to more elaborated enhanced due diligence procedures, financial institutions are, in general, reasonably well regulated when it comes to anti-money laundering. There are, however, a number of areas of concern relating to identification of and access to beneficial ownership information, as well as the identification of domestic and foreign politically exposed persons.

Since the 2015 assessment, many countries have adopted new rules on customer due diligence and other aspects of money laundering and the financial sector, including **Australia, China, France, Germany, Indonesia, Italy, Mexico, Russia, South Africa, South Korea, Turkey, the United Kingdom and the United States**.<sup>117</sup>

### Identification and verification of real owners

In this year's assessment, all 23 countries analysed require financial institutions to identify the beneficial ownership of customers, including South Africa, South Korea and the United States, countries where such a requirement was non-existent or inadequate two years ago.<sup>118</sup>

All countries, with the exception of Switzerland, require financial institutions both to identify the beneficial owner and verify their identity. Verification is understood as a basic analysis to ensure the beneficial owner exists, such as requiring a valid document containing a photo or an in-person meeting. There are, however, some limitations to this requirement in Canada, Italy, Germany and the United States.

Less common among the countries assessed is to require financial institutions to conduct independent verification of the beneficial ownership information submitted by customers. Eight G20 countries (**Australia,**

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**Turkey still does not require any type of measure to identify whether the customer or the beneficial owner of the customer is a politically exposed person.**

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**China, France, India, Indonesia, Japan, Mexico and the United Kingdom**) and three G20 guest countries (**Netherlands, Norway and Spain**) require financial institutions to use independent and reliable sources to verify the beneficial owner in cases considered high-risk. Nevertheless, current rules or guidance by authorities usually do not provide detailed information on when and how such independent analysis should be carried out, which gives the impression that enforcement of this requirement could be a challenge. Overall, the analysis shows that there is over-reliance on customers' declaration. This is particularly problematic given that competent authorities in 15 G20 countries, and guests, rely extensively on information collected by financial institutions to access beneficial ownership information.

### Enhanced due diligence on politically exposed persons

Despite improvements in the legal framework related to politically exposed persons in some countries (such as **France, Russia, South Africa** and the **United Kingdom**), enhanced due diligence for customers (or the beneficial owners of customers) who are politically exposed persons, associates of politically exposed persons or family members of politically exposed persons is still inadequate in many of the countries assessed.

**Turkey** still does not require any type of measure to identify whether the customer or the beneficial owner of the customer is a politically exposed person. In **Canada**, customer due diligence requirements apply under certain circumstances when the customer is a domestic or a foreign politically exposed person, a close associate, a head of an international organisation or a family member. However, the law does not require financial institutions to identify whether the beneficial owner of a legal entity customer is a domestic or a foreign politically exposed person, a close associate or a family member.

In six other countries (**China, India, Japan, Norway, South Korea** and the **United States**), only foreign politically exposed persons are regulated. This means that enhanced due diligence mechanisms do not apply if the customer is a domestic politically exposed person. In **Norway**, enhanced due diligence requirements only extend to domestic politically exposed persons if there is already suspicion.

In countries where politically exposed persons need to be identified and enhanced due diligence is required, this usually includes senior management approval to proceed with the transaction, additional investigation into the sources of funds and ongoing monitoring.



The non-standardised definition of politically exposed persons in the different countries and the understanding of close associates and family members requires further exploration. For instance, in the United Kingdom, the law refers to “known close associates”, meaning individuals who are known to have joint beneficial ownership of legal entities or to be the representative of a legal entity whose control is in the hands of a politically exposed person. In Brazil and Italy, current definitions could also be improved to ensure wider coverage.

## Consequences of the lack of beneficial ownership identification

The lack of beneficial ownership information is not an impediment to a financial institution proceeding with a transaction in nine countries assessed (**Australia, Brazil, Canada, Germany, Indonesia, Russia, South Korea, Turkey** and the **United States**). In some countries (such as **Australia, Canada, Germany, Russia** and **Turkey**), if the beneficial owner cannot be identified, a senior manager may be recorded as the beneficial owner and the financial institution is allowed to proceed with the transaction. In **Canada**, if information cannot be obtained or confirmed after taking reasonable measures to identify the beneficial owner, reporting entities (excludes DNFBPs) must take reasonable measures to verify the identity of the most senior managing officer of the entity; treat the entity's transactions and activities as high-risk, and apply the enhanced measures for high-risk clients (including enhanced ongoing monitoring). It should, however, consider submitting a suspicious transaction report to the country's financial intelligence unit if there is any suspicion of wrongdoing.

**Brazil's** regulation is notable for sending conflicting messages. It states, on the one hand, that financial institutions should only initiate or continue “commercial relations” provided all register data (which includes beneficial ownership information) is collected and up-to-date. On the other hand, it also states that financial institutions should pay special attention to clients and operations whose data on the ultimate beneficiary is impossible to obtain, suggesting that it is possible to proceed with the transaction without this information.<sup>119</sup>

Other countries have established broader requirements stating that, if a financial institution failed to conduct due diligence (and this should cover the identification of the beneficial owner), it should not proceed with the transaction.

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**Australia is the only country where financial institutions' directors and senior managers cannot be held personally responsible for non-compliance with the anti-money laundering rules.**

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## Accessibility of beneficial ownership information

There has been a slight improvement regarding the accessibility of beneficial ownership collected by the government by financial institutions. In the 2015 assessment, only the **United Kingdom** had legal provisions that guaranteed financial institutions direct access to beneficial ownership information collected by the **United Kingdom** company register. Other European Union countries (including **France, Germany, Italy** and **Spain**) have now also brought their legal framework in line with the requirements under the fourth EU AMDL, which provides for access to obliged entities “without any restriction”.<sup>120</sup> In **Germany**, obliged persons can gain access to the register on a case-by-case basis and within their due diligence obligations. In **Italy**, access is granted upon the payment of a fee. In **France**, obliged persons also need to request access to the register.

In **Argentina** and **India**, assuming the information is being collected, financial institutions are also able to consult beneficial ownership information in person at the central or subnational company registers.

Studies and mutual evaluations conducted by the FATF<sup>121</sup> show that, in many countries, financial institutions rely on the information available on company registers to verify (even when they are not legally required to do so) the beneficial ownership information provided by customers. The problem is that, in the majority of countries, company registers do not include beneficial ownership information, only legal ownership, and there is no other source of information on beneficial ownership.

## Sanctions

**Australia** is the only country where financial institutions' directors and senior managers cannot be held personally responsible for non-compliance with the anti-money laundering rules. In all the other countries assessed, sanctions for non-compliance (including penalties, fines, suspension or warnings) apply to financial institutions themselves as well as to directors and senior managers. In the 2015 assessment, the only other country that did not extend sanctions to directors and senior managers was **South Africa**, but this issue was addressed with the adoption of amendments to the Financial Intelligence Centre Act in 2017.





#### CASE STUDY

### USE OF G20 COUNTRY BANKS IN THE MALAYSIA 1MDB CORRUPTION CASE

In many cases of corruption and illicit financial flows, the public and even supervisory bodies learn little about the underlying failures of the banks involved.<sup>122</sup> In contrast, investigations against Jho Low and his associates in one of Asia's most notorious scandals involving the Malaysian state-owned investment fund 1MDB brought to light detailed information on the compliance failures of the banks.

According to the complaint brought by United States attorneys,<sup>123</sup> 1MDB transferred US\$700 million intended for a joint venture with PetroSaudi – a Saudi-Arabian oil company – to an account at RBS Coutts in Zurich, Switzerland. The account was opened at the branch in Singapore by Jho Low and later transferred to Zurich under the name of Good Star Limited, a Seychelles-registered company owned by Smart Power through a single bearer share. This bearer share was initially issued to Jho Low, and the company's correspondence and records were apparently to be kept at the bank in Singapore. The transfer was made by Deutsche Bank in Malaysia through a correspondent account at J.P. Morgan, with the obligatory approval of the Malaysian Central Bank.<sup>124</sup>

“[I]n order to avoid any unforeseen circumstance”, 1MDB apparently convinced the official at Deutsche Bank to make the transfer request without naming the beneficiary of the account and using inconsistent documentation to justify the transfer.<sup>125</sup> At the request of the compliance officers of Deutsche Bank and RBS Coutts, the 1MDB official later provided the Seychelles-based company as the beneficiary of the transfer. Both the Deutsche Bank and the Malaysian Central Bank apparently trusted the representation of 1MDB that the account was held by PetroSaudi without checking with RBS Coutts or verifying the justification of the transfer.<sup>126</sup> J.P. Morgan acted both as correspondent bank and as recipient for another transfer of US\$300 million linked to the transaction, but did not complain either. RBS Coutts did not report any suspicious transactions, continued the business relationship despite repeated warnings by its staff and later allowed the money to be passed on to a domiciliary company of Jho Low through opaque loan agreements<sup>127</sup>.

The employees of RBS Coutts in Singapore, Yak Yew Chee and Seah Mei Ying, who were apparently in charge of Good Star Limited and Jho Low's account at RBS Coutts, later then moved to the Singaporean branch of BSI (a Swiss bank).<sup>128</sup> There they allegedly helped Jho Low to siphon off money from 1MDB for his private benefit again, this time using a company registered in the British Virgin Islands, the name of which (Aabar Investments PJS Limited) was similar to the name of the intended beneficiary (Aabar Investments PJS, Abu Dhabi).<sup>129</sup> Both RBS Coutts and BSI were fined and the two bankers received prison sentences of a few weeks, had to pay small fines and were barred from working as bankers.<sup>130</sup> Nevertheless, the fines for allegedly helping steal billions from taxpayers in Malaysia seem small when compared with people who assisted in stealing millions from a bank.<sup>131</sup>



## Findings – DNFBPs

There has been some improvement in the regulation of DNFBPs (such as lawyers, accountants, real estate agents and TCSPs) since the last assessment, but serious gaps remain regarding the coverage of professions and entities required to identify and verify the identity of beneficial owners (see below findings by sector). **Australia, Canada, South Korea** and the **United States** do not have legal provisions requiring DNFBPs to identify the beneficial owners of their clients. In some of these countries, such as the United States, some DNFBPs may have anti-money laundering obligations, but are not required to identify and verify beneficial ownership information.

Among those DNFBPs regulated, only **France, Japan** and the **United Kingdom** require some sort of independent verification of the beneficial ownership information provided by the customer. Enhanced due diligence for politically exposed persons and their close associates and family members is also not the norm.

## DNFBPs by sector

» **TCSPs** in **Australia, Canada**<sup>132</sup> **India, Russia, South Africa, South Korea** and the **United States** are not required by law to identify the beneficial owners of customers. In **Switzerland**, TCSPs are considered financial intermediaries and obliged to identify the beneficial owner of customers if they have direct access to cash flows and carry out their business on a professional basis. In all the other countries TCSPs have anti-money laundering obligations in place, but the conditions vary and significant loopholes exist in some countries.

The **United Kingdom** closed a major loophole with the adoption of the Money Laundering Regulation in 2017. Prior the new law, TCSPs only had to carry out due diligence checks (including identifying beneficial owners) when establishing an “ongoing business relationship”, but not for one-off transaction below the threshold.

In some countries, TCSPs are not a distinct business category; regulations therefore only apply to lawyers, accountants, notaries and other professions when they provide such TCSP business services. Supervision is often carried out by their respective professional bodies. In other countries, only some aspects of TCSP services – such as trust services – are subject to regulation.

» **Lawyers** are not required to identify the beneficial owner of clients in nine countries: **Argentina, Australia, Brazil, Canada, China, India, Japan, South Korea** and the **United States**. In **Switzerland**, lawyers are considered financial intermediaries and obliged to identify the beneficial owner of customers only if they have direct access to cash flows and carry out their business on a professional basis. In several countries, the bar associations have challenged such regulations, claiming that they threaten client-lawyer privileges. In **Canada**, for instance, the Federation of Law Societies of Canada made a successful in-court challenge to the anti-money laundering requirements that apply to lawyers.<sup>133</sup> In **Brazil**, some experts understand that lawyers would be subject to the anti-money laundering obligations when performing activities such as management of assets and investments on behalf of clients. However, the Brazilian anti-money laundering rules require further regulation by

the professional association (Brazilian Bar Association – Ordem dos Advogados do Brasil). The association has not adopted any regulation on this issue. On the contrary, it issued an official legal opinion stating that lawyers do not have to conduct due diligence or report suspicious transactions. **Indonesia** and **South Africa** adopted new rules extending anti-money laundering obligations to lawyers.

» **Accountants** in **Australia, Canada, China, India, Japan, South Korea** and the **United States** are not required by law to identify the beneficial owners of clients. **Indonesia** and **South Africa** have since the last assessment adopted new rules requiring accountants to identify the beneficial ownership of clients.

» **Real estate** agents in five G20 countries (**Australia, Canada, China, South Korea** and the **United States**)<sup>134</sup> are not required by law to identify the beneficial owners of clients buying and selling property. This is despite major recent scandals that show the ease with which corrupt money or money of unknown origin can enter the high-end real estate market in cities such as New York, Sydney or Vancouver.<sup>135</sup> All G20 guest countries have appropriate rules to prevent money laundering through the real estate sector, with the exception of **Switzerland**, where real estate agents are only required to conduct due diligence and identify the beneficial owner if they accept more than 100,000 CHF in cash in the course of a commercial transaction.

**South Africa** adopted new legislation requiring real estate agents to identify the beneficial owner of clients.

The **United Kingdom** closed an important loophole with the adoption of amendments to the anti-money laundering rules in 2017. Previously, real estate agents were required to conduct checks on individuals or companies selling a property, but not on those buying the property. The new rules extended the obligation to conduct due diligence on buyers also to state agents.

» **Casinos** are not required by law to identify the beneficial owner of customer in **Canada**,<sup>136</sup> **Japan** and **Turkey**. Other countries, such as **Brazil, China, Indonesia, Norway, Russia** and **Saudi Arabia**, prohibit casinos from operating in their territory. **South Africa** and the **United States** recently adopted rules extending due diligence requirements to casinos.

» **Dealers in precious metals and stones** in five countries (**Canada, Norway, South Africa, South Korea** and the **United States**) are not required by law to identify the beneficial owners of customers. **Australia**,<sup>137</sup> **China** and the **United Kingdom** adopted new legislation in 2017 extending anti-money laundering obligations to dealers in precious metals and stones or, in the case of the United Kingdom, high-value dealers.

In **Norway**, dealers in precious metals and stones are no longer required to conduct due diligence and identify the beneficial owner of customers. Amendments to the law adopted in 2017 established restrictions to cash payments instead.

In the **United States**, dealers in precious metals and stones are obliged to establish anti-money laundering programme, but there is no specific requirement to identify the beneficial owner of customers.

» The luxury goods sector, including car, yacht, and private jets dealers, in **Australia, Canada, China, Norway, Russia, South Africa, South Korea** and the **United States**, are not required by law to identify the beneficial owners of customers.



## BOX 8

## Real estate sector in check

In 2017, Transparency International published an analysis of anti-money laundering and corruption prevention mechanisms in the real estate sector in four key markets. The report, *Doors Wide Open*,<sup>138</sup> identified 10 main problems that have enabled corrupt individuals and other criminals to easily purchase luxurious properties anonymously and hide their stolen money in Australia, Canada, the United Kingdom and the United States.

1. **Inadequate coverage of anti-money laundering provisions.** Three out of four countries analysed are not fully compliant with their international commitments on anti-money laundering. They all fail to extend due diligence requirements to the full range of DNFBPs that might be involved in the buying and selling of real estate.
2. **Identification of the beneficial owners of legal entities, trusts and other legal arrangements is still not the norm.**
3. **Foreign companies have access to the real estate market with few requirements or checks.** There are few requirements and checks on foreign companies and individuals wishing to purchase property. In all the four countries, foreign companies do not need to provide information on their real owners to any sort of company register to purchase property or to the land register upon registration.
4. **Over-reliance on due diligence checks by financial institutions leads to cash transactions going unnoticed.** Three of the four countries do not require a sufficient range of professionals to conduct the necessary due diligence checks on real estate transactions. They rely heavily on checks by financial institutions alone, which may lead to cash transactions going unnoticed.
5. **Insufficient rules on suspicious transaction reports and weak implementation.** In Australia and the United States, professionals involved in real estate closings are not required to submit suspicious transaction reports. In Canada, real estate agents and developers, accountants and British Columbia notaries are required to submit a suspicious transaction report to the Financial Transactions and Reports Analysis Centre of Canada if they have reasonable grounds to suspect that the transaction is related to a money laundering offence or a terrorist activity financing offence, but lawyers and Quebec notaries are not subject to this requirement.
6. **Weak or no checks on politically exposed persons and their associates.** In Australia, Canada and the United States, professionals involved in real estate closings are not required to verify whether customers are politically exposed persons, or family members or close associates of politically exposed persons. This means they do not have to conduct enhanced due diligence in these cases. In the United Kingdom, enhanced due diligence must be applied in the case of foreign politically exposed persons, but not domestic politically exposed persons.
7. **Limited control over professionals who can engage in real estate transactions.** None of the countries analysed have “fit and proper tests” for professionals working in the real estate sector to assess if they are aware of their anti-money laundering obligations. Only the United Kingdom requires real estate businesses to register with Her Majesty’s Revenue and Customs for anti-money laundering supervision, but compliance with this obligation is low.<sup>139</sup>
8. **Limited understanding of and action on money laundering risks in the sector.** National money laundering risk assessments have been conducted in Canada, the United Kingdom and the United States, and in all cases high risks of money laundering have been reported in the real estate sector. In Australia, while no risk assessment has been conducted in the past six years, current government documents highlight high risks of money laundering in the real estate sector. Despite these assessments, governments have been slow to adopt mitigation measures against the vulnerabilities identified.
9. **Inconsistent supervision** In Australia and the United States. Professionals involved in real estate closings are not subject to anti-money laundering obligations, and therefore are not monitored by competent authorities or self-regulated bodies
10. **Lack of sanctions.** In all four countries, supervisory bodies publish very limited information on their enforcement efforts in the real estate sector. Both administrative sanctions for non-compliance with anti-money laundering obligations and criminal sanctions for involvement in money laundering schemes and predicate offences seem to be rare. While several financial institutions have been sanctioned for their involvement in money laundering in recent years, very little is known about the sanctions incurred by real estate agents, lawyers, accountants and notaries for facilitating money laundering into the real estate sector.

In 2017, Transparency International Switzerland (TI Switzerland)’s report “Open Doors for Illicit Money”<sup>140</sup> found similar weaknesses in the Swiss anti-money laundering legislation. The report also found that the highest money laundering risks in Switzerland can be found when real estate is acquired by foreign nationals, particularly when foreign financial intermediaries are involved in transactions, making it is relatively easy to acquire Swiss real estate with illicit proceeds and go undetected.



# G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

**“Countries should ensure that their national authorities cooperate effectively domestically and internationally. Countries should also ensure that their competent authorities participate in information exchange on beneficial ownership with international counterparts in a timely and effective manner.”**

Domestic and international cooperation are indispensable tools for law enforcement authorities handling cross-border corruption cases. Criminals often choose to conceal their identities behind a chain of different companies incorporated in different jurisdictions, thus making it harder for law enforcement authorities to locate and obtain information on the ownership and control structure. Accessing foreign data on beneficial ownership is one of the main challenges reported by legal authorities surveyed in the European Union.<sup>141</sup>

International cooperation usually takes place through mutual legal assistance or other formal or informal means, such as through existing international and regional network of agencies or joint investigation teams. However, personal data protection and privacy interests in many jurisdictions may obstruct or delay the ability

of authorities to obtain relevant information. Other jurisdictions may not cooperate with authorities on cases implicating political sensitivities, such as in cases involving corruption or sanctions evasion. Moreover, in general, mutual legal assistance requests take time to be processed and could end up delaying investigations.

Cooperation between domestic and international authorities holding information on beneficial ownership or information that could be helpful in identifying the beneficial owner is essential. Governments should thus ensure a good understanding regarding which parties/bodies hold and have an obligation to maintain basic and beneficial ownership information. This will also help avoid duplication of work and resources.

Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner – for instance, through access to central beneficial ownership registers.

## G20 SCORES

	◀ 2015 ▶ 2017	2015	2017
Argentina		71%	63%
Australia		46%	63%
Brazil		46%	46%
Canada		33%	71%
China		71%	63%
France		63%	63%
Germany		54%	71%
India		38%	38%
Indonesia		46%	71%
Italy		63%	71%
Japan		54%	71%
Mexico		79%	79%
Russia		63%	71%

	◀ 2015 ▶ 2017	2015	2017
Saudi Arabia		54%	46%
South Africa		46%	75%
South Korea		46%	63%
Turkey		63%	63%
UK		83%	83%
US		71%	71%

## GUEST SCORES

	◀ 2015 ▶ 2017	2017
Netherlands		54%
Norway		79%
Spain		88%
Switzerland		79%



In relation to international cooperation, there should be clear guidelines regarding where and how foreign jurisdictions can access beneficial ownership information. There should be provisions in the law allowing competent authorities to use their investigatory powers to respond to international requests.

Transparency International believes that ensuring the accessibility of information on beneficial ownership would help cross-border investigations, allowing foreign law enforcement authorities to access relevant information discreetly and at short notice. Public registers containing beneficial ownership information would also reduce the need to make lengthy mutual legal assistance requests, which is especially helpful for countries with limited resources.<sup>142</sup> More importantly, authorities would be able to access information without tipping off different parties about ongoing investigations.

## Findings

There are significant challenges to fully verify the provisions in place for both domestic and international sharing of information, since this usually takes place confidentially.

Since the last assessment, domestic cooperation has been strengthened through the establishment of central beneficial ownership registers in some of the European countries assessed and new rules adopted in Brazil. Domestic authorities in Brazil, France, Germany, Italy, Spain and the United Kingdom now have direct access to beneficial ownership information in their countries. Once the registers are populated with all the data, this is likely to facilitate and speed investigations.

However, as not all these countries opted for the adoption of public beneficial ownership registers, international authorities still need to request beneficial ownership information. It is expected, nevertheless, that domestic authorities will be able to respond to those requests more efficiently given that information is now collected and readily available.

In all other countries, international authorities need to request beneficial ownership information, usually through mutual legal assistance requests. A process that is usually cumbersome and not necessarily fast, although informal and ad-hoc consultations might be possible in some cases.

To facilitate access to information, the G20 Anti-Corruption Working Group prepared country guides to support public authorities or other interested parties on how to find information on an entity incorporated under the laws of the country concerned.<sup>143</sup> Not all country guides, however, provide detailed guidance on the process to request information from one another, which channels should be used or who are the authorities responsible for processing the requests.

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**Since the last assessment, domestic cooperation has been strengthened through the establishment of central beneficial ownership registers in some of the European countries assessed and new rules adopted in Brazil. Domestic authorities in Brazil, France, Germany, Italy, Spain and the United Kingdom now have direct access to beneficial ownership information in their countries.**

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In addition to formal mechanisms to request information, some countries have taken steps to regulate the establishment of joint investigation units or teams.<sup>144</sup> A joint investigation team is an international cooperation tool based on an agreement between the competent authorities – both judicial (judges, prosecutors, investigative judges) and law enforcement – of two or more states, established for a limited duration and for a specific purpose, to carry out criminal investigations in one or more of the involved states. They can be a viable alternative to mutual legal assistance requests as evidence is usually freely shared among the members of the team. The Council of the European Union adopted a resolution in January 2017 on a model agreement for setting up a joint investigation team.<sup>145</sup>

In Latin America, in the context of the Lava Jato investigations, some countries have also agreed to establish a joint investigation team, but further details on how the team should function is needed. **Argentina, Brazil and Mexico** are among the countries that are part of the team.<sup>146</sup>

Other countries such as **Canada, Italy,**<sup>147</sup> **Norway** and the **United States** have successfully used such teams to investigate cross-border corruption cases through bilateral or multilateral arrangements.



# G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

**“Countries should support G20 efforts to combat tax evasion by ensuring that beneficial ownership information is accessible to their tax authorities and can be exchanged with relevant international counterparts in a timely and effective manner.”**

Current estimates of undeclared offshore wealth range from conservative estimates of US\$7 trillion<sup>148</sup> (which still amounts to 8 per cent of the world's personal financial wealth) to US\$21–32 trillion.<sup>149</sup> In Africa alone, the estimate is that 30 per cent of wealth is hidden offshore.<sup>150</sup> The Panama and the Paradise Papers showed that similar methods and vehicles are used by individuals wishing to evade or avoid paying tax as are used by those siphoning off corrupt funds out of a country.<sup>151</sup> It is important that tax authorities should also have access to beneficial ownership information to prevent tax evasion and recover funds, and that they should face no restrictions on sharing information internationally.

Tax authorities should have access to beneficial ownership information maintained by other domestic authorities online and for free, for example through a register. Countries should thus seek to address any restrictions on sharing beneficial ownership information with domestic tax authorities.

With regard to the sharing of tax information internationally, mechanisms should be in place (such as memoranda of understanding or treaties), to facilitate the timely and automatic exchange of information between tax authorities and foreign counterparts.

## G20 SCORES

	◀ 2015 ▶ 2017	2015	2017
Argentina		83%	83%
Australia		75%	75%
Brazil		75%	100%
Canada		58%	58%
China		75%	75%
France		58%	100%
Germany		58%	100%
India		75%	75%
Indonesia		58%	75%
Italy		75%	100%
Japan		75%	75%
Mexico		75%	75%
Russia		75%	75%

	◀ 2015 ▶ 2017	2015	2017
Saudi Arabia		42%	42%
South Africa		75%	75%
South Korea		58%	58%
Turkey		75%	75%
UK		100%	100%
US		75%	75%

## GUEST SCORES

	▶ 2017	2017
Netherlands		42%
Norway		75%
Spain		100%
Switzerland		75%



## Findings

Improvement under this principle since the last assessment is driven by the adoption of central registers of beneficial ownership in European countries and new rules in Brazil. Several countries have strongly worded legislation or mechanisms in place. **France**, **Germany**, **Spain** and the **United Kingdom** have a register with beneficial ownership information available immediately to tax authorities. **Italy's** register will also be available to tax authorities once operational.

In **Brazil** tax authorities maintain their own database with beneficial ownership information of legal persons and arrangements.

In **Argentina**, tax authorities also have some information on beneficial ownership in their database and are able to access information in the company register through a request. In other countries, such as **Norway**, tax agencies maintain a shareholder register that contain information on legal owners, but not on beneficial ownership, although they are able to access beneficial ownership information collected by other authorities or obliged entities.

Nevertheless, in the majority of countries, assessed tax authorities do not have access to a central database or register, although there are no explicit restrictions in place. They can request access to information held by other domestic authorities, or those abroad.

Overall, restrictions on sharing information among authorities do not seem to be significant, at least not formally. Only some countries, such as **Canada**, **Netherlands**, **Saudi Arabia** and **South Korea**, have some restrictions in place in relation to sharing information, even domestically.

Every G20 and guest country scored full points on having mechanisms in place to support the exchange of tax information with international counterparts, but the extent to which these mechanisms work in practice is not analysed in this assessment. Recent work by the Financial Transparency Coalition points to several challenges in these mechanisms. For instance, an analysis of information exchange agreements in place around the globe found that high-income countries usually receive a great share of information, while some of the world's poorest countries do not receive any. None of the world's 31 low-income economies are on the receiving end of any automatic information exchange, and just 21 of the world's 109 middle income economies receive automatic information.<sup>152</sup>

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**Every G20 and guest country scored full points on having mechanisms in place to support the exchange of tax information with international counterparts, but the extent to which these mechanisms work in practice is not analysed in this assessment.**

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# G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

“Countries should address the misuse of legal persons and legal arrangements which may obstruct transparency, including:

- » prohibiting the ongoing use of bearer shares and the creation of new bearer shares, or taking other effective measures to ensure that bearer shares and bearer share warrants are not misused;
- » taking effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused.”

Bearer shares and nominee shareholders are some of the methods used by the corrupt and other criminals to move, hide and launder illicit-acquired assets. Bearer shares are company shares that exist in a certificate form. Whoever is in physical possession of the bearer shares is deemed to be the owner.<sup>153</sup> As the transfer of shares requires only the delivery of the certificate from one person to another, they allow for anonymous transfers of control and pose serious challenges for money laundering investigations.

## G20 SCORES

	2015	2017	Bearer Shares		Nominees		Sum	
			2015	2017	2015	2017	2015	2017
Argentina			100%	100%	100%	100%	100%	100%
Australia			100%	100%	0%	0%	50%	50%
Brazil			100%	100%	100%	100%	100%	100%
Canada			25%	25%	0%	0%	13%	13%
China			0%	0%	0%	0%	0%	0%
France			100%	100%	100%	100%	100%	100%
Germany			0%	50%	0%	50%	0%	50%
India			100%	100%	50%	50%	75%	75%
Indonesia			100%	100%	100%	100%	100%	100%
Italy			50%	50%	100%	100%	75%	75%
Japan			100%	100%	100%	100%	100%	100%
Mexico			100%	100%	25%	50%	63%	75%
Russia			100%	100%	100%	100%	100%	100%
Saudi Arabia			50%	50%	25%	25%	38%	38%
South Africa			100%	100%	50%	0%	75%	50%
South Korea			100%	100%	0%	0%	50%	50%
Turkey			50%	50%	100%	100%	75%	75%
UK			100%	100%	75%	75%	88%	88%
US			100%	100%	0%	0%	50%	50%

## GUEST SCORES

	2017	Bearer Shares		Nominees		Sum	
		2017		2017		2017	
Netherlands		0%		25%		13%	
Norway		100%		100%		100%	
Spain		100%		100%		100%	
Switzerland		25%		50%		38%	



Nominees act as the manager, owner or shareholder of limited companies or assets on behalf of the real manager, owner or shareholder of these entities and often are the only names indicated in paperwork. These nominees obscure the reality of the company's ownership and control structure, and are often used when the beneficial owners do not wish to disclose their identity or role in the company.

Nominee shareholders and directors are not regarded as the legal owners and can be dismissed by the beneficial owner at any time. As such, the nominee is not liable for business activities of the company and is not allowed to sign any commercial contract without the consent of the beneficial owner. They usually sign a private contract with the beneficial owner to ensure the interests of the beneficiary are protected.

Appointing a nominee shareholder or director is legal in many countries, provided they do not engage in criminal activities. However, major data leaks like the Panama or the Paradise Papers<sup>154</sup> showed how companies such as Mossack Fonseca<sup>155</sup> or Appleby<sup>156</sup> provided nominee services that may have helped individuals hide corrupt or criminal assets or evade taxes. Employees of these firms were usually the ones registered as responsible agents of a company or a bank account, while the identity of the real beneficiary remained hidden.

To prevent the misuse of bearer shares, countries should prohibit it or at least adopt measures that allow for the identification of the beneficiary of the shares, such as requiring bearer shares to be converted into registered shares (dematerialisation), or requiring bearer shares to be held with a regulated financial institution or professional intermediary (immobilisation).

In countries where nominee shareholders and/or directors are permitted, only licensed professionals should be allowed to provide such services, and they should be required to keep records of their clients for a certain period. Moreover, nominee shareholders and directors should be obliged to disclose the identity of the beneficial owner who nominated them to the company<sup>157</sup> and to the company register.

## Findings

As in the previous assessment, bearer shares are prohibited in 13 G20 countries: **Argentina, Australia, Brazil, France, India, Indonesia, Japan, Korea, Mexico, Russia, South Africa, the United Kingdom** and the **United States**. Bearer shares are also prohibited in two of the four G20 guest countries analysed, **Norway** and **Spain**.

While the number of countries that allow shares to be issued in bearer form has not changed since the 2015 assessment, some countries adopted new rules to regulate the issuance of bearer shares. In **Germany**, for example, Amendments to the Stock Corporation Act (Aktiengesetz -AktG) that entered into force in December 2015 provide that bearer shares can only be issued if: (i) shares of are publicly listed; or (ii) the shares are immobilised (that is, they need to be held with a regulated financial institution or professional intermediary). These amendments constitute an important step towards increasing the transparency of German legal persons and preventing money laundering. However, key loopholes remain; existing companies that

have issued bearer shares prior to the amendment of the law are not affected by the new regime and may still have bearer shares, even if they do not fulfil conditions described above.

Safeguards to avoid the misuse of bearer shares are also in place in **Italy, Saudi Arabia, Switzerland** and **Turkey**, and to a certain extent in **Canada**.

In **Canada**, bearer shares are permitted in most provinces and at the federal level. Bearer shares also do not need to be converted into registered shares or held with a regulated financial institution or professional intermediary. However, financial institution clients that can issue bearer shares are meant to undergo enhanced due diligence and reasonable measures should be taken to mitigate the risks, including (for example) requiring the immobilisation of shares and requiring corporations to replace bearer shares with shares in registered form.

**China** and the **Netherlands** allow bearer shares and do not have any safeguard in place. In **China**, joint stock companies have been permitted to issue shares in bearer form since 1992. There are no requirements that these should be converted into registered shares or be held by a regulated financial institution or professional intermediary. Likewise, companies do not need to record the identity of the owner of the bearer share, but only the amount, serial numbers and date of issue of the stock certificate. This constitutes a major loophole in China's anti-money laundering framework. In the **Netherlands**, the use of bearer shares for public limited liability companies is still allowed. A bill banning the use of bearer shares is currently under discussion in the Dutch Parliament.<sup>158</sup>

The landscape relating to the use of nominees remains concerning.

Eight G20 countries (**Australia, Canada, China, Korea, Mexico, South Africa**,<sup>159</sup> **Saudi Arabia** and the **United States**) allow nominee shareholders without requiring them to disclose beneficial ownership information. Of the G20 guest countries analysed, the **Netherlands** also allows nominee shareholders without any requirement for them to disclose they hold shares on behalf of a third person, but professional nominees need to be licensed and to keep records of their clients.

Only in **India** and in the **United Kingdom**, and more recently in **Germany**, are nominee shareholders required to disclose the identity of the beneficial owner. This is also the case in the G20 guest country **Switzerland**, where nominee shareholders need to disclose their position to the company (but not to the public).

**Argentina, Brazil, France, Indonesia, Italy, Japan, Norway, Spain, Russia** and **Turkey** do not allow the use of nominee shareholders or directors; therefore, registered legal owners are understood to be the actual owners and beneficiaries of a company.

In some of these countries, representation through a third party with powers granted by power of attorney is possible, but in this case the nominee cannot substitute the real owner for the purposes of registration (for example) but will only perform certain actions on the owner's behalf. Nevertheless, the use of a front man in contravention to the law is still possible, and remains a reality in many of these countries. It is important that countries ensure company formation data is verified upon registration.



## FOREIGN COMPANIES: A LOOPHOLE IN THE BENEFICIAL OWNERSHIP TRANSPARENCY FRAMEWORK?

Last year, Transparency International conducted an analysis of the availability of ownership information related to foreign investments in Brazil, France and the United Kingdom.<sup>160</sup> While there have been some improvements in the past years, there is still very limited publicly available information on the real people behind foreign company investments.

Foreign investment in a country can take place in many different ways. A foreign company may sell a product, bid for public procurement, invest in real estate or in domestic companies, open accounts, or even participate in art auctions.

Countries have different rules and requirements on what information a foreign company needs to disclose to make an investment. For some (but not necessarily all) of the activities mentioned above, foreign companies already have to adhere to various requirements, including:

- entering contractual engagements with a local representative to distribute, market and/or sell the foreign company's products
- establishing a representative/liaison office
- registering an establishment or branch office
- registering a separate legal entity (subsidiary or affiliated company)
- registering with the tax agency, the Central Bank, the Ministry of Economy and others

This, however, does not necessarily mean that information on the beneficial owner or even shareholders of these companies is collected. Very often, foreign companies only need to provide the name of a manager or representative in the country, and there is no record whatsoever of who the beneficial or legal owners are. If needed, this information is to be collected with authorities where the company was incorporated. This could be a challenge if, for example, incorporation happened in a tax haven.

Public procurement and real estate purchases are two common investments by foreign companies that are often possible with limited ownership information publicly available. Some countries have taken steps to improve the situation.

### Public procurement

In Brazil, to participate in public procurement, foreign companies must be legally established or represented in Brazil, either by establishing a branch or by registering a separate legal entity. Even for international processes concerning works outside of Brazil and payment in foreign currencies, companies need to establish a legal representation in the country or enter a joint-venture with a Brazilian firm. For that, foreign companies will need to register with the Brazilian Federal Tax Agency and with subnational company registers. The tax agency maintains a database with ownership information and, since 2017, the disclosure of the beneficial owner has been a requirement to new foreign companies registering. Before that, foreign companies were only obliged to provide the name of a manager representing them in the country. The database is now publicly available, but it does not seem to include beneficial ownership information. It remains to be seen if, once companies have provided this information, it will be systematically made available online. Information on foreign companies available through the subnational trade boards do not include the names of individuals controlling them, but only of legal representative in the country.

In France, following a decision of the French Administrative Supreme Court ("Conseil d'Etat"), a public procurement can require the bidder to establish a local subsidiary as long as such a requirement is justified by the object of the contract or its execution. If this is the case, beneficial ownership information will need to be disclosed (as per the transposition of the fourth EU AMLD), but this information is not available to the public. If the establishment of a local subsidiary is not justifiable, there are no special registering requirements for foreign companies and authorities will need to rely on the ownership information collected in the country of incorporation of the company. Nevertheless, during the anti-corruption summit held in London in May 2016, France committed to ensuring transparency of the ownership and control of all companies involved in public contracting and to fostering transparency on public procurement contracts.



In the United Kingdom, in 2016, there were over 17,000 officially published tenders worth a total of £301 billion. During this period, the top six suppliers to the United Kingdom public sector by award value were all foreign-owned.<sup>161</sup> Despite this, access to information on foreign entities operating in the United Kingdom is entirely dependent on the jurisdiction in which they are incorporated. The United Kingdom government launched a public consultation in 2016 to explore whether a beneficial ownership register of overseas companies that own United Kingdom property or participate in United Kingdom public procurement.<sup>161</sup> In response to the consultation, the government has committed to publish a draft bill in 2018 for the establishment of a public register of beneficial ownership of overseas legal entities. It will require them to provide beneficial ownership information when they own or purchase property in the United Kingdom or are participating in central government contracts.<sup>162</sup> According to the consultation, the United Kingdom public procurement regime for foreign companies would only apply to future contracts valued over £10 million.

### Real estate

In Brazil, foreign companies may purchase real estate properties without having to register with the company register. Beneficial ownership is also not collected and consequently not recorded in the land register. Foreign companies are however required to register with tax authorities. Until 2017, they only had to provide the name of a manager in Brazil; no other information on ownership was required. As of 2017, a new rule adopted by the Tax Agency requires beneficial ownership information to be disclosed, but this information is not yet publicly available (as discussed above).

Foreign companies may also own real estate through Brazilian companies. For example, research conducted by Transparency International Brazil (TI Brazil) into real estate ownership in São Paulo<sup>163</sup> (Does Corruption Live Next Door?) shows that 3,452 properties were found to be registered in the name of 236 companies controlled by or linked to others incorporated in tax havens and secrecy jurisdictions. The properties are worth more than US\$2.7 billion. The analysis cross-checked the data published by the city of São Paulo containing information on natural and legal taxpayers of property tax in the city against data on legal entities registered with the São Paulo company register (Junta Comercial). As such, the direct owners

of these properties identified are Brazilian companies. However, the research found that these companies have other legal entities as shareholders incorporated in places such as British Virgin Islands, the US state of Delaware, Uruguay and Panama, making it impossible to know who the individuals behind them are. The number of properties owned or controlled by offshore companies is likely to be higher because foreign companies do not necessarily need to register with the company register to purchase property in Brazil.

In France, there is no central register for property and land. Ownership is registered by the local “service de la publicité foncière” and available on request. As for any other investment, foreign investors have to make a statistical declaration to the Ministry of Economy, including information about the ultimate beneficial holders of the foreign investor, whenever the investment exceeds €1.5 million. This information is not publicly available. Furthermore, France levies a wealth tax on real estate ownership that requires the declaration of beneficial ownership to tax authorities. This information is also not available to the public.<sup>164</sup>

Foreign companies wishing to purchase property in the United Kingdom do not need to provide information on their beneficial owners to do so. Recent corruption scandals have raised flags regarding the role of the United Kingdom’s property market in money laundering. To address this and to unveil the real owners of around 85,000 United Kingdom properties purchased using anonymous companies, the United Kingdom Government committed to establishing a beneficial ownership register of foreign companies owning property in the United Kingdom. However, the United Kingdom will not put forward primary legislation on introducing a public register until at least summer 2019. The register will probably be operational only by 2021.

### The solution

A good register of beneficial ownership should include foreign owners of all domestic companies, including those behind foreign legal entities owning shares. Foreign companies wishing to invest in a country – such as in real estate property or public procurement – should be obliged to register and provide beneficial ownership information. This information should be verified by authorities and made publicly available in open data format.



# SUMMARY OF SCORES

	<i>Principle 1: beneficial ownership definition</i>	<i>Principle 2: identifying and mitigating risk</i>	<i>Principle 3: acquiring accurate beneficial ownership information</i>	<i>Principle 4: access to beneficial ownership information</i>	<i>Principle 5: beneficial ownership of trusts</i>	<i>Principle 6: access to beneficial ownership of trusts</i>	<i>Principle 7: duties of businesses and professions</i>	<i>Principle 8: domestic and international cooperation</i>	<i>Principle 9: beneficial ownership information and tax evasion</i>	<i>Principle 10: bearer shares and nominees</i>
Argentina	100%	0%	50%	68%	100%	42%	77%	63%	83%	100%
Australia	100%	0%	13%	14%	25%	50%	26%	63%	75%	50%
Brazil	100%	0%	75%	54%	25%	42%	69%	46%	100%	100%
Canada	25%	80%	0%	18%	50%	33%	24%	71%	58%	13%
China	100%	100%	0%	29%	25%	33%	40%	63%	75%	0%
France	100%	80%	100%	64%	75%	83%	93%	63%	100%	100%
Germany	100%	0%	88%	75%	75%	83%	76%	71%	100%	50%
India	100%	0%	75%	57%	25%	25%	65%	38%	75%	75%
Indonesia	100%	60%	38%	18%	25%	33%	67%	71%	75%	100%
Italy	100%	90%	100%	61%	75%	83%	86%	71%	100%	75%
Japan	100%	100%	38%	11%	25%	33%	71%	71%	75%	100%
Mexico	100%	100%	25%	18%	100%	50%	81%	79%	75%	75%
Russia	100%	80%	38%	21%	25%	33%	60%	71%	75%	100%
Saudi Arabia	100%	0%	13%	18%	50%	50%	76%	46%	42%	38%
South Africa	100%	0%	25%	11%	25%	50%	67%	75%	75%	50%
South Korea	50%	50%	13%	11%	25%	33%	24%	63%	58%	50%
Turkey	100%	0%	38%	11%	25%	33%	57%	63%	75%	75%
UK	100%	100%	100%	82%	88%	100%	93%	83%	100%	88%
US	25%	80%	0%	18%	25%	42%	29%	71%	75%	50%
Netherlands	100%	100%	13%	18%	25%	33%	83%	54%	42%	13%
Norway	100%	100%	38%	18%	25%	50%	76%	79%	75%	100%
Spain	100%	60%	75%	71%	100%	33%	90%	88%	100%	100%
Switzerland	100%	80%	100%	21%	50%	33%	55%	79%	75%	38%





# CONCLUSION

**Nine countries have moved up at least one category in the overall assessment of their beneficial ownership legal framework since 2015, with Brazil moving up two. Only two countries still have a “weak” overall framework, down from six in 2015. Certainly, there are improvements, with three G20 countries and guest country Spain sitting in the “very strong” category, which had only been occupied by the United Kingdom in 2015.**

There remain, however, some major areas of weaknesses across most countries. This is especially the case regarding actually requiring companies to collect beneficial ownership information, ensure it is accurate and up to date and make it available to competent authorities and entities that have due diligence obligations and need to see the data. Unfortunately, in nine G20 countries, financial institutions can still proceed with a transaction even if they can't identify the beneficial owner, which can only incentivise the use of secrecy jurisdictions by criminals and the corrupt to slow down and impede the work of those conducting due diligence.

It cannot go unnoticed that countries with the strongest improvement have been required to make changes because of regional requirements (for example, through the fourth EU AMLD) or because of domestic drivers (in the case of Brazil), and not seemingly because of membership of the G20. All four guest countries scored comparatively well against G20 countries, despite not being accountable to the G20 Principles as non G20 members. As it considers its next G20 Anti-Corruption Action Plan during the Argentinian presidency, the G20 should take the opportunity to decide what measures it will put in place to monitor and require implementation of commitments.

The preamble to the G20 Beneficial Ownership Principles states that “the G20 considers financial transparency, in particular the transparency of beneficial ownership of legal persons and arrangements, is a high priority.”<sup>166</sup> It continues to say that adopting those principles shows “the G20 is committed to leading by example”. Sadly, unless progress dramatically improves in the near future, the G20 will be left leading from behind, if at all.



# ANNEX 1: COUNTRY OVERVIEW

**Argentina** has not conducted a money laundering risk assessment for more than three years, despite a commitment in 2014 to conduct one every two years. While Argentina requires companies to provide beneficial ownership information upon registration at the providence level, submission of the information to the National Register of Companies depends on the adoption of further regulations by each province, which has delayed the implementation of the national register and consequently the availability of beneficial ownership information.

**Australia** is the only country where financial institutions' directors and senior managers cannot be held personally responsible for non-compliance with the anti-money laundering rules. Australia is particularly weak on regulation of DNFPBs, with no legal provision requiring lawyers, accountants, the luxury goods sector or real estate agents to identify the beneficial owners of their clients and still permit nominee directors and shareholders to operate without disclosing on whose behalf they are working.

**Brazil** has seen the largest improvement across all G20 countries, having closed a number of loopholes since 2015, where it was assessed to have a weak legal framework. It is the only non-European Union country to have established a central beneficial ownership register maintained by tax authorities, and it should be fully implemented by the end of 2018. The register is open to the public; it remains to be seen if and what information on beneficial owners will be available once companies fulfil reporting duties.

**Canada** remains one of only two assessed countries still to have a weak legal framework with average, weak or very weak scores across 8 of the 10 G20 Principles. Its federal structure means that requirements across provinces are patchy, and some company registers do not even require information on shareholders. Lawyers, accountants and real estate agents are not required to identify the beneficial owner of clients, and the financial institutions can proceed with transactions even without beneficial ownership information. The country wins points for having conducted a recent money laundering risk assessment, but implementation of mechanisms to mitigate the identified risk is limited.

**China** still permits bearer shares and has no safeguards in place to protect them from being used for money laundering. China also permits nominee directors and shareholders and does not require lawyers, accountants or real estate agents to identify the beneficial owners of clients. In 2017, China adopted new rules on client identification, including beneficial owner identification, requiring information to be independently verified in cases considered of high risk. China scored points for having conducted a recent money laundering risk assessment that consulted external stakeholders.

**France** has adopted a central beneficial ownership register since our last assessment, and moves up one category as a result. Unfortunately, competent authorities cannot access the register automatically. France requires DNFPBs to undertake some level of

independent verification of the beneficial ownership information provided by their clients. France also provides access to competent authorities to a trusts register containing beneficial ownership information.

**Germany** has adopted new rules on customer due diligence and money laundering in the financial sector since the 2015 assessment and has established a central beneficial ownership register (transparency register), to which individuals who can prove "legitimate interest" can gain access. Companies, however, only need to declare their beneficial owners to the transparency register if the information is not available in the commercial register, raising doubts regarding implementation. Financial institutions can still, however, proceed with transactions where they cannot identify the beneficial owner.

**India** has not conducted a risk assessment for more than three years, and has severe weaknesses in its obligations on DNFPBs. India is one of only three countries to require nominee shareholders to disclose the identity of their beneficial owner, and requires financial institutions to use independent sources to verify beneficial ownership information in high risk cases.

**Indonesia** adopted new rules requiring lawyers to identify their beneficial owners since our last assessment. In March 2018, new rules requiring companies to collect and report beneficial ownership information to an authorised agency. Companies that are already registered have one year to comply with the law. The new law also establishes the "know your beneficial owner" rules, requiring companies to verify the identity of the beneficial owners. Given the law was adopted when this publication was being finalised, the findings and scores do not reflect these changes. However, these rules would likely improve the country's performance under Principles 3 and 4.

**Italy** has improved its score through its efforts to transpose the European Union directive into domestic law, requiring legal entities to maintain accurate information and establishing a central register. Notaries are involved in the registration process, conducting some level of verification.

**Japan** has conducted a recent money laundering risk assessment and requires financial institutions to use independent sources to verify the beneficial owner in high risk cases but their requirements on lawyers, accountants and casinos are weak. Japan scores particularly badly on collecting and providing access to beneficial ownership information. Their shareholders'/members' register includes information on legal ownership, and does not necessarily include information on natural persons.

**Mexico** requires financial institutions to use independent sources to verify beneficial ownership information of their customers in high-risk cases. However, competent authorities have limited access to beneficial information, as companies are neither obliged to maintain this information nor to report it upon incorporation. Access to information by authorities would be vastly facilitated if beneficial ownership information were to be collected in one central location and made available.



**Russia** has undertaken an anti-money laundering assessment but has not published the results, which means it is hard to know whether measures have been put in place to mitigate identified weaknesses. Russia scores poorly on collecting and providing access to beneficial ownership information. New rules have been adopted since 2015 on due diligence conducted by financial institutions on their customers, but they can still proceed with transactions, even if they cannot identify the natural person controlling their client, as can TCSPs.

**Saudi Arabia** has still to conduct an anti-money laundering risk assessment and scores extremely poorly on collecting and making any beneficial ownership information available. Nominee directors and shareholders are allowed to operate without disclosing on whose behalf they are working. Saudi Arabian trustees of foreign trusts are required to identify the client under the anti-money laundering law, but no clear guidance is provided on what information should be obtained by the trustee to satisfy this requirement.

**South Africa** has passed legislation since our 2015 assessment. It now has a strong legal definition of beneficial ownership, extends sanctions to directors and senior managers, and requires financial institutions to identify the beneficial owners of customers. Weaknesses remain in obligations imposed on lawyers, despite anti-money laundering rules having been extended to cover lawyers since 2015. Nominee directors and shareholders are still permitted. South Africa has not conducted a money laundering risk assessment for more than three years. Beneficial ownership information for trusts is not collected.

**South Korea** is one of just two countries identified to have weak beneficial ownership legal frameworks. Despite revisions in December 2015, South Korea still lacks a good legal definition for beneficial ownership, and this could have repercussions for implementing strong money laundering controls. South Korea does not collect or make beneficial ownership information available from companies; it is one of four countries where DNFPBs are not required to identify the beneficial owner of clients. Financial institutions can still proceed with transactions without identifying the beneficial owner of their clients.

**Turkey** has still not conducted a money laundering risk assessment, and still does not centrally collect beneficial ownership information. Some new rules have been adopted requiring the financial sector to conduct better due diligence, but there are still no requirements to identify whether the customer, or its beneficial owner is a politically exposed person requiring enhanced checks. Financial institutions can still proceed with transactions regardless of having beneficial ownership information.

The **United Kingdom** scores well across all G20 Principles. Its central, public beneficial ownership register (the “Persons of Significant Control Register”) has been operational since June 2016, allowing immediate access to beneficial ownership information of companies incorporated in the United Kingdom. Sanctions are in place for incorrect information, but no independent verification is undertaken by the register authority. Nominees must disclose on whose behalf they are working; financial institutions are required to verify the beneficial owners of clients in high-risk cases. However, evidence continues to come to light

showing that the United Kingdom’s Overseas Territories and Crown Dependencies operate very different legal systems that are permitting corruption and money laundering to take place. The United Kingdom should accelerate plans to adopt a property register containing beneficial ownership information of foreign companies owning property in the United Kingdom and bring the Overseas Territories and Crown Dependencies in line with United Kingdom transparency standards.

The **United States** still has a weak legal definition of beneficial ownership. Improvements have been made since the 2015 assessment, and financial institutions now are subject to stronger requirements to identify the beneficial owners of clients. The United States is one of four countries that still does not require DNFPBs to identify the beneficial owners of clients, and one of eight G20 countries that allows nominee directors and shareholders to operate without disclosing on whose behalf they are working.

## G20 Guest Countries

The **Netherlands** scores “very weak” across four of the 10 G20 Beneficial Ownership Principles, and performs least well of the four guest countries. Only legal ownership information is included in companies’ individual registers; this can include a nominee or another company, making it very difficult to actually identify the beneficial owner. The Netherlands does not require foreign trusts that operate in the country to maintain information on all parties to the trust. Under the fourth EU AMLD, the Netherlands should move towards registering trusts, but there appear to be no plans to do so. The Netherlands should ban bearer shares and the use of nominees.

**Norway** scores relatively well across most principles, aside from on acquiring and providing access to beneficial ownership information. Norway removed requirements on dealers in precious metals and stones to identify the beneficial owners of clients in 2017, limiting these measures to transactions via cash payments only.

**Spain** has a central beneficial ownership register open to competent authorities and in line with European Union regulations; it has a strong legal framework in place overall. In suspicious cases, beneficial ownership information may be verified by notaries (one of just three countries to do so). Banks are also required to provide information on account holders, including beneficial ownership information to the supervisory body. Spain does not, however, have a trust register, which is required to comply with the fourth EU AMLD.

**Switzerland** requires legal entities to maintain accurate and up-to-date information on their beneficial owners. They also require financial institutions to identify the beneficial owners of their clients, but it is the only country that does not require financial institutions to verify that information with a valid ID, for example. Real estate agents are only required to conduct due diligence and identify the beneficial owner if they accept more than 100,000 CHF in cash in the course of a commercial transaction. Bearer shares are still allowed, although safeguards have been in place since 2015.



## ANNEX 2: METHODOLOGY

To monitor the extent to which G20 members are fulfilling their commitments and the adequacy of their beneficial ownership transparency framework, in 2015 Transparency International developed an assessment framework looking at the level of compliance of countries with each of the 10 beneficial ownership principles. The assessment sheds light on how strong the current beneficial ownership transparency system is within a country, and which parts of the system should be strengthened, based on Transparency International's *Technical Guide on Implementing the G20 Beneficial Ownership Principles*.<sup>167</sup>

The 2017 assessment uses the same methodology developed in 2015, with a few modifications (as highlighted below). In addition to assessing G20 countries, this assessment also covers four G20 guest countries: **Netherlands, Norway, Spain and Switzerland**.

The European Union, a G20 member, was not included in the 2017 assessment because negotiations of the fifth EU AMLD were concluded at the time of writing.

### Data collection and verification

All data for the questionnaire was collected by desk research conducted between July and December 2017 by pro bono lawyers or Transparency International national chapters. The sources consulted included relevant domestic laws, rules and regulations, as well as available reports and assessments produced by international and non-governmental organisations. Data for each question was recorded and the exact sources documented. The research was based on the latest available documentation. In countries where recent legislation has been adopted but not yet implemented, the researcher answered the questions by considering the new legal framework.

Additional questions aimed at better understanding the context in these countries were also asked but they were not scored.

In countries with federal systems, where answers could differ across federal units, the responses refer to the state/province where the largest numbers of legal entities are currently incorporated.

All collected data was peer-reviewed by in-country experts and/or pro bono lawyers. The data was also verified and checked for consistency by the Transparency International secretariat.

Draft questionnaires were shared with government officials from all G20 countries and G20 guest countries for comments. Officials were given the opportunity to review the data and to provide feedback or propose corrections. Eighteen (18) government authorities provided feedback to the questionnaires, from **Argentina, Australia, Brazil, Canada, China, France, Germany, Indonesia, Japan, Mexico, Netherlands, Norway, Saudi Arabia, Spain, South Africa, South Korea, Switzerland** and the **United States**.

### Questionnaire structure and scoring

Questions were designed to capture and measure the necessary components that should be in place for a G20 member to be implementing each of the 10 G20 principles to best effect. The number of questions per principle, and thus the total number of points available per principle, varied depending on the complexity and number of issues covered in the original principle. Within this framework, the total number of possible points under each principle also varied.

We used a four-point scoring scale. The model answers pertaining to each are specific to each question, but the principles underlying each score were, generally, as follows:

4	The country's legal framework is fully in line with the principle.
3	The country's legal framework is generally in line with the principle, but with shortcomings.
2	There are some areas in which the country is in line with the principle, but significant shortcomings remain.
1	The country's legal framework is not in line with the principle, apart from some minor areas.
0	The country's legal framework is not at all in line with the principle.

For each principle, the scores were averaged across questions and transformed into percentages that were converted into grades from "very weak" to "very strong". Each country received a score per principle. Finally, countries were also grouped according to the overall adequacy of their beneficial ownership transparency framework, based on a simple averaging of their scores across all G20 principles. The bands and grades were defined as follows:

	Scores between 81% and 100%	Very strong
	Scores between 61% and 80%	Strong
	Scores between 41% and 60%	Average
	Scores between 21% and 40%	Weak
	Scores between 0% and 20%	Very weak



## Changes to the questionnaire

Some adjustments in the methodology were made for the 2017 assessment. In particular, changes were made to some of the possible answers to questions under Principle 3 (Question 10), Principle 4 (Questions 16 and 18), Principle 5 (Questions 19 and 20) and Principle 6 (Question 21) to better reflect the guidance provided under these principles and emphasise the importance of access to beneficial ownership information. As a result of these changes, the performance of some countries under these specific principles may have got worse in comparison to the 2015 assessment. This does not mean that changes to the legal framework had a negative impact on beneficial ownership transparency; rather, some features of the legal framework were no longer considered under the scoring criteria for that question. The following changes were made:

- We updated Question 10 to include an intermediary score in cases where there is a requirement for shareholders to inform the company about changes in share ownership but not for beneficial owners.
- We updated Question 16 to include among the possible answers that access to beneficial ownership by individuals and organisation with “legitimate interest” is possible.
- We modified Question 18 so that possible answers reflected the intention of the questions, that is to cover beneficial ownership, shareholders AND directors (and not OR).
- Under Principles 5 and 6, we added a clarification to ensure that trustees collect information on the natural persons that are parties to the trust. This clarification affected Questions 19 and 20 and the respective scoring criteria, which now looks strictly at whether beneficial ownership information about trusts is maintained by trustees (Question 19) or registered with authorities (Question 20), in addition to information about all parties to the trust.
- We updated Question 20 to include the possibility that a country might score four points if trustees of foreign trusts are required to proactively disclose beneficial ownership to financial institutions and DNFBPs, and that a country might score two points if this information needs to be collected by obliged entities but not proactively disclosed.

## Limitations

It is important to note that this research focuses specifically on assessing the legal framework related to beneficial ownership transparency. It is thus beyond its scope to analyse how laws and regulations are implemented and enforced in practice. However, such research would be an important follow-up to this assessment.

Transparency International has not undertaken to verify whether the information disclosed on government websites or in reports is complete or accurate. This assessment focuses on what we consider to be the key issues necessary to implement the G20 principles and to ensure an adequate beneficial ownership transparency framework. There may be other relevant issues that are not covered by this assessment.

Finally, we have not weighted the principles. We are aware that some principles are more complex than others; however, we do not take a position within this report on whether some are more important than others. Therefore, the overall scoring is a general analysis of how countries are performing across all the principles.



# ANNEX 3: QUESTIONNAIRE & SCORING CRITERIA

Set out below are the questions that were asked, guidance on what we were looking to be in place and the number of points awarded for each type of response.

PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION
<p>Guidance: The beneficial owner should always be a natural (physical) person and never another legal entity. The beneficial owner(s) is the person who ultimately exercises control through legal ownership or through other means.</p> <p><b>Q1: To what extent does the law in your country clearly define beneficial ownership?</b></p> <p><b>Scoring criteria:</b></p> <p>4: Beneficial owner is defined as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means, in addition to legal ownership.</p> <p>1: Beneficial owner is defined as a natural person [who owns a certain percentage of shares] but there is no mention of whether control is exercised directly or indirectly, or if control is limited to a percentage of share ownership.</p> <p>0: There is no definition of beneficial ownership or the control element is not included.</p>
PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK
<p>Guidance: Countries should conduct assessments of cases in which domestic and foreign corporate vehicles are being used for criminal purposes within their jurisdictions to determine typologies that indicate higher risks. Relevant authorities and external stakeholders, including financial institutions, DNFBPs, and non-governmental organisations, should be consulted during the risk assessments and the results published. The results of the assessment should also be used to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies.</p> <p><b>Q2: Has the government during the last three years conducted an assessment of the money laundering risks related to legal persons and arrangements?</b></p> <p>4: Yes</p> <p>0: No</p>
<p><b>Q3: Were external stakeholders (e.g. financial institutions, designated non-financial businesses or professions (DNFBPs), non-governmental organisations) consulted during the assessment?</b></p> <p>4: Yes, external stakeholders were consulted.</p> <p>0: No, external stakeholders were not consulted or the risk assessment has not been conducted.</p>
<p><b>Q4: Were the results of the risk assessment communicated to financial institutions and relevant DNFBPs?</b></p> <p>4: Yes, financial institutions and DNFBPs received information regarding high-risks areas and other findings of the assessment.</p> <p>0: No, the results have not been communicated.</p>
<p><b>Q5: Has the final risk assessment been published?</b></p> <p>4: Yes, the final risk assessment is available to the public.</p> <p>2: Only an executive summary of the risk assessment has been published.</p> <p>0: No, the risk assessment has not been published or conducted.</p>
<p><b>Q6: Did the risk assessment identify specific sectors / areas as high-risk, requiring enhanced due diligence?</b></p> <p>4: Yes, the risk assessment identifies areas considered as high-risk where additional measures should be taken to prevent money laundering.</p> <p>0: No, the risk assessment does not identify high-risk sectors / areas.</p>
PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION
<p>Guidance: Legal entities should be required to maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction in which they were incorporated. Companies should be able to request information from shareholders to ensure that the information held is accurate and up-to-date, and shareholders should be required to inform changes to beneficial ownership.</p> <p><b>Q7: Are legal entities required to maintain beneficial ownership information?</b></p> <p>4: Yes, legal entities are required to maintain information on all natural persons who exercise ownership of control of the legal entity.</p> <p>0: There is no requirement to hold beneficial ownership information, or the law does not make any distinction between legal ownership and control.</p>



**Q8: Does the law require that information on beneficial ownership has to be maintained within the country of incorporation of the legal entity?**

4: Yes, the law establishes that the information needs to be maintained within the country of incorporation regardless whether the legal entity has or not physical presence in the country.

0: There is no requirement to hold beneficial ownership information in the country of incorporation or there is no requirement to hold beneficial ownership information at all.

**Q9: Does the law require shareholders to declare to the company if they own shares on behalf of a third person?**

4: Yes, shareholders need to declare if control is exercised by a third person or nominee shareholders are not allowed.

2: Only in certain cases do shareholders need to declare if control is exercised by a third person.

0: No, there is no such requirement.

**Q10: Does the law require beneficial owners / shareholders to inform the company regarding changes in share ownership?**

4: Yes, there is a requirement for beneficial owners / shareholders to inform the company regarding changes in share ownership.

2: While there is a requirement for shareholders to inform the company regarding changes in share ownership, there is no such requirement for beneficial owners.

0: No, there is no requirement for beneficial owners or shareholder to inform the company regarding changes in share ownership.

**PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION**

Guidance: All relevant competent authorities, including all bodies responsible for anti-money laundering, control of corruption and tax evasion / avoidance, should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Countries should establish a central (unified) beneficial ownership register that is freely accessible to the public. At a minimum, beneficial ownership registers should be open to competent authorities, financial institutions and DNFBPs.

Beneficial ownership registers should have the mandate and resources to collect, verify and maintain information on beneficial ownership. Information in the register should be up-to-date and the register should contain the name of the beneficial owner(s), date of birth, address, nationality and a description of how control is exercised.

**Q11: Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, etc.) are allowed to have access to beneficial ownership information?**

4: Yes, the law specifies that all law enforcement bodies, tax agencies and the financial intelligence unit should have access to beneficial ownership information

2: Only some competent authorities are explicitly mentioned in the law.

1: The law does not specify which authorities should have access to beneficial ownership information.

0: No, the law does not specify it.

**Q13: Which information sources are competent authorities allowed to access for beneficial ownership information?**

4: Information is available through a central beneficial ownership register/company register.

3: Information is available through decentralised beneficial ownership registers/ company registers.

1: Authorities have access to information maintained by legal entities / or information recorded by tax agencies/ or information obtained by financial institutions and DNFBPs.

0: Information on beneficial ownership is not available.

**Q14: Does the law specify a timeframe (e.g. 24 hours) within which competent authorities can gain access to beneficial ownership?**

4: Yes, immediately /24 hours.

3: 15 days.

2: 30 days or in a timely manner.

1: Longer period.

0: No specification.

**Q15: What information on beneficial ownership is recorded in the central company register?**

In countries where there are sub-national registers, please respond to the question using the state/province register that contains the largest number of incorporated companies.

4: All relevant information is recorded: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

2: Information is partially recorded.

1: Only the name of the beneficial owner is recorded.

0: No information is recorded.



**Q16. What information on beneficial ownership is made available to the public?**

4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

2: Information is partially published online, but some data is omitted (e.g. tax number).

1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically. Or only individuals and organisation with "legitimate interest" can access it.

0: No information is published.

**Q17: Does the law mandate the register authority to verify the beneficial ownership information or other relevant information such as shareholders / directors submitted by legal entities against independent and reliable sources (e.g. other government databases, use of software, on-site inspections, among others)?**

4: Yes, the register authority is obliged to conduct independent verification of the information provided by legal entities regarding ownership of control.

2: Only in suspicious cases.

0: No, the information is registered as declared by the legal entity.

**Q18. Does the law require legal entities to update information on beneficial ownership, shareholders and directors provided in the company register?**

4: Yes, legal entities are required by law to update information on beneficial ownership and information relevant to identifying the beneficial owner (directors/ shareholders) immediately or within 24 hours after the change.

3: Yes, legal entities are required to update the information on beneficial ownership and directors / shareholders within 30 days after the change.

2: Yes, legal entities are required to update the information on the beneficial owner and directors/ shareholders on an annual basis.

1: Yes, but the law does not specify a specific timeframe.

0: No, the law does not require legal entities to update the information on control and ownership.

**PRINCIPLE 5: TRUSTS**

Guidance: Trustees should be required to collect information on the natural persons who are the beneficiaries and settlors of the trusts they administer. In countries where domestic trusts are not allowed but the administration of trusts is possible, trustees should be required to proactively disclose beneficial ownership information when forming business relationships with financial institutions and DNFBPs.

**Q19 Does the law require trustees to hold beneficial information about the parties to the trust, including information on settlors, the protector, trustees and beneficiaries?**

4: Yes, the law requires trustees to maintain all relevant information about the parties to the trust, including on settlors, the protector, trustees and beneficiaries, including on beneficial owners.

2: Yes, but the law does not require that the information maintained should cover all parties to the trust (e.g. settlors are not covered).

1: Yes, but only professional trusts are covered by the law.

0: Trustees are not required by law to maintain information on the parties to the trust.

**Q20. In the case of foreign trusts, are trustees required to proactively disclose to financial institutions / DNFBPs or others information about the parties to the trust?**

4: Yes, the law requires trustees to disclose information about the parties to the trust, including about settlors, the protector, trustees and beneficiaries.

2: No, but financial institutions and/or DNFBPs are required to collect beneficial ownership information on all parties to the trust that are customers.

0: Trustees are not required by disclose information on the parties to the trust.

**PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO TRUST INFORMATION**

Guidance: Trustees should be required to share with legal authorities all information deemed relevant to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs. Countries should create registers to capture information about trusts, including beneficial ownership information, such as trust registers or asset registers, to be consulted by competent authorities exclusively or open to financial institutions and DNFBPs and / or the public.

**Q21 Is there a register which collects information on trusts?**

4: Yes, information on trusts, including beneficial ownership information, is maintained in a register.

2: Yes, there is a register which collects information on trusts but registration is not mandatory or information registered is not sufficiently complete to make it possible to identify the real beneficial owner.

0: No, there is no register.



**Q22. Does the law allow competent authorities to request / access information on trusts held by trustees, financial institutions, or DNFBPs?**

4: Yes, competent authorities are able to access beneficial ownership information held by trustees and financial institutions, or access information collected in the register.

2: Competent authorities have to request information or only have access to information collected by financial institutions.

0: No.

**Q23. Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, etc.) should have timely access to beneficial ownership information held by trustees?**

4: Yes.

2: Some authorities.

0: No.

**PRINCIPLE 7: DUTIES OF BUSINESSES AND PROFESSIONS**

Guidance: Financial institutions and DNFBPs should be required by law to identify the beneficial owner of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as trust or company service providers (TCSPs) when they provide services to legal entities. The list should be expanded to include other business and professions according to identified money laundering risks. In high-risk cases, financial institutions and DNFBPs should be required to verify – that is, to conduct an independent evaluation of – the beneficial ownership information provided by the customer.

Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer is a politically exposed person (PEP) or a close associate of a PEP. The failure to identify the beneficial owner should inhibit the continuation of the business transaction and / or require the submission of a suspicious transaction report to the oversight body. Moreover, administrative, civil and criminal sanctions for non-compliance should be applicable for financial institutions and DNFBPs, as well as for their senior management. Finally, they should have access to beneficial ownership information collected by the government.

**FINANCIAL INSTITUTIONS****Q24. Does the law require that financial institutions have procedures for identifying the beneficial owner(s) when establishing a business relationship with a client?**

4: Yes, financial institutions are always required to identify the beneficial owners of their clients when establishing a business relationship.

2: Financial institutions are required to identify the beneficial owners only in cases considered as high-risk or the requirement does not cover the identification of the beneficial owners of both natural and legal customers.

0: No, there is no requirement to identify the beneficial owners.

**Q25: Does the law require financial institutions to also verify the identity of beneficial owners identified?**

4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.

0: No, there is no requirement to verify the identity of the beneficial owner.

**Q26: In what cases does the law require financial institutions to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?**

4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).

0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

**Q27 Does the law require financial institutions to conduct enhanced due diligence in cases where the customer or the beneficial owner is a PEP or a family member or close associate of a PEP?**

4: Yes, financial institutions are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.

2: Yes, but the law does not cover both foreign and domestic PEPs, and their close family and associates.

0: No, there is no requirement for enhanced due diligence in the case of PEPs and associates.

**Q28 Does the law allow financial institutions to proceed with a business transaction if the beneficial owner has not been identified?**

4: No, financial institutions are not allowed to proceed with transaction if the beneficial owner has not been identified.

0: Yes, financial institutions may proceed with business transactions regardless of whether or not the beneficial owner has been identified.



<p><b>Q29: Does the law require financial institutions to submit suspicious transaction reports if the beneficial owner cannot be identified?</b></p> <p><b>4: Yes.</b></p> <p>2: Only if there is enough evidence of wrongdoing.</p> <p>0: No.</p>
<p><b>Q30: Do financial institutions have access to beneficial ownership information collected by the government?</b></p> <p><b>4: Yes, online for free through, for instance, a beneficial ownership register.</b></p> <p>3: Online, upon registration.</p> <p>2: Online, upon registration and payment of fee.</p> <p>1: Upon request or in person.</p> <p>0: There is no access to beneficial ownership information collected by the government.</p>
<p><b>Q31: Does the law allow the application of sanctions to financial institutions' directors and senior management?</b></p> <p>4: Yes, the law envisages sanctions for both legal entities and senior management.</p> <p>0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.</p>
<b>DNFBPS</b>
<p><b>Q32: Are TCSPs required by law to identify the beneficial owner of the customers?</b></p> <p><b>4: Yes, TCSPs are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.</b></p> <p>2: TCSPs are partially covered by the law.</p> <p>0: No, TCSPs are not covered by the law and do not have anti-money laundering obligations.</p>
<p><b>Q33: Are lawyers, when carrying out certain transactions on behalf of clients (e.g. management of assets), required by law to identify the beneficial owner of the customers?</b></p> <p><b>4: Yes, lawyers are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.</b></p> <p>0: No, lawyers are not covered by the law and do not have anti-money laundering obligations.</p>
<p><b>Q34: Are accountants required by law to identify the beneficial owner of the customers?</b></p> <p><b>4: Yes, accountants are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.</b></p> <p>0: No, accountants are not covered by the law and do not have anti-money laundering obligations.</p>
<p><b>Q35: Are real estate agents required by law to identify the beneficial owner of the customers?</b></p> <p><b>4: Yes, real estate agents are required to identify the beneficial owner of their clients buying or selling property.</b></p> <p>2: Real estate agents are partially covered by the law.</p> <p>0: No, real estate agents are not covered by the law and do not have anti-money laundering obligations.</p>
<p><b>Q36: Are casinos required by law to identify the beneficial owners of the customers?</b></p> <p><b>4: Yes, casinos are required by law to identify the beneficial owners of their customers or casinos are prohibited by law.</b></p> <p>0: No, casinos are not covered by the law and do not have anti-money laundering obligations.</p>
<p><b>Q37: Are dealers in precious metals and stones required by law to identify the beneficial owner of the customers?</b></p> <p><b>4: Yes, dealers in precious metals and stones are required to identify the beneficial owner of clients in all transactions or in transactions above a certain threshold.</b></p> <p>0: No, dealers in precious metals and stones are not covered by the law and do not have anti-money laundering obligations.</p>
<p><b>Q38: Are dealers in luxury goods required by law to identify the beneficial owner of the customers?</b></p> <p><b>4: Yes, dealers in luxury goods are required to identify the beneficial owner of their customer.</b></p> <p>0: No, dealers in luxury goods are not covered by the law and do not have anti-money laundering obligations.</p>
<p><b>Q39: Does the law require relevant DNFBPs to also verify the identity of beneficial owners identified?</b></p> <p><b>4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.</b></p> <p>0: No, there is no requirement to verify the identity of the beneficial owner.</p>
<p><b>Q40: Does the law require DNFBPs to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?</b></p> <p><b>4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).</b></p> <p>0: No, there is no legal requirement to conduct independent verification of the information provided by clients.</p>



<p><b>Q41: Does the law require enhanced due diligence by DNFBPs in cases where the customer or the beneficial owner is a PEP or a family member or close associate of the PEP?</b></p> <p>4: Yes, DNFBPs are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.</p> <p>2: Yes, but the law does not cover both foreign and domestic PEPs and their close family and associates.</p> <p>0: No, there is no requirement for enhanced due diligence in the case of PEPs and their associates.</p>
<p><b>Q42: Does the law allow DNFBPs to proceed with a business transaction if the beneficial owner has not been identified?</b></p> <p>4: No, a business transaction may only proceed if the beneficial owner of the client has been identified.</p> <p>0: Yes, relevant DNFBPs are allowed to proceed with a business transaction regardless of whether or not the beneficial ownership has been identified.</p>
<p><b>Q43 Does the law require DNFBPs to submit a suspicious transaction report if the beneficial owner cannot be identified?</b></p> <p>4: Yes, the law establishes that relevant DNFBPs have to submit a suspicious transaction report if they cannot identify the beneficial owner of their clients.</p> <p>2: The law establishes that suspicious transaction reports should be submitted only if there is enough evidence of wrongdoing.</p> <p>0: No, a business transaction may only proceed if the beneficial owner of the client has been identified.</p>
<p><b>Q44: Does the law allow the application of sanctions to DNFBPs' directors and senior management?</b></p> <p>4: Yes, the law envisages sanctions for both legal entities and senior management.</p> <p>0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.</p>
<p><b>PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION</b></p>
<p>Guidance: Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner, though, for instance, access to central beneficial ownership registers. Domestic authorities should also have the power to obtain beneficial ownership information from third parties on behalf of foreign authorities or to share information without the consent of affected parties in a timely manner.</p> <p>Governments should publish guidelines explaining what type of information is available and how it can be accessed.</p>
<p><b>Q45: Does the law impose any restriction on information sharing (e.g. confidential information) across in-country authorities?</b></p> <p>4: No, there are no restrictions in place.</p> <p>2: There are some restrictions on sharing information across in-country authorities.</p> <p>0: Yes, there are significant restrictions on sharing information across in-country authorities.</p>
<p><b>Q46: How is information on beneficial ownership held by domestic authorities shared with other authorities in the country?</b></p> <p>4: Information on beneficial ownership is shared through a centralised database, such as a beneficial ownership register.</p> <p>3: There are several online databases managed by different authorities that contain relevant beneficial ownership information (e.g. company register, tax register, etc.) that can be accessed.</p> <p>2: Domestic authorities can access beneficial ownership information through written requests or memoranda of understanding.</p> <p>1: Domestic authorities may only access beneficial ownership maintained by another authority if there is a court order.</p> <p>0: Information on beneficial ownership is not shared.</p>
<p><b>Q47: Are there clear procedural requirements for a foreign jurisdiction to request beneficial ownership information?</b></p> <p>4: Yes, information on how to proceed with a request for accessing beneficial ownership information is made available through, for instance, the domestic authority's website or guidelines.</p> <p>0: No, information on how to proceed with a request is not easily available.</p>
<p><b>Q48: Does the law allow competent authorities in your country to use their powers and investigative techniques to respond to a request from foreign judicial or law enforcement authorities?</b></p> <p>4: Yes, domestic authorities may use their investigative powers to respond to foreign requests.</p> <p>0: No, the law does not allow domestic competent authorities to act on behalf of foreign authorities.</p>
<p><b>Q49: Does the law in your country restrict the provision or exchange of information or assistance with foreign authorities (e.g. it is impossible to share information related to fiscal matters; restrictions related to bank secrecy; restrictions related to the nature or status of the requesting counterpart, among others)?</b></p> <p>4: No, the law does not impose any restriction.</p> <p>2: There are some restrictions that hamper the timely exchange of information.</p> <p>0: Yes, there are significant restrictions in the law.</p>
<p><b>Q50 Do foreign competent authorities have access to beneficial ownership information maintained by domestic authorities?</b></p> <p>4: Yes, online for free through, for instance, a beneficial ownership register.</p> <p>3: Yes, online upon registration.</p> <p>2: Yes, online upon the payment of a fee and registration.</p> <p>1: Beneficial ownership information can be accessed only upon motivated request.</p> <p>0: No.</p>



## PRINCIPLE 9: TAX AUTHORITIES

Guidance: Tax authorities should have access to beneficial ownership registers or, at a minimum, have access to company registers and be empowered to request information from other government bodies, legal entities, financial institutions and DNFBPs. There should be mechanisms in place, such as memoranda of understanding or treaties, to ensure that information held by domestic tax authorities is exchanged with foreign counterparts.

### Q51: Do tax authorities have access to beneficial ownership information maintained by domestic authorities?

- 4: Yes, online for free through, for instance, a beneficial ownership register.  
3: Yes, online upon registration.  
2: Yes, online upon the payment of a fee and registration.  
1: Beneficial ownership information can be accessed only upon motivated request.  
0: No.

### Q52: Does the law impose any restriction on sharing beneficial ownership information with domestic tax authorities (e.g. confidential information)?

- 4: No, the law does not impose restrictions.  
  
2: The law does not impose significant restrictions, but exchange of information is still limited or cumbersome (e.g. a court order is necessary)  
0: Yes, there are significant restrictions in place.

### Q53: Is there a mechanism to facilitate the exchange of information between tax authorities and foreign counterparts?

- 4: Yes. The country is a member of the OECD tax information exchange and has signed tax information exchange agreements with several countries.  
2: There is a mechanism available, but improvements are needed.  
0: No.

## PRINCIPLE 10: BEARER SHARES AND NOMINEES

Guidance: Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary.  
Nominee shareholders and directors should be required to disclose to company or beneficial ownership registers that they are nominees. Nominees must not be permitted to be registered as the beneficial owner in such registers. Professional nominees should be obliged to be licensed in order to operate and to keep records of the person(s) who nominated them.

### Q54: Does the law allow the use of bearer shares in your country?

- 4: No, bearer shares are prohibited by law.  
0: Yes, bearer shares are allowed by law.

### Q55: If the use of bearer shares is allowed, is there any other measure in place to prevent them being misused?

- 2: Yes, bearer shares must be converted into registered shares or share warrants (dematerialisation) or bearer shares have to be held with a regulated financial institution or professional intermediary (immobilisation).  
  
1: Bearer share holders have to notify the company and the company is obliged to record their identity or there are other preventive measures in place.  
0: No, there are no measures in place.

### Q56: Does the law allow the incorporation of companies using nominee shareholders and directors?

- 4: No, nominee shareholders and directors are not allowed.  
0: Yes, nominee shareholders and directors are allowed.

### Q57: Does the law require nominee shareholders and directors to disclose, upon registering the company, the identity of the beneficial owner?

- 2: Yes, nominees need to disclose the identity of the beneficial owner.  
0: No, nominees do not need to disclose the identity of the beneficial owner or nominees are not allowed.

### Q58: Does the law require professional nominees to be licensed?

- 0.5: Yes, professional nominees need to be licensed.  
0: No, professional nominees do not need to be licensed.

### Q59: Does the law require professional nominees to keep records of the person who nominated them?

- 0.5: Yes, professional nominees need to keep records of their clients for a certain period of time.  
0: No, professional nominees do not need to keep records.



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77. As mentioned in the methodology, for the purposes of this assessment we only consider private, that is non-publicly traded, legal entities. That is because companies operating in the stock market are usually better regulated and subject to more transparency rules. On the other hand, private companies (limited liability and others) operate in a less regulated and more opaque environment and are therefore more prone to be misused for corruption and money laundering. For the full scoring criteria, see Annex 1 on the methodology.
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79. In Brazil, the shareholder register and the company register will only have information on legal owners. Beneficial ownership information is collected by the Federal Tax Agency (see below).
80. The fourth EU AMLD requires legal entities to maintain information on their beneficial ownership, including the details of the beneficial interests held. This information needs to be maintained within the country of incorporation, regardless of whether the legal entity is physically present there. The EU AMLD also requires shareholders to inform the company of changes in share ownership, but they are not required to declare such changes to the company if they own shares on behalf of a third person: DIRECTIVE (EU) 2015/849 [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:LJOL\\_2015\\_141\\_R\\_0003&from=ES](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:LJOL_2015_141_R_0003&from=ES).
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84. Transparency International, July 2015.
85. Italy adopted new rules establishing a beneficial ownership register, but the register is not yet in place. According to the rules, competent authorities and obliged entities will have access to the information once the register is operational. It is not yet defined which information on the beneficial owner will be recorded; Question 15 is thus not applicable at this stage.
86. The Netherlands had not yet transposed the fourth EU AMLD at the time of the assessment.



87. Decree n. 8.777, enacted in May 2016, instituted the Open Data Policy for the Federal Executive branch, which aims to make governmental databases publicly available, in an open data format, including corporate data: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2016/decreto/d8777.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decreto/d8777.htm)
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92. For instance, financial institutions and DNFBSs surveyed within the framework of the BOWNET project (Transcrime) stated that data on company shareholdings is the information most commonly used to identify beneficial owners (82.7%), followed by information on company board members and managers (47.2%); specially designated nationals, politically exposed persons and other watch-lists (37.5%); the internet/blogs (23%); news/press (20.2%); tax agency records (18.3%); police and judiciary records 17.7%; and social networks (17.4%): [www.transcrime.it/bownet/wp-content/uploads/sites/4/2015/06/BOWNET\\_Questionnaire\\_D\\_Intermediaries.pdf](http://www.transcrime.it/bownet/wp-content/uploads/sites/4/2015/06/BOWNET_Questionnaire_D_Intermediaries.pdf).
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102. Delação Premiada Benedito Barbosa da Silva Junior, <https://oglobo.globo.com/brasil/delacao-premiada-benedito-barbosa-da-silva-junior-dia-1-parte-2-21200545>.
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114. US District Court, 2016
115. El País, *Lawyer at center of Odebrecht scandal: "The company bribed more than 1,000 people"* [https://elpais.com/elpais/2017/07/27/inenglish/1501179676\\_398397.html](https://elpais.com/elpais/2017/07/27/inenglish/1501179676_398397.html), July 2017
116. Financial Services Regulatory Commission, Notice of Revocation of Licence, [https://www.fsrc.gov.ag/images/pdf/banking/Notice%20of\\_Licence\\_Revocation\\_-\\_Meinl\\_Bank\\_\(Antigua\)\\_Ltd.pdf](https://www.fsrc.gov.ag/images/pdf/banking/Notice%20of_Licence_Revocation_-_Meinl_Bank_(Antigua)_Ltd.pdf)
117. In some cases, these new rules clarified issues previously subject to open interpretation; as a result, scores in the 2017 assessment did not always improve.
118. As discussed under Principle 1, the definition of beneficial ownership is not always adequate. This could have an impact on the effectiveness or usefulness of the information collected by financial institutions, but as this issue was covered (and scored) under Principle 1, it is not directly addressed by questions under Principle 7.
119. The difference in score for Brazil under this principle is explained by this contradiction, which we were not aware of in the previous assessment, as well as by clarifications related to lawyers' anti-money laundering obligations.
120. EU Directive 2015/849 of the European Parliament and of the Council, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_2015\\_141\\_R\\_0003&from=ES](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_2015_141_R_0003&from=ES), 20 May 2015.
121. For instance, the 2016 FATF mutual evaluation report on Italy highlights: "Many institutions place undue reliance on the Chambers of Commerce database (Infocamere) when seeking to identify the ultimate natural person who controls a customer. Some institutions indicated that, where the ownership chain is comprised purely of Italian-incorporated companies, they can rely intrinsically on the database to track the ultimate beneficial owner. However, the Infocamere holds only shareholding interests, and is not able to indicate whether the ultimate shareholder of record is also the beneficial owner. Although notaries, when processing the paperwork for company formations, are required to identify and record the true beneficial ownership, this information does not form part of the Infocamere database, and cannot, therefore, be accessed by users." This evaluation was undertaken prior to the enactment of new rules establishing a central beneficial ownership register: 6.pdf.
122. For example, the German bank supervisory body used external contractors to look into allegations of the Panama Papers and did not publish the results: [www.spiegel.de/wirtschaft/soziales/bafin-zu-panama-papers-keine-geldwaesche-durch-deutsche-banken-a-1188765.html](http://www.spiegel.de/wirtschaft/soziales/bafin-zu-panama-papers-keine-geldwaesche-durch-deutsche-banken-a-1188765.html).
123. United States Department of Justice, Press Release, [www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign](http://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign), 20 July 2016; also see Attorneys for Plaintiff UNITED STATES OF AMERICA UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, CV 16-16-5362, [www.justice.gov/archives/opa/page/file/877166/download](http://www.justice.gov/archives/opa/page/file/877166/download), 20 July 2016.



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125. See page 25, [www.justice.gov/archives/opa/page/file/877166/download](http://www.justice.gov/archives/opa/page/file/877166/download)
126. [www.justice.gov/archives/opa/page/file/877166/download](http://www.justice.gov/archives/opa/page/file/877166/download).
127. [www.justice.gov/archives/opa/page/file/877166/download](http://www.justice.gov/archives/opa/page/file/877166/download)
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131. [www.justice.gov/archives/opa/page/file/877166/download](http://www.justice.gov/archives/opa/page/file/877166/download).
132. In Canada, TCSPs are not explicitly covered by the anti-money laundering regulation. At present, all lawyers who are not covered under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, usually perform the role that TCSPs play in incorporating businesses, for example. Accountants also may act as TCSPs, but are covered as reporting entities under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Only about eight TCSPs are operating in Canada and the Department of Finance, in a recent consultation document, proposes to add TCSPs to the list of reporting entities covered under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act: [www.fin.gc.ca/activty/consult/amlatfr-rpca-eng.pdf](http://www.fin.gc.ca/activty/consult/amlatfr-rpca-eng.pdf).
133. The decision is available online: *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14639/index.do>.
134. The USA PATRIOT Act 2001 originally contained provisions that required those involved in real estate closings to perform due diligence on their customers, but they were granted a temporary exemption from that requirement by the Treasury Department, which has never been lifted. Currently, beneficial ownership information is available in some States and under certain conditions due to FinCEN's Geographic Targeting Orders, which require title insurance companies to collect beneficial ownership information in real estate transactions in cash and above a certain threshold that takes place in key metropolitan areas, including New York and Miami. See: [www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20Order%20-%20208.22.17%20Final%20for%20execution%20-%20Generic.pdf](http://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20Order%20-%20208.22.17%20Final%20for%20execution%20-%20Generic.pdf)
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136. As it is the case with other DNFBPs in Canada, casinos and dealers in precious metals and stones are required to perform customer due diligence in transactions above a certain threshold, but there is no requirement for them to identify the beneficial owner.
137. Bullion dealers in Australia are the only DNFBPs that have customer due-diligence obligations above a threshold of AUD 5,000.
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140. Transparency International Switzerland, *Offene Türen für illegal Gelder: Geldwascherei im Schweizer Immobilien Sektor*, <https://transparency.ch/publikationen/offene-tueren-fuer-illegale-gelder-geldwaescherei-im-schweizer-immobiliensektor/>, October 2017
141. Transcrime, 2013.
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143. G20 Anti-Corruption Working Group, *Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements*, [star.worldbank.org/star/about-us/g20-anti-corruption-working-group](http://star.worldbank.org/star/about-us/g20-anti-corruption-working-group), n.d.
144. The United Nations Convention against Corruption encourages states to enter into agreements or arrangements to conduct international joint investigations, prosecution and proceedings, when several countries have jurisdiction over offences.
145. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2017%3A018%3ATOC>.
146. Brazilian Declaration on International Cooperation Against Corruption, [www.mpf.mp.br/pgj/documentos/declaracao-de-brasilia-1.pdf](http://www.mpf.mp.br/pgj/documentos/declaracao-de-brasilia-1.pdf).
147. According to the latest FATF mutual evaluation assessment of Italy, the country has not yet transposed some relevant international agreements into its domestic framework, such as those pertaining to the establishment of joint investigation teams (Council Framework Decision of 13 June 2002), but this hasn't prohibited the establishment of such teams on a case-by-case basis.
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