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JUST FOR SHOW?

Reviewing G20 promises
on beneficial ownership

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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ABBREVIATIONS

DNFPB	Designated non-financial business and profession
EU AMLD	EU Anti-Money Laundering Directive
FATF	Financial Action Task Force
FIFA	<i>Fédération Internationale de Football Association</i> (International Federation of Association Football)
G20	Group of 20
OECD	Organisation for Economic Co-operation and Development
PEP	Politically exposed person
PSI	Permanent Subcommittee on Investigations
TCSP	Trust or company service provider
UNODC	UN Office on Drugs and Crime

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INTRODUCTION

Major corruption scandals hitting the news often share key commonalities: the people at the centre of the scandal use a complex web of anonymous companies, trusts and other legal entities situated across multiple jurisdictions to transfer and hide their illicitly sourced funds. Perpetrators often use the services of professional middle-men and banks to move or conceal money and the funds often end up in the hands of other professionals, such as real estate agents or luxury goods providers, making the proceeds of corruption appear legitimate. The use of some of these mechanisms is evident in the recent high profile cases below.

- Brazil's largest ever corruption and money laundering scandal, which unfolded throughout 2014 and has already led to several convictions in 2015¹, involved the state-run oil giant Petrobras and 18 construction companies². Executives allegedly channelled bribes through shell companies in multiple jurisdictions into politicians' personal bank accounts and those of political parties. Time and time again money was accepted by 'facilitators of corruption', such as accountants and lawyers, to be filtered through the global financial system³.
- In 2014 former President of Ukraine Viktor Yanukovich fled Ukraine, leaving behind documents that showed how he was able to enjoy a life of luxury at the expense of his own citizens. Using nominees as front-men in a complex web of shell companies, from Vienna to London to Lichtenstein⁴, Yanukovich allegedly concealed his involvement in the syphoning off of at least US\$350 million of Ukraine public funds for his personal benefit⁵.
- The US Department of Justice's June 2015 indictment of sports marketing officials and current and former Fédération Internationale de Football Association (FIFA) officials, for allegedly funnelling at least US\$150 million in bribes through the US, outlined in detail the methods and mechanisms claimed to have been used to hide and transfer the stolen funds.⁶ These include "the use of various mechanisms, including trusted intermediaries, bankers, financial advisers, and currency dealers, to make and facilitate the making of illicit payments; the creation and use of shell companies, nominees, and numbered bank accounts in tax havens and other secretive banking jurisdictions."⁷ Twenty-six banks were named in the indictment.

Globally, the scale of the theft and laundering of assets is huge. The UN Office on Drugs and Crime (UNODC) estimates that between US\$800 billion and US\$2 trillion is laundered each year.⁸ The role

¹ "UPDATE 1-Brazil convicts first construction executives in Petrobras scandal", *Reuters*, 20 July 2015, <http://www.reuters.com/article/2015/07/20/brazil-petrobras-scandal-idUSL1N10025J20150720#WmASF6GyFOoG3XOC.97>

² "The Betrayal of Brazil", *Bloomberg Business*, 8 May 2015, <http://www.bloomberg.com/news/features/2015-05-08/brazil-s-massive-corruption-scandal-has-bitterness-replacing-hope>

³ "Car Wash focuses on 'private operators' of Petrobras corruption scheme", *Valor International*, 11 May 2015, <http://www.valor.com.br/international/brief/4043422/car-wash-focuses-private-operators-petrobras-corruption-scheme>

⁴ "Anonymous UK Company Owned Viktor Yanukovich's Presidential Palace Compound", *Global Witness*, 1 March 2014, <https://www.globalwitness.org/blog/anonymous-uk-company-owned-truncated/>

⁵ "Prosecutor: Yanukovich's 'Mafia' Government Stole Up To \$100 Billion From Ukraine And Some Of It Is Funding Rebels", *Reuters – Business Insider*, 30 April 30, 2014, <http://www.businessinsider.com/r-toppled-mafia-president-cost-ukraine-up-to-100-billion-prosecutor-says-2014-30?IR=T>

⁶ *USA vs Jeffrey Webb et al*, US District Court, of New York, 20 May 2015, accessed at <http://www.justice.gov/opa/file/450211/download>

⁷ "The FIFA Scandal, Secrecy aids corruption again", *Financial Transparency Coalition* (web), 27 May 2015, <https://financialtransparency.org/the-fifa-scandal-secrecy-aids-corruption-again/www.justice.gov/opa/file/450211/download>

⁸ UNODC, "Money Laundering and Globalization", www.unodc.org/unodc/en/money-laundering/globalization.html

of secretly owned and controlled companies and other legal entities in the transfer and laundering of corrupt funds is significant. Corrupt politicians used secret companies to obscure their identity in 70 per cent of more than 200 cases of grand corruption surveyed by the World Bank.⁹ Illicit money was channelled through shadowy secret companies in a quarter of the 400+ bribery cases across 41 countries reviewed by the Organisation for Economic Co-operation and Development (OECD).¹⁰ Its report lists the ways law enforcement was tricked by "... subsidiary companies, local consulting firms, companies located in offshore financial centres or tax havens or companies established under the beneficial ownership of either the public official who received the bribes or the individual or entity that was paying the bribes."

In recent years commitments have been made at the highest level to tackle the misuse of these corporate vehicles and trusts, and to increase transparency around who ultimately owns, controls or is benefitting from them. At their Brisbane Summit in November 2014, the Group of 20 (G20) leaders adopted High-Level Principles on Beneficial Ownership Transparency, describing financial transparency as a "high priority" issue.¹¹ The G20 principles build upon the Financial Action Task Force (FATF) recommendations, which set the current global standards for anti-money laundering.¹² The FATF recommendations were strengthened in 2012, which means that some countries may still be in the process of strengthening their own frameworks accordingly.

It is crucial that the G20 principles are now transposed into law and implemented effectively by member countries. In July 2015 Transparency International published a Technical Guide¹³ that outlines in detail how governments can ensure their legal framework is in line with each of the 10 G20 principles to more effectively tackle money laundering. The current report, *Just for Show? Reviewing G20 Promises on Beneficial Ownership* now assesses the extent to which G20 members are fulfilling their legal and regulatory commitments implicit in the G20 principles one year after their adoption. This baseline analysis identifies areas of strength and weakness in the current beneficial ownership transparency framework of each G20 member country so that progress can be monitored in the years to come. It draws on data collected from expert questionnaires focusing on the key components of each G20 principle.

This report aims to encourage a conversation in each country on where laws can be improved to strengthen the beneficial ownership regulatory framework. Alongside this report we also publish individual summaries for each G20 member, which provide more detailed analysis on an individual basis. The combined findings should be used to help identify which concrete legal provisions should be adopted in order to adhere to the commitments within the G20 principles. Where they exist, Transparency International encourages competent authorities, such as tax and banking regulators, as well as law enforcement agencies, to ensure the strong legal basis is effectively enforced within these countries to close the tap on illicit financial flows to and from their jurisdiction.

⁹ World Bank/UNODC Stolen Asset Recovery Initiative, "The Puppet Masters", October 2011, <https://star.worldbank.org/star/publication/puppet-masters>.

¹⁰ OECD, "OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials", 2014, www.oecd-ilibrary.org/governance/oecd-foreign-bribery-report_9789264226616-en;jsessionid=53ermotje3gp.x-oecd-live-03

¹¹ G20, *G20 High-Level Principles on Beneficial Ownership*, 2014, https://g20.org/wp-content/uploads/2014/12/g20_high-level_principles_beneficial_ownership_transparency.pdf.

¹² FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, The FATF Recommendations (February 2012), www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html.

¹³ Transparency International, *Technical Guide: Implementing the G20 Beneficial Ownership Principles*, July 2015, www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles.

EXECUTIVE SUMMARY

This report identifies areas of strength and weakness in the current beneficial ownership transparency legal framework of each G20 member country against the G20 Beneficial Ownership Transparency Principles adopted by the G20 in November 2014. The 10 principles cover the following elements:

1. The definition of a beneficial owner
2. Risk assessments relating to legal entities and arrangements
3. Beneficial ownership information of legal entities
4. Access to beneficial ownership information of legal entities
5. Beneficial ownership information of trusts
6. Access to beneficial ownership information of trusts
7. Roles and responsibilities of financial institutions and businesses and professions
8. Domestic and international cooperation
9. Beneficial ownership information and tax evasion
10. Bearer shares and nominees

OVERALL STRENGTH OF FRAMEWORK

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

For each principle, the scores were averaged across questions and then transformed into percentages, which were again averaged across the 10 principles to yield an overall score. Five performance 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) were defined to assess the overall quality of each country's respective framework. The principles have not been weighted and the country grouping seeks to provide a general indication of the strength of the beneficial ownership legal framework in each G20 country, based on the principles adopted by G20 leaders in November 2015 in Brisbane. The countries are listed in alphabetical order within the groupings.

The **UK** is the only G20 member to score **very strong** overall.

- The **UK** scores 100 per cent on four out of 10 principles, scoring especially highly on principles that require good access to beneficial ownership information. This is because of its recently adopted legislation to establish a central registry containing relevant information that will be made public. However, the UK's score under this assessment only covers domestic law and not the beneficial ownership standards for legal entities and trusts incorporated in the British Overseas Territories and Crown Dependencies. The weaker performance in many of the British Overseas Territories and Crown Dependencies on key beneficial ownership issues threatens to undermine the UK's implementation to the G20 principles as a whole. Further research will be carried out specifically on the standards in those offshore jurisdictions.

Three G20 countries fall into the **strong framework** category.

- **Argentina** made significant progress this year with the adoption of a new law that will require legal entities and arrangements to disclose beneficial ownership information upon registration.
- **France** scores well in relation to regulatory actions taken on trusts, and obligations of financial institutions and designated non-financial businesses and professions (DNFBPs), such as accountants, trust and company service providers, real estate agents and casinos.
- **Italy** scores reasonably well across most principles, though there is particular room for improvement on trusts.

The majority of countries fall into the **average framework** category, displaying wide variation.

- **Germany** has weaknesses in relation to the use of bearer shares and nominees. Current laws and regulations do not require legal entities, other than those with anti-money laundering obligations, to maintain information on beneficial ownership. There is no guarantee that the information currently available to competent authorities is adequate for anti-money laundering purposes, or that it is accurate and current. The situation will improve with the transposition of the fourth EU Anti-Money Laundering Directive (EU AMLD) into national law.
- **India** has made progress in recent years by requiring companies to maintain beneficial ownership information in their membership registry. However, improvements are still necessary to ensure that this information is readily and easily available to competent authorities.
- **Indonesia** has strong requirements in place for financial institutions, requiring them to scrutinise and verify supporting documents used to identify customers. The list of Designated Non-Financial Businesses and Professions (DNFBPs) required to identify the beneficial owner of customers should be expanded and timely access to beneficial ownership information should be guaranteed.
- **Japan** has made progress in 2015, with the adoption of new laws on beneficial ownership. Japan is now fully compliant with three principles. However, it does not require legal entities or trusts to maintain beneficial ownership information.
- **Mexico** should seek to improve the current legal framework to ensure that at least in high-risk cases beneficial ownership information collected is independently verified, given the reliance of the current anti-money laundering system on the information collected by financial institutions and DNFBPs.
- **Russia** has weaknesses regarding the ability of competent authorities to access beneficial ownership information of legal entities and arrangements. The requirements placed upon financial institutions to identify and verify the beneficial owners of customers are also not fully in line with the G20 commitments.

- **Saudi Arabia** does not require companies to maintain beneficial ownership information, nor does it require nominee shareholders to indicate if they own shares on behalf of another person. However, laws do require financial institutions to identify and verify the beneficial owners before establishing a business relationship in every case.
- **South Africa**'s existing rules do not provide for a definition of the beneficial owner and there are no requirements for legal entities to maintain, or financial institutions and DNFBPs to collect, information on the natural persons who ultimately own legal companies. Consequently, the ability of competent authorities to access beneficial ownership information is seriously restricted. The country is currently debating amendments to laws, which could close existing loopholes.
- **Turkey** is only fully compliant with one of the G20 principles. Companies are not required to maintain beneficial ownership information. Anti-money laundering rules for financial institutions should also be strengthened, especially regarding independent verification of beneficial ownership information in high-risk cases.

A small group of countries fall into the category of **weak** implementation.

- **Australia** is only fully compliant with one principle and serious improvements in the current legal framework are needed. Given the size of Australia's financial sector and its attractiveness to other countries in the region, more needs to be done to ensure that financial institutions and DNFBPs adequately identify and verify the beneficial owner of their customers.
- **Brazil** lacks an adequate definition of beneficial ownership and mechanisms to ensure that competent authorities are able to identify the beneficial owners of domestic and foreign legal entities operating in Brazil.
- **Canada** does not fully comply with any of the G20 principles. Information collected in company registries, by legal entities themselves or by financial institutions and DNFBPs is either inadequate or not made available in a timely manner. Moreover, current rules on bearer shares and nominee shareholders and directors are also inadequate.
- **China** should undertake urgent measures to ensure that legal entities collect and maintain beneficial ownership information, and that financial institutions and DNFBPs adequately identify and verify the beneficial ownership of their customers.
- **South Korea** is not fully compliant with any of the G20 principles. Information on beneficial ownership is only collected by financial institutions in suspicious cases. The legal framework with regard to DNFBPs and nominee shareholders needs to be strengthened in order to effectively curb money laundering and corruption.
- The **US** is not fully compliant with any of the G20 principles. The US lacks an adequate definition of beneficial ownership and anti-money laundering laws have key loopholes related to beneficial ownership identification. Requirements to identify the beneficial owners of clients should also be expanded to all relevant DNFBPs, including lawyers, accountants, trusts, and corporate service providers and real estate agents. Stricter rules and disclosure requirements should be adopted in relation to nominee shareholders.

No country was rated **very weak** when scores were averaged across all G20 principles. However, all but three G20 members (the **EU**, **Italy**, and the **UK**) score very weak against at least one of the principles.

THE UK OVERSEAS TERRITORIES AND CROWN DEPENDENCIES

Despite the UK's commitment to corporate transparency, a number of the UK's Overseas Territories, such as the British Virgin Islands and the Cayman Islands, 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. The use of secret and anonymous companies disguises the identity and source of funds of the owners of those companies, and constitutes a serious obstacle to investigating money laundering. The UK needs to do more to ensure that the Overseas Territories are not used as a safe haven for laundering illicit and corrupt wealth. If action is not taken, the UK's strong domestic implementation of the G20 Beneficial Ownership Transparency Principles risks being overshadowed.

Money laundering and the use of secrecy in the financial sector for corrupt purposes is an international challenge. Regardless of the mechanisms and laws put into place in domestic contexts across all G20 members, additional attention must be placed on closing the gaps in other jurisdictions. Otherwise, corrupt or criminal individuals will continue to find alternative, often faster or cheaper, options that help them launder criminal proceeds.

KEY FINDINGS

All G20 countries score well on at least one principle and each of the G20 principles is implemented well by at least one country. G20 countries should use their network to share best practice on how to strengthen their own systems, whilst taking into consideration their own country-specific risks and context.

Weak understanding of beneficial ownership and the risks posed

Two countries (Brazil and South Africa) do not have an accurate and comprehensive definition of beneficial ownership in place. Thirteen G20 countries have a definition that is fully compliant with good practice. A strong definition is fundamental to a beneficial ownership transparency system that works effectively.

G20 countries are not integrating comprehensive risk assessments into their policy process. Only four G20 countries have conducted a risk assessment in the last three years and published the results in full, namely **Canada**, **Japan**, the **UK** and the **US**. Without understanding where the risks lie, such as how domestic and foreign legal entities and arrangements can be used for money laundering purposes, countries are not able to effectively regulate and detect money laundering-related offences. The risk assessments should be part of a longer policy process that provides a continuous update of the anti-money laundering regulatory framework and supervisory practices.

Inadequate measures taken to identify and verify beneficial ownership information

Only two G20 countries (the UK and India) require legal entities to actually identify and keep updated records of their own beneficial owners. Companies must be required to identify their own actual beneficial owners, not just their legal owners. This information needs to be accurate and current, both at the time the legal entity is created and maintained over time. This is especially important in jurisdictions that permit nominees. Only **Argentina, India**, and the **UK** require the shareholder to inform the legal entity if he/she owns shares on behalf of a third person. In **Australia** and **South Africa** such a requirement only applies to public listed companies. In some jurisdictions, such as **Argentina**, it is required that information about beneficial ownership is kept in company registries, and nominees, where applicable, are required to state on whose behalf they are working. Unfortunately, this study finds that in the majority of countries where the concept of nominee shareholder exists, a company registry contains only the name of the nominee as there is no requirement to disclose that the nominee represents a third person.

Timely access to relevant and accurate beneficial ownership information by competent authorities, including those with law enforcement duties, is restricted in the majority of G20 countries. There have been recent improvements in the UK, the EU, **Argentina** and **India**, which could facilitate access. In all other countries, the main source of beneficial ownership information is the data collected and maintained by financial institutions and obliged DNFBPs, such as lawyers, accountants and trust and company service providers. This may pose serious challenges in relation to the effective detection and investigation of corruption and money laundering by competent authorities. 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 effectively identify wrongdoing.

Seven G20 members (Canada, China, Germany, the EU, Italy, Saudi Arabia and Turkey) still permit the use and transfer of bearer shares. Two of these seven (**China** and **Germany**) do not have any prevention mechanisms, such as immobilisation or dematerialisation of shares to prevent them being misused.

Eight G20 countries (Australia, Canada, China, Germany, Mexico, Saudi Arabia, South Korea and the US) still allow nominee directors and shareholders, without requiring them to disclose the beneficial owners on whose behalf they are working.

Inadequate verification of beneficial ownership information by financial institutions

Financial institutions and key businesses and professions are being relied on to gather information on beneficial ownership, yet they are not assisted by being provided with access to relevant information nor are regulations in place requiring them to carry out strong enough checks and verification.

- **Financial institutions are not taking appropriate steps to verify information and usually take the information provided by customers at face value.** Only nine of the countries (**Australia, Canada, France, Indonesia, India, Italy, Japan, Saudi Arabia** and the **UK**) require some sort of independent verification, and only in cases considered to be of high-risk. As the information collected by the government usually includes individuals exercising de facto control, their independent verification is also restricted. Within this framework, there is no guarantee that the information available to competent authorities is reliable and relevant.

- **Financial institutions in four countries have limited or no regulations requiring verification of the beneficial ownership of customers (South Africa, Canada, South Korea and the US).** In 10 countries the information is never verified using independent sources.
- In eight countries (**Australia, Canada, China, Japan, Russia, South Africa, South Korea, and the US**) financial institutions are still allowed to proceed with a transaction if the beneficial owner has not been identified, and in none of them is this a reason for submitting a suspicious transaction report.
- **Politically exposed persons (PEPs) do not undergo significant enough checks when opening bank accounts or establishing relationships with businesses and professions, such as lawyers, accountants, trust or company service providers (TCSPs), real estate agents or luxury goods providers.** Two countries (**Canada and Turkey**) do not require any type of measure to identify whether the beneficial owner of a customer is a PEP. In nine countries (**China, France, India, Japan, Russia, South Africa, South Korea, the UK and the US**), only foreign PEPs are regulated.

Weak requirements for businesses and professions to identify beneficial ownership of clients or customers

In five countries (Australia, Canada, China, South Africa and the US), businesses and professions, such as lawyers, accountants, TCSPs, real estate agents or luxury goods providers, are not required to carry out any checks at all on the beneficial ownership of their clients or customers.

- Even though TCSPs have been found to have been complicit in a range of serious corruption scandals in recent years, they are not required by law to identify the beneficial owners of their customers in seven countries, namely **Australia, Canada, India, Russia, South Africa, South Korea and the US**. In the **UK**, there are major loopholes in the regime, which means that many UK TCSPs are not identifying the beneficial owner of their customers.
- Real estate agents in seven G20 countries (**Australia, Canada, China, South Africa, South Korea, the UK and the US**) are not required by law to identify the beneficial owners of clients who are buying and selling property. This is despite major scandals coming to light in recent years regarding the ease with which corrupt money or money of unknown origin can enter the high-end real estate market in cities, including New York.¹⁴
- The luxury goods sector in 10 G20 countries, namely **Australia, Canada, China, Italy, Indonesia, Japan, Mexico, South Africa, South Korea and the US**, is not required by law to identify the beneficial owners of customers.

METHODOLOGY

Questions were designed in order 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 the G20 principles. The number of questions per principle, and thus the total

¹⁴ "Inside the Towers of Secrecy", New York Times, 19 February 2015, www.nytimes.com/times-insider/2015/02/19/inside-the-towers-of-secrecy/?_r=0.

number of points available per principle, varies depending on the complexity and number of issues covered in the original principle.

Questionnaires were completed by Transparency International chapters or consultants for each G20 member – the EU and the following 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the UK, and the US. Additional questions aimed at better understanding the context in these countries were also asked but were not scored. Data was peer-reviewed by in-country experts and/or pro bono lawyers. During August and September 2015, completed questionnaires were shared with government officials from all G20 countries, who were given the opportunity to review the data and to provide feedback or propose corrections. Nine governments provided feedback.

In the EU our questionnaire was applied to the provisions within the fourth EU AMLD. Some of the principles are not directly applicable to the EU.

In countries where recent legislation has been adopted but not yet implemented the researcher answered the questions by considering the present legal framework. In EU countries affected by the recent adoption of the fourth EU AMLD, legislation that has not yet been transposed into national law is not reflected in the scores.

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

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.

The full methodology, questionnaire and scoring criteria for each of the questions is 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 beyond the scope of the report, however, to analyse how laws and regulations have been implemented and enforced in practice. Such research to assess implementation and effectiveness in practice would be an important follow-up to this assessment. Our detailed recommendations can be found in the Technical Guide.¹⁵

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.

¹⁵ Transparency International, July 2015

While the EU is not included in the overall assessment above, we do analyse the strength of the fourth EU AMLD throughout the rest of the report. With the forthcoming transposition of the EU AMLD into national law, European countries will necessarily increase their score to at least the EU standard indicated in the classification. It is, however, worth noting that some European countries already surpass the score awarded to the EU AMLD under certain principles.

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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.”¹⁶

WHY IS THIS IMPORTANT?

An adequate legal definition of beneficial ownership establishes the framework from which all legal responsibilities and obligations emerge. A strong and clear definition assists relevant stakeholders, such as competent authorities or entities with reporting obligations, to understand the scope of their duties. Weak definitions lead to weaknesses in the regulatory and enforcement framework, and to uncertainty in the duties and obligations of reporting entities.

An adequate definition of beneficial ownership in national legislation should focus on the natural (not legal) persons who actually own and take advantage of the capital or assets of the legal person, 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.¹⁷

WHAT SHOULD BE IN PLACE?

Top scoring G20 members define a beneficial owner 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. Lesser scoring countries may define beneficial owners as natural persons, for example owning 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. Lowest scoring G20 members have either no legal definition of beneficial ownership or the control element is not included.

¹⁶ The G20 Beneficial Ownership Transparency Principles can be found at https://g20.org/wp-content/uploads/2014/12/g20_high-level_principles_beneficial_ownership_transparency.pdf.

¹⁷ Transparency International, July 2015.

SCORES

Argentina	100%	Italy	100%
Australia	100%	Japan	100%
Brazil	0%	Mexico	100%
Canada	25%	Russia	100%
China	50%	Saudi Arabia	100%
EU	100%	South Africa	0%
France	100%	South Korea	50%
Germany	100%	Turkey	100%
India	100%	UK	100%
Indonesia	50%	US	25%

FINDINGS

Thirteen G20 members have a definition of beneficial ownership that is fully compliant with the G20 principle, and thus includes reference to a natural person who exercises direct or indirect ultimate control. Two countries (**Brazil** and **South Africa**), however, score zero points for their definition.

Every G20 member that is rated as very strong or strong overall, scores 100% on principle 1. This shows how important an accurate and comprehensive definition is for establishing a strong beneficial ownership regulatory framework. Countries that have placed an emphasis on having strong beneficial ownership definitions seem to have generally built stronger beneficial ownership systems. Only one country (**Australia**) that scores weak overall scores 100% for principle 1, having amended legislation in 2014 to address pre-existing shortcomings.

In the case of **South Africa** there is no definition at all as financial institutions are currently not required to identify the beneficial owners of their clients. Amendments to the South African Financial Intelligence Centre Act, currently under review, include a definition of beneficial owners and if approved would address existing shortcomings.

In **Brazil**, while there is a requirement for financial institutions to identify the beneficial owner of legal persons, there is no precise definition of what is understood by beneficial owner or final beneficiary. Existing rules only state that financial institutions should follow the chain of shareholders until a natural person who qualifies as the final beneficiary is reached.

In all the other countries, with the exception of **Argentina** and the **UK**, beneficial ownership is defined within the context of anti-money laundering obligations. In **Argentina** and in the **UK** recent laws and resolutions have included the concept of beneficial owners in company / company registration laws, making 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).

In all countries where a definition of beneficial ownership exists, the beneficial owner is always understood as a natural person. This is very important and is fundamental to preventing and detecting money laundering. However, as this definition, in the great majority of cases, does not apply to company registration and other company regulations, in several countries shareholders and

partners may be another legal entity, and they can be registered as such. Moreover, as company laws do not differentiate between ownership and control, companies are usually registered in the name of those (natural or legal persons) exercising legal ownership and those exercising actual control are not mentioned. It is often assumed, particularly in countries where the concept of nominee shareholder does not exist, that the legal owners are the actual owners and there is no reason for further investigation.

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12 NOV 2015, 00:01 BERLIN TIME

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.

- a. 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.
- b. Effective and proportionate measures should be taken to mitigate the risks identified.
- c. Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors.”

WHY IS THIS IMPORTANT?

An effective anti-money laundering regime requires a good and current understanding of how domestic and/or foreign corporate vehicles and other legal arrangements can be misused for criminal purposes within their jurisdictions, and an understanding of the areas that pose greater risks. A clear understanding of the types of legal persons and arrangements that exist in the country, their formation and registration processes, their different forms and structures and the risks they pose, is crucial to a substantive risk assessment. If they do not understand where the risks lie, countries are not able to effectively regulate and detect money laundering-related offences. For instance, in some countries companies incorporated abroad may be frequently used for laundering the proceeds of corruption. The government needs, then, to ensure that the right policies are in place regarding the registration and operation of foreign companies in their countries. 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. A national risk assessment is also a new requirement within the newly strengthened FATF recommendations, adopted in 2012.

WHAT SHOULD BE IN PLACE?

High scoring G20 members have conducted recent risk assessments within the last three years, with the consultation of external stakeholders, such as financial institutions, DNFBPs (such as accountants, lawyers, real estate agents and casinos), as well as civil society organisations. The results, including information on high-risk areas, will have been communicated to financial institutions and DNFBPs and the results of the assessment would have been made public. The risk

assessment will at a minimum identify specific sectors or areas at high risk that require enhanced due diligence measures.

SCORES

Argentina	10%	Italy	70%
Australia	0%	Japan	100%
Brazil	0%	Mexico	40%
Canada	80%	Russia	20%
China	0%	Saudi Arabia	0%
EU	0%	South Africa	0%
France	0%	South Korea	0%
Germany	0%	Turkey	0%
India	0%	UK	100%
Indonesia	0%	US	80%

FINDINGS

Twelve countries (**Argentina, Australia, Brazil, China, France, Germany, India, Indonesia, Saudi Arabia, South Africa, South Korea and Turkey**) have not conducted a risk assessment within the last three years.

Only four countries have conducted and published their risk assessments in full. The **US, Canada** and the **UK** score highly, having finalised and published their risk assessments in June,¹⁸ July¹⁹ and October²⁰ 2015, respectively. **Japan** completed its latest risk assessment in December 2014. Neither the **US** nor **Canada** score full points since they did not consult with external stakeholders, whereas **Japan** and the **UK** score full points as a result of having done so.

Risk assessments often seem to have been conducted in an ad hoc manner, and have not been integrated as a continuous updating of the anti-money laundering regulatory framework and supervisory practices. **Argentina**, however, took an important step to better integrate risk assessments into its policy process. In 2014 the *Unidad de Informacion Financiera* (Financial Information Unit) issued a resolution providing that an assessment of money laundering risks has to be conducted every two years. The first assessment is currently being undertaken. Unfortunately,

¹⁸ United States of America Department of Treasury: *National Money Laundering Risk Assessment*, Washington D.C., 2015, www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%932006-12-2015.pdf.

¹⁹ Department of Finance Canada, *Assessment of inherent risks in money laundering and terrorist financing in Canada*, July 2015, www.fin.gc.ca/pub/mltf-rpcfai/index-eng.asp.

²⁰ HM Treasury and Home Office of the UK, *UK national risk assessment of money laundering and terrorist financing*, October 2015, www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf.

the resolution includes a confidentiality clause and the results will not be made available to the public.

In the **EU**, the fourth EU AMLD states that the Commission shall conduct an assessment of the risks of money laundering every two years, or more frequently if appropriate, with the first assessment due by June 2017.

In order to better understand the risks, it is also important that relevant stakeholders, such as financial institutions, DNFBPs, professional and industry associations, as well as non-governmental organisations working on related topics, are consulted. However, stakeholders were consulted in only three of the countries that have conducted risk assessments in the last three years.

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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.”

WHY IS THIS IMPORTANT?

Information on beneficial ownership should be adequate – that is, sufficient to identify the beneficial owner. This means that the information should contain the full name of the beneficial owner, an identification number, their date of birth, nationality, country of residence and an explanation of how control is exercised. Companies should ensure that the actual beneficial owners are identified, not just the legal owners. The information needs to be accurate and current, both at the time the legal entity is created and over time.²¹ This means that information about all changes in the ownership and control structure should be updated promptly. Companies should therefore 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 the company about changes to beneficial ownership.

The information must be available in the jurisdiction where the company is incorporated, even when, as is often 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.

²¹ Transparency International, *Ending secrecy to end impunity, Tracing the beneficial owner*, February 2014, www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial.

THE IBORI CASE: WHY ACQUIRING BENEFICIAL OWNERSHIP INFORMATION CAN HELP STOP CORRUPTION

James Ibori served two terms as governor of oil-rich Delta State in Nigeria. He was convicted in a London court after skimming millions of pounds from inflated contracts for infrastructure projects in Delta State, including for a sports stadium, schools and hospitals. Ibori was also a key figure benefitting from the fraudulent sale of shares owned by Delta State in one of the biggest telecoms operating companies in Nigeria, V-Mobile (now Airtel). Authorities were able to identify £50 million of corrupt funds outside of Nigeria but believe that the real figure could be in excess of £200 million.²²

Multinational investigations led to his guilty plea to 13 charges of money laundering in a **United Kingdom** in April 2012. In the early years of his scam, from 1999 to around 2004, James Ibori admitted fraud of nearly GBP 50 million.²³ He bought properties in London in his own name and the names of his family members without any serious attempt to disguise the source of the money. In a much more sophisticated manner Ibori later engaged the services of a London-based solicitor and a corporate financier, and a Jersey-based fiduciary agent.²⁴ A former Goldman Sachs investment banker provided Ibori with instructions on how to register four companies so that banks in Guernsey would not submit them to the deeper due diligence investigations recommended for companies and accounts of PEPs.²⁵ They hid the route of the money using numerous shell companies and accounts in the names of his mistress, wife and sister to pass money to Channel Islands trusts and elsewhere²⁶ through a bewildering route of other shell companies, sometimes with registered addresses at commercial mail boxes in several different countries, such as Gibraltar, India, Malaysia and Mauritius. With this money, Ibori purchased more houses, luxury cars and allegedly put a payment down for a US\$20 million personal jet.²⁷

²² "Jailed former Nigerian oil state governor loses appeal in Britain", *Reuters* (web), 2 May 2013, www.reuters.com/article/2013/05/02/us-britain-nigeria-ibori-idUSBRE9410SG20130502.

²³ "Former Nigeria state governor James Ibori receives 13-year sentence", *The Guardian*, 17 April 2012, <http://www.theguardian.com/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced>

²⁴ Judgement of Judge PITTS in REGINA V JAMES ONANANEFE IBORI delivered on Tuesday, 17 April 2012

²⁵ "Ex-Goldman Sachs banker jailed in UK in Nigerian corruption case", *Reuters*, 9 December 2013, <http://www.reuters.com/article/2013/12/09/us-britain-banker-corruption-idUSBRE9B80OE20131209#BBgm5HDjx2iBzYyp.97>

²⁶ "UK properties held by offshore firms used in global corruption, say police", *The Guardian*, 4 March 2015, <http://www.theguardian.com/uk-news/2015/mar/04/uk-properties-held-by-offshore-firms-used-in-global-corruption-say-police>

²⁷ "The Case against Ibori", *This Day-Live* (Nigeria), 28 February 2012, <http://www.thisdaylive.com/articles/the-case-against-ibori/110253/>

WHAT SHOULD BE IN PLACE?

Top scoring G20 members require legal entities to maintain information on all natural persons who exercise ownership or control of the legal entity, and that information needs to be maintained within the country of incorporation regardless of whether the legal entities have or do not have a physical presence in the country. The law would require shareholders to declare if control is exercised by a third person and there would be a requirement in place for beneficial owners and shareholders to inform the company when there are changes in ownership, or control.²⁸

Mid scoring G20 countries may require legal entities to maintain information on natural persons who own or control shares but only in certain cases would shareholders need to declare if control is exercised by a third person. Lowest scoring countries will have no requirement for legal entities to hold beneficial ownership information, nor would nominee shareholders have to declare if they own shares on behalf of another person, nor if there is a change in the ownership of those shares.

SCORES

Argentina	50%	Italy	50%
Australia	13%	Japan	25%
Brazil	25%	Mexico	25%
Canada	0%	Russia	31%
China	25%	Saudi Arabia	25%
EU	75%	South Africa	38%
France	50%	South Korea	25%
Germany	13%	Turkey	25%
India	75%	UK	100%
Indonesia	50%	US	0%

²⁸ For the full scoring criteria see Annex 1 on the methodology.

FINDINGS

The G20 principles put great emphasis on ensuring legal entities are responsible for collecting and maintaining information on their ultimate beneficial owners. However, only two of the countries assessed, **India** and the **UK**, have such a requirement in place. In **India** the implementation of the Company Act requirement may be hampered by the fact that a definition of beneficial ownership is omitted and it is unclear whether the definition provided in the anti-money laundering law also applies in this case.

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 regarding changes in share ownership but are not required to declare to the company if they own shares on behalf of a third person.

In **Argentina** a recently approved law does not require legal entities to maintain beneficial ownership information, but it does require legal entities to declare that information when registering the company 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 all other countries legal entities are required to maintain a shareholder / member registry, but as company laws do not differentiate between legal ownership and control, this registry contains only the name (sometimes the natural person but sometimes the legal person) of the legal owner. In the majority of countries where the concept of nominee shareholder exists, the registry contains only the name of the nominee as there is no requirement to disclose that the nominee represents a third person. Only **Argentina**, **India**, and the **UK** require nominee shareholders to inform the legal entity if he/she owns shares on behalf of a third person. In **Australia** and **South Africa** such a requirement only applies to public listed companies.

In all other countries current laws and regulations do not require legal entities to maintain information on beneficial ownership. Consequently, there is also no requirement that the beneficial ownership information is maintained within the jurisdiction and there is also no requirement for nominee shareholder to declare to the company if they own shares on behalf of a third person.

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.”

WHY IS THIS IMPORTANT?

Government bodies responsible for anti-money laundering and control of corruption and tax evasion / avoidance, amongst others, need to have timely access to sufficient, legitimate and verified, and up-to-date information on beneficial ownership, in order for them to be able 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, and this increases the likelihood of impunity for those that have engaged in corrupt or illegal acts.

As an example, the US Department of Justice’s June 2015 indictment of FIFA outlined in detail the methods and mechanisms, including the creation and use of shell companies and nominees, that were used to hide and transfer stolen funds. Significantly, the indictment explicitly states that these mechanisms were “designed to prevent the detection of their illegal activities, to conceal the location and ownership of proceeds of those activities, and to promote the carrying on of those activities”.²⁹

WHAT SHOULD BE IN PLACE?

Top scoring G20 members explicitly state that all law enforcement bodies, tax agencies and the financial intelligence unit 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. Higher scores are given for countries with a central beneficial ownership or company registry that includes all relevant information that grants access within 24 hours. Additional points are given to countries where this information is public. A public, central (unified) register is the most effective and practical way to record information on beneficial ownership and facilitate access to competent authorities³⁰. A central registry also supports the harmonisation of the country’s legal framework, avoiding double standards.

²⁹ United States District Court, Eastern District of New York, *United States v Webb et al.*, 20 May 2015, www.justice.gov/opa/file/450211/download.

³⁰ Transparency International, July 2015

Top scoring G20 members also have laws in place mandating the registry authority to verify the information against independent and reliable sources, and requiring legal entities to update the beneficial ownership information within 24 hours.

Lower scores are given to those with decentralised registries, with only partial information, and for those where competent authorities have access to information held by legal entities or other bodies, or who grant access only after a longer period of time. Lower scores are also given to countries where verification only happens in suspicious cases, and where legal entities are only required to update the beneficial ownership information over a longer period, or, indeed, over a non-specific timeframe.

SCORES

Argentina	46%	Italy	39%
Australia	14%	Japan	14%
Brazil	14%	Mexico	18%
Canada	14%	Russia	32%
China	21%	Saudi Arabia	29%
EU	61%	South Africa	21%
France	21%	South Korea	11%
Germany	29%	Turkey	7%
India	71%	UK	79%
Indonesia	29%	US	18%

FINDINGS

Compliance with this principle is the weakest overall among countries; no G20 member reaches a “very strong” score of 81% or above. Establishing ways to provide timely access to adequate, accurate and current information must be seen as an immediate priority for all G20 countries.

In the great majority of cases, competent authorities rely almost solely on the information collected by financial institutions and DNFPBs. Another source of information used to investigate beneficial ownership information is the legal entities themselves. However, many of these entities are not required to collect and maintain beneficial ownership information, as we saw in the discussion of the previous principle. Another commonly used source of information is company registries. However, we find here that just three countries collect beneficial ownership in company registries. All the others, at a maximum, include information on shareholders, but this refers only to the natural or legal persons exercising legal ownership. This information cannot be considered sufficient to identify the beneficial owner of a company.

The main key challenges in relation to ensuring easy access to competent authorities are outlined below.

Unclear rights to access information

The assessment shows that timely access to relevant and accurate beneficial ownership information by competent authorities is restricted in the great majority of countries. In some countries there is a lack of information or legislation indicating who has a right to access information and at what point.

Turkey scores lowest in this analysis because of an absence of legislation stating which authorities should be able to access beneficial ownership information. Legal entities are not required to maintain beneficial ownership information. While the electronic trade registry (MERSIS) should contain basic (legal) ownership information on all legal entities incorporated in the country, only limited information is recorded. For instance, information on shareholders and detailed information on directors are not recorded in the registry. Moreover, the registry authority does not have a mandate to verify the information provided by legal entities. It is not unusual to find conflicting information on a legal entity in the trade registry and in the registry gazette.

In **Australia** there is currently no law or regulation that defines which authorities may have direct and timely access to beneficial ownership information. Information obtained by financial institutions is accessible on a case-by-case basis using the investigative powers of the competent authority in question and these vary according to the authority.

Easy access to a central registry or database

The recently approved law in the **UK** establishing the requirement for companies to maintain beneficial ownership information and the creation of a public registry is expected to enable open access to corporate beneficial ownership information. The approved fourth **EU** AMLD, currently undergoing transposition into national law across EU countries, requires that Member States establish a central registry containing beneficial ownership information accessible to competent authorities, financial intelligence units and obliged entities such as banks. Other stakeholders, such as non-governmental organisations and investigative journalists, may request access to the registry if they prove “legitimate interest”. All EU countries are currently considering the transposition into national law, which must take place by 2017, at which point access by competent authorities in EU countries will improve.

In other countries where beneficial ownership information is collected, 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 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 registries at the sub-national 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.

In countries where beneficial ownership information is not directly available, the quality and ease of access to basic legal ownership information available in company registries 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 it is collected, is often incomplete, difficult to access or fragmented across different databases. As an example, **Canada** does not have a central company registry and information collected in the majority of provinces is insufficient to support the identification of the beneficial owner. In the majority of states, with the exception of some such as Alberta, Manitoba and Quebec, company registries do not even include information on shareholders. Only the names of directors are recorded. Similarly, in the **US** 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 US state has a

separate company registry and requires different information from legal entities. In some of the registries (e.g. Delaware), information on shareholders or directors is not even recorded, making the identification of the beneficial owner more difficult.

“LEGITIMATE INTEREST” IN FINDING THE SOURCE OF CORRUPTION AND CRIME

The fourth EU AMLD made good progress last year by requiring Member States to establish national central registries containing beneficial ownership information, accessible to competent authorities, financial intelligence units and obliged entities, such as banks. The EU AMLD does not, however, require Member States’ registers to be fully public. Stakeholders that prove a “legitimate interest” may be granted some level of access, although beneficial ownership information of trusts will not be made available in this way.

However, it is not clear whether only authorities and obliged entities within EU Member States will have direct access to the registries or whether foreign authorities will need to continue to rely on mutual legal assistance requests, or claim their “legitimate interest”. This could continue to delay investigations, by maintaining an unnecessary bureaucratic layer. Independent investigations by journalists or civil society groups would also be hampered by the requirement to make requests for information. Moreover, it is not clear how the term “legitimate interest” will be interpreted by Member States.

It should be noted that the EU AMLD only establishes minimum requirements for Member States. EU members should be encouraged to expand on these provisions.

Reliance on financial institutions and DNFBPs to collect accurate information

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. 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 effectively identify wrongdoings.

Insufficient verification

Across the majority of G20 countries, financial institutions and DNFBPs usually take for granted the information on the identity of the beneficial owner provided by customers. Only in nine of the countries (**Australia, Canada, France, Indonesia, India, Italy, Japan, Saudi Arabia** and the **UK**) does the law require that in cases considered to be of high-risk the information provided by the customer must be verified by the financial institution against independent and reliable sources. 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 recorded in the company

registry) to verify the information provided by the customer.³¹ 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 and relevant.

A second problem is that information collected in company registries is rarely verified by registry authorities across the G20. Only in **Italy**, and to a certain extent in **Russia**, is the registry authority mandated to verify the information provided by companies. In **India** verification may take place in suspicious cases. Even in countries where beneficial ownership information is recorded, no verification takes place. In the **UK**, the registry authority, Companies House, does not investigate fraud or wrongdoing.

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

Limited registration requirements for foreign companies

Finally, in some countries, foreign companies operating in the country do not need to disclose the beneficial owner or even provide details on shareholders. Very often they only need to provide the name of a manager or representative in the country and there is no record whatsoever of whom the beneficial or legal owners are.

In **Brazil**, for instance, foreign companies operating in the country are required to register with the registry authority and with the tax authority. Until very recently the registration only required the name of a company representative in Brazil. Tax, law enforcement and other supervisory authorities did not have access to the identity of the owners, which caused serious challenges in cases where the company passed through financial difficulties or were involved in criminal activities. In an attempt to improve access to information and accountability, the federal tax authority started requiring foreign companies to declare the name of the beneficial owner upon registration. This requirement is still not fully mandatory as there is an option for company managers to state that they do not know who the final beneficiary is and registration may still proceed. This issue is particularly problematic where the foreign company is incorporated in a secrecy jurisdiction by a professional nominee who often does not hold detailed information about the company and the beneficial owner(s).

³¹ For instance, financial institutions and DNFBPs surveyed within the framework of the BOWNET project (Transcrime) stated that data on companies' shareholdings is the information most commonly used to identify beneficial owners (82.7%), followed by information on companies' board members and managers (47.2%); Specially Designated Nationals, PEP 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

BENEFICIAL OWNERSHIP AND THE PETROBRAS SCANDAL

Brazilian *Operação Lava Jato* (Operation Car Wash) is an investigation carried out by Brazilian federal police that has uncovered major corruption scandals. As a result of this investigation, Brazilian federal prosecutors filed charges to the Supreme Court against Eduardo Cunha (President of the Lower House of Congress) claiming he received US\$ 5 million in bribes in order to facilitate the construction of two Petrobras drill ships, and requested his conviction for “passive” corruption and money laundering.³² Former international chief of Petrobras (the state-run oil firm) Nestor Cervero, consultant Julio Camargo and lobbyist Fernando Soares, were sentenced days before for organising these bribes.³³ According to the charges filed by federal prosecutors, the bribes were allegedly received through offshore companies and front companies in Brazil that had Cunha as a “hidden shareholder” and the final beneficiary.³⁴

In another scandal, Eduardo Cunha and some of his family members appear as the beneficial owners of bank accounts in Switzerland where bribes allegedly paid in relation to a Petrobras project in Africa in 2011 are believed to be hidden.³⁵ The assets have now been seized and the investigation will be conducted by Brazilian prosecutors.³⁶

³² “Brazil Speaker Eduardo Cunha facing corruption charges”, *BBC*, 21 August 2015, www.bbc.com/news/world-latin-america-34012980.

³³ “Former Petrobras exec sentenced for Samsung drillship bribe”, *Reuters*, August 17 2015, www.reuters.com/article/2015/08/17/petrobras-corruption-idUSL1N10S19V20150817; “Former Petrobras executive sentenced over alleged congressional bribe”, *The Guardian*, August 17 2015, www.theguardian.com/world/2015/aug/17/former-petrobras-executive-nestor-cervero-sentenced-bribe.

³⁴ Federal Public Prosecutor’s Office charges, 19 August 2015.

http://media.folha.uol.com.br/poder/2015/08/20/inquerito_3893.pdf

³⁵ “Brazil lower house speaker under pressure over Swiss accounts”, *Reuters*, 2 October 2015, <http://uk.reuters.com/article/2015/10/02/uk-brazil-corruption-cunha-idUKKCN0RW06520151002>

³⁶ “Brazil lower house speaker under pressure over Swiss accounts”, *Reuters*, October 2 2015, <http://uk.reuters.com/article/2015/10/02/uk-brazil-corruption-cunha-idUKKCN0RW06520151002>.

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.”

WHY IS THIS IMPORTANT?

Trusts are the second most used vehicle for corruption, after companies.³⁷ Efforts to tackle money laundering must also tackle secrecy and misuse of trusts, foundations and other legal structures. Trusts enable property or assets to be managed by one person on behalf of another and one challenge to tackling the misuse of trusts is that control and ownership are explicitly separate. 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.³⁸

WHAT SHOULD BE IN PLACE?

Top scoring G20 countries require trustees to collect 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).³⁹ Lower scoring countries typically require trustees to maintain information on only some parties to the trust, or only impose such obligations on professional trusts. In countries where domestic trusts are not allowed but the administration of foreign trusts is possible, high scoring countries require trustees to proactively disclose beneficial ownership information to financial institutions and DNFBPs with which they establish a relationship.

³⁷ World Bank/UNODC, 2011: 3

³⁸ Transparency International, February 2014.

³⁹ Transparency International EU Office, *Fighting money laundering in the EU: From secret companies to public registries*, January 2014, www.transparencyinternational.eu/wp-content/uploads/2014/01/TI-EU-Policy-Paper-Beneficial-Ownership.pdf.

SCORES

Argentina	100%	Italy	33%
Australia	33%	Japan	33%
Brazil	33%	Mexico	67%
Canada	67%	Russia	33%
China	67%	Saudi Arabia	50%
EU	100%	South Africa	67%
France	67%	South Korea	33%
Germany	50%	Turkey*	n/a
India	33%	UK	67%
Indonesia	67%	US	33%

In **Turkey there is no domestic trust law, and Turkey does not allow the administration of foreign trusts. Therefore the principles on trusts are not applicable.*

FINDINGS

Only **Argentina** has rules requiring trustees to maintain beneficial ownership information related to all parties to the trust, including trustees, protectors and beneficiaries. The fourth **EU** AMLD also 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.

In **China**, **South Africa** and the **UK** trustees are also required to collect information related to all parties to the trust, but the law does not mention that the beneficial owner has to be identified. In other countries the information is only required to be recorded by the trustee if the trustee is a professional (e.g. lawyer or account in a fiduciary capacity) or corporate service provider regulated by the anti-money laundering law.

In addition, in the majority of countries financial institutions are expected to conduct due diligence and identify the beneficial ownership of customers that are domestic or foreign trusts, including by recording information on trustees, settlors and beneficiaries. **China**, for example, has a domestic trust law but does not recognise the administration of foreign trusts. According the Trust Law of the People's Republic of China, trustees are required to maintain information on settlors and beneficiaries. Also, financial institutions dealing with trusts are required to collect information on parties to the trusteeship; and to register the names of, and means of contacting, the trustor and the beneficiary.

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.”

WHY IS THIS IMPORTANT?

Trustees should be required to share with legal authorities all information deemed necessary to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. This is necessary to identify or exclude individuals that are sought in relation to investigations. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs. Transparency International also believes that tax and law enforcement authorities should have timely, preferably immediate, access to the information (within 24 hours) held by trustees, but we have been unable to score this in this analysis.

WHAT SHOULD BE IN PLACE?

Top scoring G20 countries have laws in place that allow competent authorities to request and access information on ownership and control of trusts held by trustees and other parties, such as financial institutions or DNFBPs. In high scoring countries, the law also clearly states which competent authorities are granted access. In lower scoring countries, competent authorities are not permitted access or only a limited number of authorities are granted access. Finally, additional points are given to G20 countries that collect and maintain information on trusts in a registry. Lower scoring countries may have a registry that is either non-compulsory or does not collect adequate information to identify beneficial ownership.

SCORES

Argentina	75%	Italy	33%
Australia	50%	Japan	33%
Brazil	17%	Mexico	50%
Canada	33%	Russia	33%
China	50%	Saudi Arabia	50%
EU	100%	South Africa	83%
France	83%	South Korea	17%
Germany	50%	Turkey	n/a*
India	33%	UK	50%
Indonesia	33%	US	25%

In **Turkey there is no domestic trust law, and Turkey does not allow the administration of foreign trusts. Therefore the principles on trusts are not applicable.*

FINDINGS

Trust registration is only mandatory in **France**, **Saudi Arabia** and **South Africa**, but beneficial ownership information is not necessarily recorded. The fourth **EU** AMLD requires the registration of beneficial ownership information in relation to trusts with a “tax consequence”. Four other countries require the registration of trusts under certain circumstances, such as when assets need to be registered or when the trust has tax obligations.

In **South Africa** trustees are required by law to lodge the instrument of the trust with the Master of the High Court and this instrument should contain: the names and ages of the beneficiaries; the full names, and copies of the identity documents, of the trustees; the name of the bank and branch thereof at which the trust banking account will be kept; what steps will be taken by the trustee(s) to maintain accurate records of the trust; whether (s)he will exercise direct personal control over the trust – and, if not, what agent or firm has been instructed by him/her and to what extent. The Master of the High Court maintains a trust register with the information provided by the trustee. Trusts and trustee administrators are also subject to customer due diligence requirements and must identify and keep records of all the parties to the trust.

In most of the countries the competent authorities 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 do they have guaranteed timely access to beneficial ownership data. In **South Korea** the law does not specify which competent authorities should have timely access to beneficial ownership information relating to trusts and the information that can be requested is minimal.

However, the fourth **EU** AMLD requires states to ensure timely and unrestricted access by competent authorities and financial intelligence units, without alerting the parties to the trust concerned.

In **Saudi Arabia** supervisory authorities are granted access to information in the fulfilment of their supervisory duties. The Saudi Arabian Monetary Authority and the Capital Market Authority are explicitly authorised to access all information required to perform their supervisory functions.

In **Turkey** there is no domestic trust law, and the administration of foreign trusts is not allowed. Therefore the principles on trusts are not applicable.

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12 NOV 2015, 00:01 BERLIN TIME

G20 PRINCIPLE 7: FINANCIAL INSTITUTIONS, BUSINESSES AND PROFESSIONS

“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.

a. Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs.

b. Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.”

WHY IS THIS IMPORTANT?

Corrupt figures 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 ends up in the hands of another set of DNFBPs, such as real estate agents, casinos and luxury goods dealers. This is for two purposes: ultimately to enjoy the proceeds of their criminal activities; and to launder the money to allow it to enter the market later as seemingly “clean” assets.

As an example, two TCSPs based in Latvia acted as the nominee directors and shareholders for a number of companies involved in criminal activities ranging from defrauding governments and investors to arms dealing in Eastern Europe. They acted as nominees for hundreds of companies incorporated in jurisdictions that included the British Virgin Islands, Panama, Cyprus, New Zealand, the US, the UK and Ireland, many of whom were in turn nominal shareholders of many other companies.⁴⁰

In addition, a review conducted by the UK Financial Standards Authority in 2011 showed that 75% of the banks surveyed failed to carry out proper checks to detect and stop the proceeds of corruption.⁴¹ In order to make it less lucrative and less easy to launder money, financial institutions and this group of professionals must be supervised so as to not be complicit in money laundering, and they must face sanctions if they do not comply with their obligations under law. Among other measures to curb

⁴⁰ Alex Marriage, *Secret structures, hidden crimes: Urgent steps to address hidden ownership, money laundering and tax evasion from developing countries*, EUODAD, 2013, p. 12, <http://eurodad.org/files/integration/2013/01/Secret-structures-hidden-crimes-web.pdf>.

⁴¹ UK Financial Services Authority, *Banks' management of high money laundering risk situations*, June 2011, www.fsa.gov.uk/pubs/other/aml_final_report.pdf.

money laundering, financial institutions and DNFBPs should be required to identify and verify the identity of the beneficial owners of clients when establishing a business relationship or conducting transactions for occasional customers, and to report all suspicious activities in accordance with existing anti-money laundering regulations.⁴² Where financial institutions and DNFBPs cannot properly identify the client's ownership, they should not enter into a business transaction.

Furthermore, it is crucial that both financial institutions and DNFBPs conduct enhanced due diligence on clients who are PEPs, individuals (and often relatives or close associates of individuals) who hold or have held a prominent public function, such as a head of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials.⁴³

WHAT SHOULD BE IN PLACE?

Financial institutions and DNFBPs should be required by law to identify the beneficial owners 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 TCSPs providing services to legal entities.

Higher scoring G20 countries require financial institutions and DNFBPs to verify the beneficial ownership information of their customers and clients and in high-risk cases this should be done independently.

Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer or the beneficial owner is a domestic or a foreign PEP or a close associate of a PEP. If the financial institution or DNFBP cannot identify the beneficial owner, high scoring G20 countries would not be permitted to proceed with the transaction. High scoring G20 countries require a suspicious transaction report to be submitted if they cannot identify the beneficial owner.

Financial institutions and DNFBPs should have access to beneficial ownership information collected by governments. High scoring countries would make that information available online, for free – for example within a beneficial ownership registry. Lower scoring countries would make it available online, upon registration or upon payment of a fee. Limited points are awarded to G20 countries in which information is only made available upon request or in person.

Finally, high scoring countries permit the application of sanctions to financial institutions' directors and senior management.

Currently, there are big differences between the way financial institutions and businesses and professions are regulated, supervised and sanctioned. As a result, we separate the findings into two sections.

⁴² Transparency International, *Transparency of legal entities and arrangements*, May 2014, www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_BeneficialOwnership_EN.pdf.

⁴³ Transparency International, *Financial Jargon Buster*, www.transparency.org/glossary#/beneficial-ownership.

SCORES

	Financial institutions	DNFBPs	Sum
Argentina	66%	92%	82%
Australia	50%	0%	19%
Brazil	63%	85%	76%
Canada	38%	8%	19%
China	38%	8%	19%
EU	78%	96%	89%
France	75%	88%	83%
Germany	69%	88%	81%
India	81%	58%	67%
Indonesia	81%	50%	62%
Italy	81%	85%	83%
Japan	63%	50%	55%
Mexico	69%	77%	74%
Russia	50%	69%	62%
Saudi Arabia	63%	81%	74%
South Africa	6%	4%	5%
South Korea	31%	8%	17%
Turkey	50%	58%	55%
UK	88%	77%	81%
US	38%	8%	19%

FINDINGS – FINANCIAL INSTITUTIONS

Financial institutions play a key role in preventing and detecting the flow of illicit funds and are currently reasonably well regulated. There are, however, a number of areas of concern relating to identification and access to beneficial ownership information, the identification of domestic and foreign PEPs and sanctions for not complying with money laundering requirements.

One country does not require financial institutions to identify the beneficial owner of their clients when conducting due diligence (**South Africa**) and three countries (**Canada**, **South Korea** and the **US**) have very limited requirements. The majority of countries assessed require the identification and the verification of the identity of the beneficial owner (for instance, through an identification document with a photo, a copy of a utility bill to verify the address), but in 11 countries (**Argentina**, **Brazil**, **China**, **Germany**, **Mexico**, **Russia**, **Saudi Arabia**, **South Africa**, **South Korea**, **Turkey** and the **US**) there is no legal requirement that this information be verified using independent and reliable sources.

Turkey does not require any type of measure to identify whether the customer or the beneficial owner is a PEP. In Canada, customer due diligence requirements apply when the customer is a

foreign PEP under certain circumstances. However, the law does not require financial institutions to identify whether the customer or the beneficial owner of a legal entity is a domestic or a foreign PEP.

In nine other countries (**China, France, India, Japan, Russia, South Africa, South Korea, the UK and the US**), only foreign PEPs are regulated. This means that enhanced due diligence mechanisms do not apply if the customer is a domestic PEP. In countries where PEPs need to be identified and enhanced due diligence is required, this usually includes senior management approval in order to proceed with the business transaction, additional investigation into the sources of funds, and ongoing monitoring.

Australia has made some improvements recently by adopting, in 2014, new requirements for customer due diligence, which come into force in January 2016. Among other things, financial institutions should soon determine the beneficial owner of each customer, including each beneficial owner's full name, date of birth and residential address, either before the provision of a designated service to the customer or as soon as practicable after the designated service has been provided. The amendment to the anti-money laundering law also required financial institutions to have procedures to identify whether any individual customer or beneficial owner is a PEP or an associate of a PEP, requiring enhanced due diligence and the approval of senior management if the relationship is to continue.

In eight countries (**Australia, Canada, China, Japan, Russia, South Africa, South Korea, and the US**) financial institutions are still allowed to proceed with a transaction if the beneficial owner has not been identified, and in none of them is this a reason for submitting a suspicious transaction report.

While existing studies show that financial institutions often rely on available government databases to verify the information provided by customers, only the **UK** contains legal provisions that ensure direct access to beneficial ownership information. The fourth EU AMDL provides for access to financial institutions "without any restriction".⁴⁴

Financial institutions' directors and senior managers cannot be held personally responsible for non-compliance with the anti-money laundering rules in two countries, namely **Australia**, and **South Africa**. In all other countries some sort of punishment is prescribed by law, such as fines, suspension, or warnings.

⁴⁴ EU Directive 2015/849 of the European Parliament and of the Council, 20 May 2015, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_2015_141_R_0003&from=ES.

USE OF THE FINANCIAL SECTOR BY TEODORO OBIANG MBASOGO OF EQUATORIAL GUINEA

In the mid-2000s, a US Senate subcommittee became curious about the Government of Equatorial Guinea sending money and receiving loans that approached US\$700 million into accounts at just one US bank: the Riggs National Bank in Washington D.C. The investigation by the Senate Permanent Subcommittee on Investigations (PSI) found the bank had opened over 60 accounts for the government of Equatorial Guinea, including for President Teodoro Nguema Obiang Mbagasa, senior government officials, and their relatives (including Teodoro Obiang Mbasogo).⁴⁵ According to the investigation's report, the bank had also created offshore corporations and opened accounts in the names of those offshore corporations for the President and his sons; accepted millions of dollars in cash deposits from the President, his wife, and other Equatorial Guinean officials; and facilitated numerous suspect transactions involving millions of dollars, without alerting law enforcement. The PSI report concluded that Riggs Bank "turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement".⁴⁶ Riggs Bank closed the Equatorial Guinea accounts in 2004, and subsequently pleaded guilty to failure to report suspicious monetary transactions by high-risk customers and agreed to pay a US\$16 million fine, in addition to a US\$25 million civil penalty, for its handling of the Equatorial Guinean and other accounts.⁴⁷

A second Senate investigation showed that Teodoro Obiang Mbasogo moved over US\$100 million in suspect funds into or through at least six other US banks by employing professionals such as attorneys, real estate and escrow agents to help him bypass anti-money laundering and PEP controls, and by taking advantage of wire systems that were not equipped to screen out high-dollar transfers sent by PEPs from high-risk countries.⁴⁸

FINDINGS – BUSINESS AND PROFESSIONS

Argentina scores very strongly since it regulates businesses and professions to the same degree as financial institutions, with sanctions in place for directors and senior management for failures to apply the anti-money laundering legal framework. They also define DNFPBs over and beyond the FATF recommendations, subjecting a much more comprehensive group to anti-money laundering rules, including dealers in luxury goods, such as yachts, cars, planes, art dealers, armoured transportation companies, fine art auctions and private sales within their remit.

⁴⁵ United States Senate Permanent Subcommittee on Investigations, *Money Laundering and foreign corruption: Enforcement and effectiveness of the PATRIOT Act, Case Study involving Riggs Bank*, July 15 2014, www.hsgac.senate.gov/imo/media/doc/ACF5F8.pdf?attempt=2.

⁴⁶ United States Senate Permanent Subcommittee on Investigations, July 2014.

⁴⁷ United States Senate, Permanent Subcommittee on Investigations, *Keeping Foreign Corruption Out of the United States: Four Case Histories*, 4 February 2010, www.hsgac.senate.gov/subcommittees/investigations/hearings/-keeping-foreign-corruption-out-of-the-united-states-four-case-histories.

⁴⁸ United States Senate, Permanent Subcommittee on Investigations, February 2010.

However, five countries (**Australia, Canada, China, South Africa, and the US**), do not have legal provisions requiring DNFBPs to identify the beneficial owners of their clients. In some of these countries, such as the US and South Africa, for example, DNFBPs have some anti-money laundering obligations but are not required to identify and verify beneficial ownership information.

DNFPB by sector

- **TCSPs in Australia, Canada, India, Russia, South Africa, South Korea and the US** are not required by law to identify the beneficial owners of customers. Twelve countries have anti-money laundering obligations in place but the conditions vary and in some countries significant loopholes exist.

For instance, in the **UK** a major loophole exists in the anti-money laundering regime for TCSPs, in that they only have to carry out due diligence checks (including identifying beneficial owners) when establishing an “ongoing business relationship”. TCSPs have taken the position that if they are simply incorporating a company, this is a one-off transaction below the threshold, and so they do not have to carry out any customer due diligence.

In some countries TCSPs are not a distinct business category and therefore regulations only apply to lawyers, accountants, notaries, and other professions when they provide such TCSP business services, and 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** in more than half of the G20 countries are required by law to identify the beneficial owners of clients, usually in relation to activities such as management of assets and investments, selling of properties, etc. However, in several countries the bar associations have challenged such regulations, claiming that they threaten client-lawyer privileges. In **Canada**, for instance, the lawyers’ association made a successful in-court challenge to the anti-money laundering requirements that apply to lawyers.⁴⁹
- **Accountants in Australia, Canada, China, India, Indonesia, Japan, South Africa, South Korea and the US** are not required by law to identify the beneficial owners of clients.
- **Real estate agents** in seven G20 countries (**Australia, Canada, China, South Africa, South Korea, the UK and the US**) are not required by law to identify the beneficial owners of clients buying and selling property, and this is despite major scandals coming to light in recent years regarding 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 and London.
- **Casinos** in eight G20 countries, namely **Australia, Canada, China, Indonesia, Japan, South Africa, Turkey** or the **US** are not required by law to identify the beneficial owners of customers or clients (casinos are not permitted to operate in Brazil, Russia and Saudi Arabia).
- **Dealers in precious metals and stones** in seven G20 countries, namely **Australia, Canada, China, South Africa, South Korea, the UK and the US**, are not required by law to identify the beneficial owners of customers.

⁴⁹ 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>.

- The luxury goods sector in 10 G20 countries, namely **Australia, Canada, China, Indonesia, Italy, Japan, Mexico, South Africa, South Korea** and the **US**, is not required by law to identify the beneficial owners of customers.

It is not simply a case of regulation, however. Transparency International also believes that financial institutions and DNFBPs should have access to accurate, up-to-date information on the beneficial owners of customers to verify the information provided as well as to constantly monitor existing clients, particularly in high-risk situations.⁵⁰ However only in **Argentina, India, the UK** and in the **EU**, once relevant internal mechanisms are adopted, will financial institutions and DNFBPs have access to beneficial ownership information collected by the government. Automatic access would facilitate their due diligence obligations.

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12 NOV 2015, 00:01 BERLIN TIME

⁵⁰ Transparency International, 2014.

FOCUS ON THE REAL ESTATE SECTOR

Transparency International is concerned about the role of the real estate sector in facilitating corruption and money laundering by engaging with clients and customers whose beneficial owners they do not know and/or do not verify. Real estate agents in seven G20 countries (**Australia, Canada, China, South Africa, South Korea, the UK and the US**) are not required by law to identify the beneficial owners of clients buying and selling property.

Of particular concern is that the real estate sector has at time been granted special provisions removing some of their anti-money laundering requirements. In the **US** a temporary exemption to the PATRIOT Act was granted in 2002 to the real estate industry, meaning agents are exempt from carrying out background checks on the source of purchase funds and on beneficial owners. Earlier this year the New York Times series “Towers of Secrecy”,⁵¹ revealed how billions of dollars’ worth of luxury real estate in New York City has been purchased using anonymous companies by individuals under investigation for corruption and other crimes. Such individuals are able to do this because US law does not require the real estate industry to carry out background checks on the source of purchase funds and determine who the ultimate (beneficial) owner is. Transparency International USA and its partners sent a letter⁵² to the US Department of Treasury demanding prompt action to require due diligence by professionals in the real estate sector, and to extend due diligence requirements for financial institutions to companies and other legal entities.⁵³

Meanwhile, in the **UK** the requirement for real estate agents to identify beneficial owners only applies to the seller and not the purchaser of the property. A recent Transparency International UK report found that 75% of properties whose owners are under investigation for corruption made use of offshore corporate secrecy to hide their identities.⁵⁴ The latest FATF mutual evaluation of **Australia’s** anti-money laundering regime noted that Australian real estate is seen as an attractive destination for foreign corruption proceeds.⁵⁵ The Australian Federal Police estimates that AUS\$200 million of corrupt money is laundered from Papua New Guinea each year,⁵⁶ often transferred through bank accounts and into the real estate sector. Recovery of these funds has been difficult.⁵⁷

After a complaint issued by Transparency International France in 2008, authorities in **France** opened an investigation against state officials from Gabon, Republic of Congo and Equatorial Guinea.⁵⁸ French authorities believe the Sassou Nguesso family has spent around €60 million on properties and other luxury goods in French territory.⁵⁹ As a result of these investigations, some 15 luxury cars were taken from Sassou Nguesso’s family members in February 2015, near Paris. On August 15 a Court referral was issued for two luxury properties near Paris. French authorities believe that the beneficial owner behind the shell companies is Wilfrid Nguesso, nephew of the President of the Republic of Congo.⁶⁰

⁵¹ New York Times, February 2015

⁵² “Treasury must close loopholes to stem the flow of proceeds of foreign corruption into the U.S”, *Transparency International*, 11 March 2015,

[www.transparency.org/news/pressrelease/u.s. treasury must close loopholes to stem the flow of proceeds of foreign](http://www.transparency.org/news/pressrelease/u.s._treasury_must_close_loopholes_to_stem_the_flow_of_proceeds_of_foreign_corruption)

www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?action=click&contentCollection=N.Y.%20%2F%20Region&module=Kicker®ion=Header&pgtype=article

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.”

WHY IS THIS IMPORTANT?

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

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 EU.⁶¹ Against this backdrop it is important that countries facilitate access to beneficial ownership information by foreign authorities in a timely and effective manner.

⁵⁴ Transparency International UK, *Corruption on your doorstep, how corrupt capital is used to buy property in the UK*, February 2015, www.transparency.org.uk/publications/15-publications/1230-corruption-on-your-doorstep/1230-corruption-on-your-doorstep

⁵⁵ Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures - Australia, Fourth Round Mutual Evaluation Report*, April 2015, www.fatf-gafi.org/topics/mutualevaluations/documents/mer-australia-2015.html

⁵⁶ “The days of banging a million bucks into a secret account in Singapore are over” *Global Witness*, 2 July 2015 (www.globalwitness.org/campaigns/corruption-and-money-laundering/png-lawyers/).

⁵⁷ US Department of State, *Countries/Jurisdictions of Primary Concern - Papua New Guinea*, www.state.gov/j/inl/rls/nrcrpt/2015/supplemental/239281.htm

⁵⁸ “Des chefs d’Etat africains visés à Paris par une nouvelle plainte” *Le Monde*, 2 December 2008, www.lemonde.fr/international/article/2008/12/02/des-chefs-d-etat-africains-vises-a-paris-par-une-nouvelle-plainte_1125846_3210.html

⁵⁹ “Congo President spent £1m on clothes he never wore more than once” *The Telegraph*, 16 December 2013, www.telegraph.co.uk/news/worldnews/africaandindianocean/congo/10521681/Congo-President-spent-1m-on-clothes-he-never-wore-more-than-once.html

⁶⁰ “Biens mal acquis : la justice saisit deux propriétés du clan Nguesso près de Paris” *Le Monde*, 29 September 2015,

⁶¹ Transcrime, 2013.

WHAT SHOULD BE IN PLACE?

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 registries.

High scoring countries have no restrictions in place related to sharing information between domestic bodies, and accessing that information is efficient. A central database therefore scores more points than several databases. Lower scores are given to countries in which domestic authorities can only access beneficial ownership information through written requests or memoranda of understanding – or worse, through court orders.

In relation to international cooperation, high scoring countries have clear procedural requirements to guide foreign jurisdictions making requests. High scoring countries have laws in place that allow competent authorities to use their investigatory powers to respond to international requests. Low scoring countries have significant legal restrictions in place that prevent good cooperation and sharing of information.

Moreover, Transparency International believes that ensuring information on beneficial ownership is accessible would help cross-border investigations, allowing foreign law enforcement authorities to access relevant information discreetly and at short notice. Public registries 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.⁶²

SCORES

Argentina	71%	Italy	63%
Australia	38%	Japan	54%
Brazil	46%	Mexico	79%
Canada	33%	Russia	63%
China	71%	Saudi Arabia	54%
EU	n/a	South Africa	46%
France	63%	South Korea	46%
Germany	54%	Turkey	63%
India	38%	UK	83%
Indonesia	46%	US	54%

⁶² Transparency International, May 2014.

FINDINGS

It is difficult to fully verify the provisions that are in place for both domestic and international sharing of information since this usually takes place confidentially.

With regard to cooperating domestically on money laundering cases, there are significant restrictions in place in **Australia, Canada, Russia** and **South Africa**.

In **Australia** domestic authorities usually share beneficial ownership information – where it exists – through informal, ad hoc mechanisms or formal agreements. AUSTRAC is the competent authority that holds some beneficial ownership information, as it receives reports from financial institutions. However, only designated agencies, specified officials or a specified class of officials may access information held by AUSTRAC. This information may only be exchanged with other domestic and foreign authorities pursuant to an agreement from AUSTRAC, if they are not in contravention of the Privacy Act.

Canada also scores poorly on domestic cooperation. Domestic authorities usually are required to obtain a court order even to access basic ownership information held by legal entities and trustees. Only the country's financial intelligence unit (FINTRAC) can request information from financial institutions under its administrative or investigative powers.

In **Russia** relevant authorities may write a motivated request to the Federal Financial Monitoring Service to obtain specific information but Russian federal laws including laws on the protection of the state and other protected types of secrets (e.g. confidential information and commercial secrets) can be obstructive.

In **South Africa** information on beneficial ownership is neither collected nor made available to any competent authority. Domestic authorities holding any relevant information related to beneficial ownership can exchange that information with other authorities upon written request. In the case of the Financial Intelligence Centre, the law states that any information held by the body can be furnished to “an investigating authority inside the Republic, the South African Revenue Service and the intelligence services, which may be provided with such information—(i) on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or (ii) at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity”.

Regarding international cooperation, **India** scores lowest. Information can be shared based on mutual legal assistance treaties or memoranda of understanding but there are no clear procedural requirements or guidelines regarding how countries should proceed to request beneficial ownership information. However, international cooperation with regard to anti-money laundering/combating the financing of terrorism is restricted in the financial sector, because the financial sector supervisors (with the partial exception of the Securities Exchange Board of India) currently lack a specific legal basis for exchanging confidential information with supervisors in other countries. Information is usually exchanged at a higher level, but access to customer-specific information may be limited.

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.”

WHY IS THIS IMPORTANT?

Current estimates of undeclared offshore wealth range from conservative estimates of US\$7 trillion⁶³ (which still amounts to 8% of the world's personal financial wealth) to US\$21–32 trillion⁶⁴. 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. It is important that tax authorities also have access to beneficial ownership information to prevent tax evasion and recover funds, and that they face no restrictions on sharing information internationally in light of the cross-border nature of the theft taking place.

WHAT SHOULD BE IN PLACE?

High scoring G20 countries permit tax authorities to access beneficial ownership information maintained by domestic authorities online and for free, for example through a registry. Countries receive fewer points if they can only access the information upon submission of a specific motivated request. Countries in which the law imposes significant restrictions on sharing beneficial ownership information with domestic tax authorities score worst.

With regard to the sharing of tax information internationally, points are awarded where there are mechanisms in place, such as memoranda of understanding or treaties, to facilitate the exchange of information between tax authorities and foreign counterparts.

⁶³ “The True Cost of Hidden Money, a Piketty Protégé’s Theory on Tax Havens”, *New York Times*, 15 June 2014, www.nytimes.com/2014/06/16/opinion/a-piketty-protoges-theory-on-tax-havens.html.

⁶⁴ Tax Justice Network, *The Price of Offshore Revisited*, July 2012, www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf.

SCORES

Argentina	83%	Italy	75%
Australia	75%	Japan	75%
Brazil	75%	Mexico	75%
Canada	58%	Russia	75%
China	75%	Saudi Arabia	42%
EU	n/a	South Africa	75%
France	58%	South Korea	58%
Germany	58%	Turkey	75%
India	75%	UK	100%
Indonesia	58%	US	75%

FINDINGS

Seven countries, namely **Canada, France, Germany, Indonesia, Saudi Arabia, South Korea** and the **US**, have some or significant restrictions in place in relation to sharing information even domestically.

Tax authorities in **Saudi Arabia** do not have access to a central registry containing beneficial ownership information and they must make specific written requests or issue memoranda of understanding to share information between domestic authorities.

In **Indonesia** tax authorities do not have access to a central registry containing beneficial ownership information and bank secrecy laws could hamper the timely exchange of information. Bank information in Indonesia can only be accessed by tax authorities under conditions that are often time-restrictive.

Several countries have strongly worded legislation or mechanisms in place. The **UK** will soon have in place a public register with beneficial ownership information that would be available immediately to tax authorities. Whilst **Argentina** and **Brazil** do not have a central register in place, tax authorities maintain their own database containing relevant information in the identification of beneficial owners of legal persons and arrangements.

Many countries do not have access to a central database or registry but there are no explicit restrictions in place and tax authorities can make requests to gain access.

Every G20 country scored full points on having mechanisms in place to support the exchange of tax information with international counterparts.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

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

a. 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; and

b. taking effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused.”

WHY IS THIS IMPORTANT?

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”.⁶⁵ 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.

Nominees act as the legal manager, owner or shareholder of limited companies or assets. They act 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.

WHAT SHOULD BE IN PLACE?

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. High scoring G20 countries prohibit bearer shares by law. Lower scoring countries permit bearer shares but there is a process in place for them to be converted into registered shares. Limited points are available to countries where bearer share holders should notify the company of their identity, and that information is recorded by the company.

G20 countries that also prohibit the incorporation of companies using nominees score highly. Where nominees are permitted, countries can gain points if nominees are required by law to disclose the identity of the beneficial owners on whose behalf they are working at the time of registering the company. Additional points can be gained by countries where nominees are licensed and if the law requires that professional nominees keep records of their clients for a certain period of time.

⁶⁵ World Bank/UNODC Stolen Asset Recovery Initiative, 2011.

SCORES

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

FINDINGS

Overall, six G20 members are fully compliant with this principle, which is designed to prevent the misuse of legal entities by prohibiting bearer shares and not accepting nominee shareholders and directors.

Thirteen G20 members have already abolished bearer shares, the other seven countries assessed allow shares to be issued in bearer form. In five of them, preventive measures to avoid the misuse of bearer shares are in place, including in the **EU, Italy, Saudi Arabia, and Turkey**, and to a certain extent **Canada**. **China** and **Germany** are among the countries that allow bearer shares and have not established any prevention mechanism.

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 **Canada** federally incorporated entities are permitted to issue bearer shares. There are no requirements that bearer shares 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, among others.

The **EU** score is low because the EU has chosen to be non-prescriptive about bearer shares and thus approaches to bearer shares vary across the EU.

The landscape relating to the use of nominees is also concerning.

Eight G20 countries (**Australia, Canada, China, Germany, Mexico, Saudi Arabia, South Korea** and the **US**) still permit nominee directors and shareholders, without requiring them to disclose beneficial ownership information. In **China** there is no requirement for nominee shareholders and directors to disclose on whose behalf they are working, nor are there registration requirements for professional nominees. Only in **India** and in the **UK** are nominee shareholders required to disclose upon registration the identity of the beneficial owner.

Argentina, Brazil, France, Indonesia, Italy, Japan, Russia and **Turkey** do not recognise the concept of nominee shareholders and directors in domestic law; therefore, registered legal owners are understood to be the owner automatically. In some of these countries representation through a third party with powers granted by a power of attorney is possible, but in this case the nominee is not registered as the legal owner and it is clear that he/she only represents the owner. Nevertheless, the use of a front man in contravention to the law is still possible and is a reality in many of these countries. Therefore, it is important that countries ensure that company formation data is verified upon registration.

SUMMARY OF SCORES

	Principle 1: Beneficial ownership definition	Principle 2: Identifying and mitigating risk	Principle 3: Acquiring accurate beneficial ownership information	Principle 4: Access to beneficial ownership information	Principle 5: Beneficial ownership of trusts	Principle 6: Access to beneficial ownership of trusts	Principle 7: Duties of businesses and professions	Principle 8: Domestic and international cooperation	Principle 9: Beneficial ownership information and tax evasion	Principle 10: Bearer shares and nominees
Argentina	100%	10%	50%	46%	100%	75%	82%	71%	83%	100%
Australia	100%	0%	13%	14%	33%	50%	19%	38%	75%	50%
Brazil	0%	0%	25%	14%	33%	17%	76%	46%	75%	100%
Canada	25%	80%	0%	14%	67%	33%	19%	33%	58%	13%
China	50%	0%	25%	21%	67%	50%	19%	71%	75%	0%
EU	100%	0%	75%	61%	100%	100%	89%	n/a	n/a	50%
France	100%	0%	50%	21%	67%	83%	83%	63%	58%	100%
Germany	100%	0%	13%	29%	50%	50%	81%	54%	58%	0%
India	100%	0%	75%	71%	33%	33%	67%	38%	75%	75%
Indonesia	50%	0%	50%	29%	67%	33%	62%	46%	58%	100%
Italy	100%	70%	50%	39%	33%	33%	83%	63%	75%	75%
Japan	100%	100%	25%	14%	33%	33%	55%	54%	75%	100%
Mexico	100%	40%	25%	18%	67%	50%	74%	79%	75%	63%
Russia	100%	20%	31%	32%	33%	33%	62%	63%	75%	100%
Saudi Arabia	100%	0%	25%	29%	50%	50%	74%	54%	42%	38%
South Africa	0%	0%	38%	21%	67%	83%	5%	46%	75%	75%
South Korea	50%	0%	25%	11%	33%	17%	17%	46%	58%	50%
Turkey	100%	0%	25%	7%	n/a	n/a	55%	63%	75%	75%
UK	100%	100%	100%	79%	67%	50%	81%	83%	100%	88%
US	25%	80%	0%	18%	33%	25%	19%	71%	75%	50%

CONCLUSION

This report identifies areas of strength and weakness in the current beneficial ownership transparency framework of each G20 member country against the G20 Beneficial Ownership Transparency Principles adopted in November 2014.

While only one country (the UK) is found to have a legal framework that is closer in line with the G20 principles, it is important to note that recent improvements in legislation in several countries, such as in Argentina and India, have resulted in strengthening the beneficial ownership transparency framework. There is potential for several countries to improve their scores significantly if they adopt legislative proposals that are currently under discussion, for example in South Africa. This will also be the case when the EU AMLD is transposed into national law in France, Italy, Germany and the UK.

The UK scores highly in part because of the recent adoption of legislation that will establish a central, public registry containing beneficial ownership information. Transparency International fully supports this approach, which has been subsequently adopted by other non-G20 countries, such as Norway and Denmark. We believe that other G20 countries should do the same.

Furthermore, as more countries and procurement authorities, such as the World Bank,⁶⁶ move towards making beneficial ownership transparency a requirement for incorporation or for bidding for contracts, it would be useful to work towards ensuring that individual beneficial ownership registries can be made inter-operable with a central global public register.

Corruption and money laundering are global challenges. It is only with collective, global collaboration that we will find the solutions to tackle them.

⁶⁶ "World Bank wants to stop anonymous firms winning contracts", Reuters, 8 June 2015, www.reuters.com/article/2015/06/08/us-aid-worldbank-contracts-idUSKBN0OO2D520150608.

ANNEX 1: METHODOLOGY

To monitor the extent to which G20 members are fulfilling their commitments and the adequacy of their beneficial ownership transparency framework, Transparency International conducted an assessment of the current level of compliance 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.

DATA COLLECTION AND VERIFICATION

All data for the questionnaire was collected by desk research conducted between May and August 2015 by Transparency International national chapters or consultants. 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. In EU countries affected by the recent adoption of the fourth EU AMLD, if legislation had not yet been transposed into national law the commitments are not reflected in the scores. 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 number 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 Research and Knowledge Department at the Transparency International secretariat.

During August and September 2015 draft questionnaires were shared with government officials from all G20 countries for comments. Officials were given the opportunity to review the data and to provide feedback or propose corrections. Feedback was accepted until 30 September 2015. Nine government authorities provided feedback to the questionnaires, including those of **Argentina, Australia, France, Germany, Italy, Japan, South Africa, South Korea** and the **UK**.

QUESTIONNAIRE STRUCTURE AND SCORING

Questions were designed in order 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, varies 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 varies.

We used a four-point scoring scale. The model answers pertaining to each are specific to each question, but the principles underlying each score are, 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 then transformed into percentages that were converted into grades from “very weak” to “very strong”. Each country receives 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 are 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

LIMITATIONS

It is important to note that this research focuses specifically on assessing the legal framework related to beneficial ownership transparency and it is 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. 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.

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 2: QUESTIONNAIRE AND 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

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.

Q1. To what extent does the law in your country clearly define beneficial ownership?

Scoring criteria:

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.

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.

0: There is no definition of beneficial ownership or the control element is not included.

PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

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.

Q2: Has the government during the last three years conducted an assessment of the money laundering risks related to legal persons and arrangements?

4: Yes

0: No

Q3: Were external stakeholders (e.g. financial institutions, designated non-financial businesses or professions (DNFBPs), non-governmental organisations) consulted during the assessment?

4: Yes, external stakeholders were consulted.

0: No, external stakeholders were not consulted or the risk assessment has not been conducted.

Q4: Were the results of the risk assessment communicated to financial institutions and relevant DNFBPs?

4: Yes, financial institutions and DNFBPs received information regarding high-risks areas and other findings of the assessment.

0: No, the results have not been communicated.

Q5: Has the final risk assessment been published?

4: Yes, the final risk assessment is available to the public.

2: Only an executive summary of the risk assessment has been published.

0: No, the risk assessment has not been published or conducted.

Q6: Did the risk assessment identify specific sectors / areas as high-risk, requiring enhanced due diligence?

4: Yes, the risk assessment identifies areas considered as high-risk where additional measures should be taken to prevent money laundering.

0: No, the risk assessment does not identify high-risk sectors / areas.

PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

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.

Q7: Are legal entities required to maintain beneficial ownership information?

4: Yes, legal entities are required to maintain information on all natural persons who exercise ownership of control of the legal entity.

3: Yes, legal entities are required to maintain information on all natural persons who own a certain percentage of shares or exercise control in any other form.

0: There is no requirement to hold beneficial ownership information, or the law does not make any distinction between legal ownership and control.

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.

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.

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 registry that is freely accessible to the public. At a minimum, beneficial ownership registries should be open to competent authorities, financial institutions and DNFBPs.

Beneficial ownership registries should have the mandate and resources to collect, verify and maintain information on beneficial ownership. Information in the registry should be up-to-date and the registry 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.

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

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

3: information is available through decentralised beneficial ownership registries/ company registries.

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 registry?

In countries where there are sub-national registries, please respond to the question using the state/province registry 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.

0: No information is published.

Q17: Does the law mandate the registry 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 registry 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 registry?

4: Yes, legal entities are required by law to update information on beneficial ownership or 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 or directors /

shareholders within 30 days after the change.

2: Yes, legal entities are required to update the information on the beneficial owner or 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 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 relationship with financial institutions and DNFBPs. Countries should create registries to capture information about trusts, such as trust registries or asset registries, to be consulted by competent authorities exclusively or open to financial institutions and DNFBPs and / or the public.

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.

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.

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.

Q21 Is there a registry which collects information on trusts?

4: Yes, information on trusts is maintained in a registry.

2: Yes, there is a registry 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 registry.

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 registry.

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 (TCSs) 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.

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.

Q29: Does the law require financial institutions to submit suspicious transaction reports if the beneficial owner cannot be identified?

- 4: Yes.
- 2: Only if there is enough evidence of wrongdoing.
- 0: No.

Q30 Do financial institutions have access to beneficial ownership information collected by the government?

- 4: Yes, online for free through, for instance, a beneficial ownership registry.
- 3: Online, upon registration.
- 2: Online, upon registration and payment of fee.
- 1: Upon request or in person.
- 0: There is no access to beneficial ownership information collected by the government.

Q31: Does the law allow the application of sanctions to financial institutions' directors and senior management?

- 4: Yes, the law envisages sanctions for both legal entities and senior management.
- 0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

DNFBPS

Q32: Are TCSPs required by law to identify the beneficial owner of the customers?

- 4: Yes, TCSPs are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 2: TCSPs are partially covered by the law.
- 0: No, TCSPs are not covered by the law and do not have anti-money laundering obligations.

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?

- 4: Yes, lawyers are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, lawyers are not covered by the law and do not have anti-money laundering obligations.

Q34: Are accountants required by law to identify the beneficial owner of the customers?

- 4: Yes, accountants are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, accountants are not covered by the law and do not have anti-money laundering obligations.

Q35: Are real estate agents required by law to identify the beneficial owner of the customers?

- 4: Yes, real estate agents are required to identify the beneficial owner of their clients buying or selling property.

2: Real estate agents are partially covered by the law.

0: No, real estate agents are not covered by the law and do not have anti-money laundering obligations.

Q36: Are casinos required by law to identify the beneficial owners of the customers?

4: Yes, casinos are required by law to identify the beneficial owners of their customers or casinos are prohibited by law.

0: No, casinos are not covered by the law and do not have anti-money laundering obligations.

Q37: Are dealers in precious metals and stones required by law to identify the beneficial owner of the customers?

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.

0: No, dealers in precious metals and stones are not covered by the law and do not have anti-money laundering obligations.

Q38: Are dealers in luxury goods required by law to identify the beneficial owner of the customers?

4: Yes, dealers in luxury goods are required to identify the beneficial owner of their customer.

0: No, dealers in luxury goods are not covered by the law and do not have anti-money laundering obligations.

Q39: Does the law require relevant DNFBPs 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.

Q40: Does the law require DNFBPs 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.

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?

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.

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 their associates.

Q42: Does the law allow DNFBPs to proceed with a business transaction if the beneficial owner has not been identified?

4: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

0: Yes, relevant DNFBPs are allowed to proceed with a business transaction regardless of whether or not the beneficial ownership has been identified.

Q43 Does the law require DNFBPs to submit a suspicious transaction report if the beneficial owner cannot be identified?

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.

2: The law establishes that suspicious transaction reports should be submitted only if there is enough evidence of wrongdoing.

0: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

Q44: Does the law allow the application of sanctions to DNFBPs' directors and senior management?

4: Yes, the law envisages sanctions for both legal entities and senior management.

0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

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 registries. 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.

Governments should publish guidelines explaining what type of information is available and how it can be accessed.

Q45: Does the law impose any restriction on information sharing (e.g. confidential information) across in-country authorities?

4: No, there are no restrictions in place.

2: There are some restrictions on sharing information across in-country authorities.

0: Yes, there are significant restrictions on sharing information across in-country authorities.

Q46: How is information on beneficial ownership held by domestic authorities shared with other authorities in the country?

4: Information on beneficial ownership is shared through a centralised database, such as a beneficial ownership registry.

3: There are several online databases managed by different authorities that contain relevant beneficial ownership information (e.g. company registry, tax registry, etc.) that can be accessed.

2: Domestic authorities can access beneficial ownership information through written requests or memoranda of understanding.

1: Domestic authorities may only access beneficial ownership maintained by another authority if there is a court order.

0: Information on beneficial ownership is not shared.

Q47: Are there clear procedural requirements for a foreign jurisdiction to request beneficial ownership information?

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.

0: No, information on how to proceed with a request is not easily available.

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?

4: Yes, domestic authorities may use their investigative powers to respond to foreign requests.

0: No, the law does not allow domestic competent authorities to act on behalf of foreign authorities.

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)?

4: No, the law does not impose any restriction.

2: There are some restrictions that hamper the timely exchange of information.

0: Yes, there are significant restrictions in the law.

Q50 Do foreign competent authorities have access to beneficial ownership information maintained by domestic authorities?

4: Yes, online for free through, for instance, a beneficial ownership registry.

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.

PRINCIPLE 9: TAX AUTHORITIES

Guidance: Tax authorities should have access to beneficial ownership registries or, at a minimum, have access to company registries 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 registry.
- 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 registries that they are nominees. Nominees must not be permitted to be registered as the beneficial owner in such registries. 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.

ANNEX 3: ACKNOWLEDGEMENTS

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