

**TECHNICAL GUIDE
IMPLEMENTING THE
G20 BENEFICIAL
OWNERSHIP PRINCIPLES**

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. Through 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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ISBN: 978-3-943497-86-1
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Printed on 100% recycled paper.

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This publication was supported by
the Financial Transparency Coalition

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INTRODUCTION

Illicitly gained funds can enter and move through a financial system via companies and other legal arrangements. These vehicles can be used to conceal or disguise the identity of the real person who ultimately owns, controls or benefits from them – the “beneficial owner” – making it difficult to trace the origin of the funds, as well as lending the money the semblance of legitimacy. Corrupt politicians have been found to have used companies to obscure their identity in 70 per cent of cases of grand corruption surveyed by the Stolen Assets Recovery Initiative (StAR).¹

In recent years commitments have been made at the highest level to ramp up efforts to increase beneficial ownership information transparency, to tackle money laundering.

Most recently, at the Brisbane Summit in November 2014, G20 leaders adopted High-Level Principles on Beneficial Ownership Transparency, describing financial transparency as a “high priority” issue.² The G20 principles draw on the G8 Action Plan Principles to Prevent the Misuse of Companies and Legal Arrangements, adopted in the United Kingdom in 2013.³ The adoption of the G20 principles just one year later dramatically increased both the number and diversity of countries that have signalled their commitment at the highest political level to tackle beneficial ownership secrecy.

The G20 principles build upon the Financial Action Task Force (FATF) recommendations, the current global standards for anti-money laundering.⁴ However the principles offer flexibility for G20 countries to implement them according to their own legal frameworks.

In order for the principles to be most effective in tackling money laundering, they must be implemented as soon as possible. Equally, the language that provides for flexibility between different jurisdictions should not be misinterpreted to allow countries to settle for standards that fall to the lowest common denominator.

HOW TO USE THIS GUIDE

This technical guide takes each of the 10 G20 principles in turn and describes the current applicable international standards. In cases where the principles provide for flexibility in regard to interpretation and implementation, or in cases where Transparency International considers that the standards may not be sufficiently strong, the additional steps that countries should take in order for a principle to be implemented most effectively are also stated. At the end of each section, a summary of recommendations on how to implement the principle is provided.

¹ StAR Initiative, 2011. *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>

² G20 High Level Principles on Beneficial Ownership Transparency, 2014: https://g20.org/wp-content/uploads/2014/12/g20_high-level_principles_beneficial_ownership_transparency.pdf

³ G8 Action Plan Principles to Prevent the Misuse of Companies and Legal Arrangements: www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements

⁴ FATF Recommendations: www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

This guide can be used by practitioners within government seeking to strengthen their country's implementation of anti-money laundering commitments, as well as civil society organisations and interested parties wishing to assess the steps taken by their governments to implement commitments made at a global level.

Transparency International intends to use this guide to conduct an assessment of G20 countries against the G20 principles and associated recommendations contained in this guide, to shed light on the strengths and weaknesses of the current anti-money laundering system as it relates to beneficial ownership transparency.

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.”⁵

BENEFICIAL OWNERSHIP DEFINITION

The FATF defines the beneficial owner as “the natural person who ultimately owns or controls a customer and / or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate control over a legal person or arrangement”.⁶ The definition thus extends beyond legal ownership and control to consider the notion of ultimate ownership and control.

Transparency International applies the following definition: a beneficial owner is the natural person who ultimately owns, controls or benefits from a legal entity or arrangement and the income it generates. The term is used to underscore the contrast with the legal or nominee company owners and with trustees, all of whom might be registered as the legal owners of an asset without actually possessing the right to enjoy its benefits.

An adequate definition of beneficial ownership in national legislation should therefore 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. As such, it should also cover those who de facto exercise control, whether or not they occupy formal positions or are listed in the corporate register as holding controlling positions.

DEFINING CONTROL

Whilst both the FATF and Transparency International definitions of beneficial owner seems relatively straightforward, in practice some critical considerations need to be made. For instance, the interpretation of “control” is one that is debated and countries have defined control differently. The person who ultimately controls a corporate vehicle varies depending on the type of corporate vehicle. In a company limited by shares, for example, three groups of people might possibly qualify as having ultimate control: shareholders, the board of directors, and executive officers. In most cases, the shareholders may be said to have the most control over the company. In other types of corporate vehicles, such as trusts, identifying who exercises de facto control is even more difficult

⁵ All the principles cited in this guide can be found at https://g20.org/wp-content/uploads/2014/12/g20_high-level_principles_beneficial_ownership_transparency.pdf

⁶ FATF, 2014. *Transparency and Beneficial Ownership*. FATF Guidance.

because control and ownership are explicitly separate. Multiple individuals with different statuses (settlor, beneficiary, trustee, for example) could qualify as the beneficial owners.⁷

The majority of countries use a quantitative approach to identify certain owners, controllers or beneficiaries as the beneficial owner. Within this framework, control is defined based on the holding of a certain percentage of shares, voting rights or property. This is the case for instance in the EU Third Anti-Money Laundering Directive, under which any natural person holding more than 25 per cent of share capital qualifies as the beneficial owner.⁸ In some countries this percentage is lower. In the United States, for example, the Securities Exchange Act establishes a threshold of 5 per cent.⁹

However, on some occasions this quantitative approach is not useful in identifying the real beneficial owner. A person may exercise control over a corporate entity without holding shares or a position within the management of the company – through, for example, the use of nominee shareholders and shareholder agreements, or through kinship (or other types of affiliations), directors and persons in senior management positions, among others.¹⁰ For instance, research from Global Witness shows that in the United Kingdom up to 410,000 people control UK companies indirectly, which allows them to more easily hide tax evasion and the proceeds of corruption.¹¹

Similarly, a review of 150 grand corruption cases carried out by the StAR Initiative in 2011 shows that in the vast majority of cases actual control of corporate vehicles was exercised by unknown individuals through professional beneficiaries.¹²

In the case of trusts, as mentioned previously, control and ownership are explicitly separate, meaning that multiple individuals could be considered beneficial owners. The criterion for identifying the beneficial owner is usually based on the control over, or the benefit obtained from, a certain percentage of property or assets. The literature and the G20 principles do not specify what threshold may be adequate, as countries should take into consideration their legal framework and the risks identified for the different legal entities and arrangements when that framework was established.

Overall, a substantive approach to identifying beneficial ownership should be adopted, in which the information about shareholders, directors, and management (or settlors, beneficiaries and trustees in the case of trusts), whilst very important, should not be accepted as “a final, definitive conclusion”.¹³ The identification of the beneficial owner requires a sound understanding of the circumstances. Efforts need to be made to verify and assess who is the ultimate owner, particularly in cases identified in the national context as high-risk.

⁷ Transparency International, 2014. *Ending secrecy to end impunity: Tracing the beneficial owner*. www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial

⁸ The fourth Anti-Money Laundering (AML) Directive maintains this threshold but advises countries to adjust it according to their context.

⁹ Vermeulen, E., 2013. *Beneficial Ownership and Control: A Comparative Study – Disclosure, Information and Enforcement*. www.oecd-ilibrary.org/governance/beneficial-ownership-and-control_5k4dkhwckbzbv-en?crawler=true.

¹⁰ Global Witness. *The great rip off*. <http://greatripoffmap.globalwitness.org/#/>.

¹¹ Christian Aid, 2015. *UK leads world with new law to reveal who really owns companies*: www.christianaid.org.uk/pressoffice/pressreleases/march_2015/uk-leads-world-with-new-law-to-reveal-who-really-owns-companies.aspx

¹² StAR Initiative, 2011.

¹³ StAR Initiative, 2011.

G20 Principle 1 – Recommendations for implementation

- *The beneficial owner should always be a natural (physical) person and never another legal entity. As such, the identification and verification of beneficial owners should extend to legal entities that own other legal entities.*
- *The beneficial owner (s) is the person who ultimately exercises control through legal ownership or through other means.*
- *When defining beneficial ownership, countries may opt to determine controlling shareholders based on a threshold (for example, persons owning more than a given percentage of a company). This, however, should not be considered sufficient in identifying the beneficial owner, but rather it should be considered as one evidential factor to be taken into account, among others.*
- *The law should require those with reporting obligations to use other means, such as cross-checking the data provided with other government registries or using network analysis tools, to identify the actual owner – especially in the case of suspicious transactions.*

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.”

IDENTIFICATION OF MONEY LAUNDERING RISKS

The second G20 principle requires countries to develop a good understanding of the risks associated with different types of legal persons and arrangements, and how they can be misused. To do this, countries must first identify the existing types of legal persons and arrangements, understand their formation and registration processes, and their different forms and structures, and they must then assess the risks they pose.

Legal persons are any legal entities, such as public companies, limited liability companies (LLCs), foundations, partnerships or associations.¹⁴ Their incorporation requirements vary by jurisdiction and type of company. As such, different information and documents may be required to register each legal entity. In general, legal entities usually have a set of “associated persons”, such as directors, shareholders, other senior managers, nominee directors (formal and informal), and nominee shareholders (formal and informal),¹⁵ among others, who perform different roles. They may be the real beneficial owners, have only legal ownership but no actual control, or be responsible for opening and managing the company on behalf of someone else. In the latter cases, they are expected to have information regarding the actual beneficial owners.

¹⁴ FATF Glossary: www.fatf-gafi.org/pages/glossary/j-m/

¹⁵ “Nominee directors and shareholders fall into two categories: ‘professional’ nominees such as TCSP [trust or company service provider] firms or other individuals who provide the nominee services as a business and may be required by the jurisdiction that licenses them to know the identity of the natural person on behalf of whom they are providing the services and the so-called “informal” nominees such as associates, family members or friends who ‘front’ for the beneficial owner(s).” StAR Initiative, no year: *Access to beneficial ownership of legal entities and arrangements*. http://star.worldbank.org/star/sites/star/files/afar_bo_intro_final.pdf

Legal arrangements “refer to express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT [combating the financing of terrorism] purposes) include fiducie, treuhand and fideicomiso”.¹⁶ In a trust, a settlor transfers the right to control a property to a trustee and the benefits of the same property to beneficiaries. As such, the assets constitute a separate fund and are not a part of the trustee's own estate. The trustee merely manages the assets for the beneficiaries in accordance with the terms of the trust. Settlor, trustee and beneficiaries may be natural persons, companies or other corporate vehicles. The terms of the trust are set out in a trust instrument, the text that constitutes the trust. Countries have different rules on whether or not this instrument has to be registered and / or made public, but they are usually granted a high degree of confidentiality. While the majority of trusts are used for legal purposes, such as family estate planning, the level of confidentiality involved makes trusts attractive for money launderers.¹⁷

Once the different types of corporate vehicles are identified, the FATF recommends governments analyse the money laundering risks associated with each of them, whilst taking into account the broader money laundering risks in the country.¹⁸ This can be done, for example, by reviewing cases in which corporate vehicles were misused and / or reviewing suspicious transaction reports (STRs),¹⁹ in order to identify typologies which indicate higher risk.²⁰ This requires a good understanding of how corporate vehicles are formed and which ownership structures are frequently used in money laundering schemes (for example, the use of shell or shelf companies, or the extent to which service providers and professional intermediaries, such as lawyers and accountants, or others such as family members or “front men”, are used to disguise the beneficial owner).

CONDUCTING OF RISK ASSESSMENTS

The G20 principles do not specify by whom, how and when the risk assessment should be conducted, and whether the results should be made public. The FATF recommendations, while emphasising the importance of risk assessments, also do not provide further details.

The FATF assessment methodology, however, underscores that the risk assessment should involve all competent authorities and use a wide range of reliable information sources.²¹ Financial institutions and designated non-financial businesses or professions (DNFBPs)²² should provide input to the risk assessment and other anti-money laundering policies by sharing their experiences, challenges faced in conducting due diligence and patterns observed. According to the World Bank and the UN Office on Drugs and Crime's (UNODC's) StAR Initiative, the risk assessment should also include a succinct overview of the legal requirements for the corporate vehicles that are allowed to be established or to operate within the jurisdiction, the rationale for these requirements, and where information on them may be obtained.

¹⁶ FATF Glossary.

¹⁷ StAR Initiative, no year.

¹⁸ FATF, 2014.

¹⁹ According to the FATF recommendations, financial institutions and DNFBPs are required to submit STRs to the country's financial integrity unit when there is suspicion that their customer's funds are the proceeds of criminal activity.

²⁰ FATF, 2014.

²¹ FATF, 2013. *Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CTF regimes*: www.fatf-gafi.org/media/fatf/documents/methodology/fatf%20methodology%202022%20feb%202013.pdf

²² See Annex 1 for a definitional overview of DNFBPs. The FATF considers DNFBPs to include casinos, lawyers, notaries, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers.

Transparency International believes that input from other non-state actors, such as civil society organisations, into the assessment process is also instrumental in ensuring a comprehensive understanding of the anti-money laundering risks.

In addition, Transparency International believes that countries should not delay undertaking a risk assessment until, for example, they are due to be reviewed under the FATF mutual evaluations process.

RESULTS OF THE RISK ASSESSMENT

The FATF states that the results of the risk assessment should be used as a basis for developing anti-money laundering policies in a coordinated manner, and that they should be conducted and monitored frequently. This will ensure that legislation remains relevant to the main challenges and risks faced by the country at the current time.

The G20 principles recommend that the results of the risk assessment be shared with financial institutions, DNFBPs, and foreign jurisdictions to help inform their anti-money laundering policies and approaches. This could include, for example, the publication of briefings and guidance on relevant conclusions from the risk assessment, as suggested by the FATF.²³ The results of the assessment should be used as a basis for defining enhanced due diligence requirements for specific sectors or corporate vehicles. This could include, for example, enhanced due diligence on politically exposed persons (PEPs), or the establishment of requirements that registered members of a legal entity make a declaration stating whether they are acting on their own behalf or in the interests of another person, amongst others.

While the G20 principles are silent regarding the publication of the risk assessment, Transparency International believes risk assessments should be made public so that law-makers, civil society and other interested stakeholders can better identify gaps, emerging challenges and loopholes.

²³ FATF, 2013.

G20 Principle 2 – Recommendations for implementation

- *Countries should conduct assessments of the 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.*
- *Results of the assessment should be used to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies.*
- *Based on the assessment, the country should enact enhanced due diligence requirements for identified sectors or types of corporate vehicles.*
- *The results of the assessment should be clearly communicated to relevant authorities, financial institutions and DNFBPs.*
- *Risk assessments should be made public so stakeholders can better identify gaps, emerging challenges and loopholes.*

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

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

The third G20 principle requires countries to ensure that information on beneficial ownership is maintained by legal persons and made available in their jurisdiction.

This information should be adequate – that is, sufficient to identify the beneficial owner. Transparency International believes that this means that the information should contain the full name of the beneficial owner, an identification number, their date of birth, their nationality, their country of residence and an explanation of how control is exercised. The information needs to be accurate and current, both at the time the legal entity is created and over time.²⁴ This means that information about all changes in the ownership and control structure should be updated promptly.

The G20 principle does not specify how and where this information should be stored, but it stresses that it must be available in the jurisdiction where the company is incorporated. This is an important issue since in many cases companies do not have a physical presence in the jurisdiction where they were incorporated, making it difficult for supervisors and law enforcement authorities to obtain information when necessary.

In an attempt to address this issue, several countries, including Argentina, Australia, Brazil, Japan, and South Korea, require companies to have an office or a registered agent, or a resident director in the jurisdiction of incorporation. In practice, however, in some countries this requirement fails to guarantee easy access to company information by competent authorities, as the registered office of the company is actually a “letter box” where official documents are sent.

Alternatively, companies’ beneficial ownership information may be held by a third party provider on their behalf in the jurisdiction of incorporation, in which case the company remains liable for the obligations.²⁵

In practice, compliance with the requirement to maintain beneficial ownership information onshore usually involves the obligation for companies to keep and update a list of shareholders and members that is either available to the public or accessible to competent authorities. Some countries, for instance, require companies to file a shareholder list with the authorities when filing

²⁴ Transparency International, 2014. *Ending secrecy to end impunity*.

²⁵ FATF, 2013.

their annual returns. Others require companies to make the information available online,²⁶ or they require that such information be made immediately available upon request.²⁷

Shareholder lists are an important source of information and may provide useful hints to investigators in the identification of beneficial owners;²⁸ nevertheless, they provide information about legal ownership, but not necessarily about beneficial ownership. Companies should thus ensure that the actual beneficial owners are identified.

Moreover, to guarantee that the information on beneficial ownership is accurate and current, Transparency International believes that companies should have powers to request information from shareholders on the beneficial ownership of shares. They should also be able to apply to a court to place restrictions on shareholders (for example, a suspension of the payment of dividends) if they fail to provide beneficial ownership information. In the United States, for example, shareholders and companies have the right to bring private actions in Federal Courts against persons who violate the rules on beneficial ownership disclosure contained in the Exchange Act.²⁹ Shareholders should also be required to report on changes to beneficial ownership when they occur and to declare when they administer shares on behalf of a third person.

While the G20 principles do not mention sanctions, Transparency International believes that adequate implementation of the law depends on the application of dissuasive sanctions, including administrative penalties and restrictions on incorporation.³⁰

²⁶ FATF and Asia-Pacific Group on Money Laundering (AGP), 2015. '7. Legal persons and arrangements', in *Anti-Money Laundering and Countering Terrorism Financing Measures – Australia*: www.fatf-gafi.org/media/fatf/documents/reports/mer4/7-Legal-Persons-and-Arrangements-Mutual-Evaluation-Australia-2015.pdf

²⁷ Brazil, Law 6.404/76, article 100, I.

²⁸ Transcrime, 2013. *The identification of beneficial owners in the fight against money laundering. Final report of project BOWNET – Identifying the beneficial owner of legal entities in the fight against money laundering networks.*

²⁹ Vermeulen, E., 2013.

³⁰ StAR Initiative, 2011.

G20 Principle 3 – Recommendations for implementation

- *Legal entities should be required to maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction in which they were incorporated.*
- *In cases where third parties are responsible for maintaining this information on behalf of the company, the company should still be held responsible.*
- *Companies should be able to request information from shareholders to ensure that the information held is accurate and up-to-date.*
- *Shareholders should be required to inform changes to beneficial ownership. The failure to provide information should be sanctioned.*
- Beneficial ownership information should be made available in a timely, preferably immediate, manner to the competent authorities.
- Dissuasive and proportionate sanctions for non-compliance, including administrative penalties and / or restrictions on incorporation, should be established.

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.”

OVERVIEW

G20 principle four is in line with the FATF recommendations. It is critical that all relevant competent authorities have timely access to adequate, accurate and current information regarding the beneficial owner of legal entities, so the misuse of corporate vehicles for money laundering purposes can be effectively investigated and punished.

However, recent studies show that accessing beneficial ownership information is one of the main challenges faced by investigators, either because the legal framework of the country fails to require this information to be recorded or because obliged parties fail to comply with the law.³¹

The principle put forward by the G20 suggests that one way in which beneficial ownership information can be made available to competent authorities is through central registries of beneficial ownership. Transparency International believes this is the best model to avoid criminal misuse of legal entities, and that the registry should be public. This would provide a range of benefits, including ensuring timely access to necessary information.³²

Other mechanisms may also facilitate the identification and verification of beneficial ownership information. These include requiring legal entities, company service providers or financial institutions to make available accurate information on beneficial ownership to competent authorities and regulators upon request.³³

In assessing the best way to implement timely access, first we consider the definitions of competent authorities and “timely” access to information.

³¹ Global Witness, 2014. *Poverty, Corruption and Anonymous Companies: How Hidden Company Ownership Fuels Corruption and Hinders the Fight against Poverty*.

www.globalwitness.org/sites/default/files/library/anonymous_companies_03_2014.pdf

³² Transparency International, 2013. *Transparency International's Ideal St Petersburg G20 Communiqué*: www.transparency.org/files/content/activity/Sept2013_G20_TI_IdealCommunique_EN.pdf

³³ In this case, companies should be obliged to respond to legal authorities' requests to access beneficial ownership information within 24 hours.

DEFINING COMPETENT AUTHORITIES

The G20 opted for a relatively wide range of authorities to be included among those that should have access to beneficial ownership information, including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units. In defining the competent authorities, countries should take into account their institutional framework that is tasked with money laundering and corruption investigations as well as tax issues.

ENSURING TIMELY ACCESS TO ADEQUATE, ACCURATE, AND CURRENT INFORMATION

The G20 principle also requires beneficial ownership information to be adequate, accurate and current. Adequate information implies the existence and initial recording of sufficient information to identify the beneficial owner. Accurate information implies that the appropriate checks have been conducted to verify the legitimacy of the information being recorded. Current information refers to having up-to-date information and having all changes in ownership properly and timely recorded³⁴.

Finally, the G20 principle mentions that competent authorities should have timely access, which refers to the ability of competent authorities to obtain or access information in a timely manner, and the ease of this process. Ideally, competent authorities would be able to have immediate access to beneficial ownership information without there being a risk that money launderers will learn about the investigation.

METHODS OF ENABLING ACCESS: CENTRAL BENEFICIAL OWNERSHIP REGISTRY

Transparency International believes that the best way countries can ensure that competent authorities have access to beneficial ownership information is by creating a (central) beneficial ownership registry.³⁵

It is currently common practice, and a FATF recommendation, that legal entities are required to register in a company registry. A cost-effective way of collecting and managing beneficial ownership information and granting timely access to competent authorities would therefore be to simply require existing company registries to obtain and hold current, accurate information on beneficial ownership.³⁶

Two cost-benefit analyses commissioned by the European Commission and by the United Kingdom's Companies House show that the benefits of collecting information on beneficial ownership are multiple, as fiscal compliance would increase and enforcement expenses for the government would fall.³⁷

³⁴ Christian Aid and Global Witness, 2013. *Company ownership: which places are the most and least transparent?* www.globalwitness.org/sites/default/files/library/GW_CA_Company%20Ownership%20Paper_download.pdf

³⁵ Transparency International, 2014. *Ending secrecy to end impunity.*

³⁶ Transparency International, 2014. *Ending secrecy to end impunity.*

³⁷ Transparency International, 2014. *Ending secrecy to end impunity.*

Nevertheless, to date, very few countries have required up-front disclosure of beneficial ownership information. In Europe only Estonia, Italy, Romania and Slovenia have recorded information on beneficial ownership as defined in the Third EU Anti-Money Laundering Directive, and this information is restricted to the percentage of shares owned.³⁸ However, with the Fourth EU Anti-Money Laundering Directive (adopted in 2015), all EU countries will be required to collect beneficial ownership information in central registries, and permit access to individuals who demonstrate a “legitimate interest” in that information. EU countries have two years to transpose the EU legislation into domestic law (See “Availability” below).

There are a few issues that should be considered when establishing a beneficial ownership registry, to ensure that it can be effectively used to prevent and identify wrongdoings. These include the following:

Role of registries

Existing company registries are usually established to function as a repository of information and documents, and as such information provided by legal entities upon registration is taken for granted and thus rarely verified.³⁹ If company registries or a separate beneficial ownership registry are to assume a more pro-active role in supporting anti-money laundering efforts, it is also important that their functions and resources are adapted accordingly. For instance, beneficial ownership registries should have the mandate and sufficient human, technical and financial resources to collect, verify and maintain beneficial ownership information. This could also include the power to request information from companies and other authorities and to sanction legal entities for non-compliance.

Central vs. decentralised registries

A central (unified) register is considered the most effective and practical way to record information on beneficial ownership.⁴⁰ Having the information compiled in one single place makes it easier for competent authorities and other stakeholders to access it. It also facilitates investigations by both domestic and foreign authorities, as well as compliance with and enforcement of the law. A central registry also supports the harmonisation of the country’s legal framework, avoiding double standards. Of course the information contained in the registry must be adequately and regularly verified.

In some countries, regulations of legal entities and the management of company registries are the responsibility of state / provincial authorities. This is the case, for example, in Brazil, Canada, China, Germany, Mexico, and the United States. The formation process of a company, registration requirements, data recorded in the registry and availability of this information may thus vary from one state / province to another. In this case, the establishment of a central registry may require changes in the legal framework and may prove more difficult to achieve. Having this information in a single place would help to facilitate investigations by reducing the number of entry points for looking for relevant data. In cases where the adoption of a central beneficial ownership registry seems unrealistic in the short term, countries should still ensure that existing registries obtain and verify beneficial ownership information.

³⁸ Transcrime, 2013.

³⁹ StAR Initiative, 2011.

⁴⁰ Transparency International EU Office, 2014. *Fighting money laundering in the EU: from secret ownership to public registries*. EU Policy Paper 01/2014.

Accuracy of the information

Transparency International believes that the beneficial ownership information provided by legal authorities upon registration should be verified by the registry authority or other designated agency with related functions. Verification may be done by cross-checking the information provided with other government databases (such as tax agencies, passport authorities, vehicle and property registries, and electoral registries, among others), on-site inspections, use of software, and other information from independent and reliable sources.

The provision of false information by legal entities should be sanctioned.⁴¹

Timeliness of the information

It is essential that the information recorded in the registry is current. To this end, Transparency International believes that legal entities should be required to submit or confirm information about the identity of the beneficial owners annually. In addition, legal entities should be required to communicate changes within a defined timeframe after they occur. Good practice suggests that this will ideally be within 15 days of the change occurring.⁴²

Transparency International believes that the company registry should also be empowered to request beneficial ownership information at any time, and that failure by legal entities to communicate changes should be sanctioned.⁴³

In addition to current information, access to historical records, such as information on past shareholders and directors, is also important and may offer useful insights in identifying and / or verifying who the beneficial owners are.⁴⁴

Type of information registered

Adequate information on beneficial ownership requires that the following is disclosed:⁴⁵

- Name of the beneficial owner(s)
- Date of birth
- Identification or tax number
- Personal and business address
- Nationality
- Country of residence
- Description of how ownership or control is exercised, such as names of chain of companies that demonstrate this person is the final beneficial owner or other means by which the person exercises control over the company.

In addition to information on the actual beneficial owner, good practice involves the registry recording all relevant information on legal ownership, including data on directors and shareholders, for example.

⁴¹ Transparency International EU Office, 2014.

⁴² StAR Initiative, 2011.

⁴³ Transparency International, 2014. *Ending secrecy to end impunity.*

⁴⁴ Transcrime, 2013.

⁴⁵ Transparency International EU Office, 2014.

Availability

Beneficial ownership registries should be available to the public.⁴⁶ This would provide access to information to the private sector, citizens, journalists and academics, increasing the level of scrutiny of the data provided. Public scrutiny could also help ensure the accuracy of the data provided. This information should be open and access should be free of charge.⁴⁷

Transparency International believes that if a wider range of stakeholders had access to beneficial ownership information, there would be a positive impact on tackling corruption and the misuse of legal entities. Access to beneficial ownership information would help to ensure financial institutions and company service providers effectively comply with due diligence obligations. Access to information on beneficial ownership would benefit the business community, by allowing them to make better informed investment decisions about the companies they are trading with. Finally, having beneficial ownership information in the public domain would allow civil society, academics, journalists and ordinary citizens to scrutinise who owns companies and other legal structures, as well as to identify false or incomplete information, and detect crime and corruption.

At a minimum, beneficial ownership information should be made accessible in a direct manner (without restrictions or the necessity of making requests) to competent authorities. Competent authorities include law enforcement and prosecutorial bodies, tax agencies, financial integrity units and other supervisory bodies, both domestically and in foreign jurisdictions. Beneficial ownership information should also be made accessible to financial institutions and DNFBPs with anti-money laundering obligations.

The approved Fourth Anti-Money Laundering Directive, currently undergoing transposition into national law, includes a provision on a central registry containing beneficial ownership information accessible to competent authorities, financial intelligence units and, as part of customer due diligence, obliged entities such as banks. The registry will not be automatically available to the public, but persons who can demonstrate a “legitimate interest” may be allowed to access information such as the name of the beneficial owner, month and year of birth, nationality, country of residence, and nature of the interest or control held.⁴⁸

Government authorities have raised concerns regarding opening up beneficial ownership registries to the public due to privacy issues. In order to balance the public interest and privacy concerns, countries are considering only partially disclosing beneficial ownership information. For instance, the new law approved in the United Kingdom⁴⁹ requires companies to disclose to Companies House the full name and date of birth, nationality, country or state of residence, and the residential and service address of beneficial owners. The full dates of birth and residential addresses of beneficial owners will, however, not be publicly accessible.

Transparency International believes that the information collected for each beneficial owner should be limited to what is strictly necessary: full name, birth date, business address, nationality, and a description of how the ownership or control is exercised. Important precedents already exist in many

⁴⁶ Transparency International, 2014. *Six things to know: New G20 Beneficial Ownership Principles*: www.transparency.org/news/feature/six_things_to_know_new_g20_beneficial_ownership_principles

⁴⁷ Transparency International, 2014 *Ending Secrecy to End Impunity*.

⁴⁸ European Council, 2015. *Money laundering: Council approves strengthened rules*: www.consilium.europa.eu/en/press/press-releases/2015/04/20-money-laundering-strengthened-rules/

⁴⁹ UK Small Business, Enterprise and Employment Act 2015: <http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

countries where information is publicly reported in pursuit of the general interest, including political donations, lobbying activities and salaries of public officials.⁵⁰

Open data

Beneficial ownership information should be available for free as open data in widely used formats that are non-proprietary, searchable, sortable, platform-independent and machine-readable. This is to ensure that the data is interoperable, easy for individuals to access, assess and analyse, so as to improve its effectiveness in identifying suspicious activity.⁵¹

RELIANCE ON EXISTING INFORMATION

Competent authorities may also access beneficial ownership information by using other sources, particularly when beneficial ownership information is not available from registries. Information from other sources may also be used by competent authorities to support the verification of the beneficial ownership information provided by legal entities.

This would require countries to ensure that competent authorities can / have the power to access in a timely manner: (i) other basic information recorded in company registries; (ii) information held by financial institutions and intermediaries, such as company formation agents, trust companies, lawyers, notaries, trustees, and other professionals; (iii) beneficial ownership information held by other government bodies (see Principle 8).

Company registries: using basic information in the identification of beneficial owners

Currently, in the absence of beneficial ownership registries, information contained in company registries is widely used by legal authorities and financial institutions when identifying or verifying beneficial ownership information. The majority of legal authorities in the European Union, for example, have declared that data on shareholders and directors constitutes the information most frequently used for beneficial ownership identification purposes.⁵²

Within this framework, in order to support the identification of beneficial owners, company registries should obtain and record accurate information on directors and shareholders, including their names, dates of birth and personal identification numbers.⁵³

If the legal entity is controlled by nominee shareholders and directors, Transparency International believes that they should be required to disclose to company registries that they are nominees, and the identity of the beneficial owner.⁵⁴

Company registries are often the starting point for investigations, and therefore function best when they are made freely available to competent authorities and the public at large. They can also be particularly helpful for journalists, civil society organisations and academics who seek to identify wrongdoing. Nevertheless, the information recorded in such registries is subject to a series of

⁵⁰ Transparency International EU Office, 2014.

⁵¹ Transparency International, 2014 *Ending Secrecy to End Impunity*.

⁵² Transcrime, 2013.

⁵³ As mentioned above, the obligation to explicitly disclose the beneficial owner(s) upon registration would greatly support anti-money laundering efforts.

⁵⁴ Transparency International EU Office, 2014.

limitations that should be taken into account. As mentioned, registries are usually established with the purpose of storing company data and very rarely is the information provided by companies independently verified.

Information from bodies with anti-money laundering obligations

Competent authorities may also use other sources of information in order to identify / verify beneficial owners of a company, provided they are available in the country. These include, for instance, information obtained by financial institutions and intermediaries, such as company formation agents, trust companies, lawyers, accountants, notaries, trustees, and other professionals.⁵⁵

In several countries, financial institutions and intermediaries that support the creation, establishment and management of legal entities, such as company formation agents, professional trustees, lawyers and notaries, have a good understanding of legal entities' ownership and control structures, and therefore could be a good source for authorities seeking information on beneficial ownership.

Countries should thus require financial institutions and intermediaries to obtain and retain information on beneficial ownership of their clients⁵⁶ (see Principle 7) so that it can be made available to competent authorities in a timely manner, preferably immediately, upon their request.⁵⁷ At the same time, competent authorities should be empowered to request beneficial ownership information from these bodies.

However, as is the case with information maintained by companies or recorded in company registries, there is no guarantee of the quality and accuracy of the information obtained by financial institutions and intermediaries. In fact, interviews conducted by the StAR Initiative show that the great majority of financial institutions rely on the information provided by legal entities, and that they rarely conduct an independent verification.⁵⁸ In cases where the information is verified, they usually rely on data provided in company registries. Similarly, intermediaries also reported having limited resources and capacities to verify / confirm the information provided by clients.

Moreover, to date, compliance of financial institutions and company service providers with anti-money laundering rules has been extremely low. A study conducted by Sharman et al. has assessed whether corporate service providers comply with customer due diligence rules. It found that in the majority of cases, the level of compliance with beneficial ownership disclosure requirements has been very low, with corporate service providers failing to request any form of photo identification, let alone certified photo identification, to form a company.⁵⁹

Likewise, a study conducted by the Financial Services Authority (FSA) in the United Kingdom on how banks operating in the country are managing money laundering risk in higher risk situations has presented alarming results. More than a third of banks analysed failed to put in place effective measures to identify customers as PEPs. Almost half did not consider serious allegations about their

⁵⁵ Transparency International, 2014. *Six Things to Know*.

⁵⁶ Transparency International, 2014. *Ending Secrecy to End Impunity*.

⁵⁷ Transparency International, 2014. *Transparency of legal entities and arrangements*. G20 Position Paper: www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_BeneficialOwnership_EN.pdf

⁵⁸ StAR Initiative, 2011.

⁵⁹ Sharman et al. *Global Shell Games: Testing Money Launderers' and Terrorist Financiers' Access to Shell Companies*: www.griffith.edu.au/business-government/centre-governance-public-policy/research-publications/?a=454625

customers and established or continued the business relationship regardless of the information found.⁶⁰

G20 Principle 4 – Recommendations for implementation

- *All relevant competent authorities, including all bodies responsible for 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. Legal entities should be obliged to communicate changes in ownership and control within 15 days after a change occurs.*
- *The registry should contain the name of the beneficial owner(s), date of birth, business address, nationality, and a description of how control is exercised.*
- *The registry should also include information on directors and shareholders, including nominees, proof of incorporation of the legal entity, articles of association, and legal form and statutes.*
- *Information in the registry should be available for free in an open data format.*

⁶⁰ FSA, 2011. *Banks' management of high money-laundering risk situations. How banks deal with high-risk customers (including politically exposed persons), correspondent banking relationships and wire transfers:* www.fca.org.uk/static/documents/fsa-aml-final-report.pdf

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.”

This G20 principle draws on FATF recommendation 25, which requires countries to take the necessary measures to prevent the abuse of trusts and other legal arrangements.⁶¹ The FATF defines a “trust” as “*the legal relationships created – inter-vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose*”.⁶² As such, trusts enable property or assets to be managed by one person on behalf of another.

Since trusts and similar arrangements are rarely strongly regulated, and since there are often no specific registration requirements for their existence, this G20 principle seeks to guarantee that the trustee, regardless of which country he or she is in or where the trust is located, is responsible for obtaining and maintaining accurate, current and adequate beneficial ownership information.

For this purpose, Transparency International believes that available information for each beneficial owner of a trust should at a minimum include the identity of: 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).⁶³

Moreover, Transparency International believes that establishing a legal obligation for trusts to obtain a formal licence may increase accountability and diminish the risk of wrongdoing.⁶⁴

In countries where there is no trust law and trusts are not legally recognised, the FATF recommends a set of measures to ensure that trustees operating in that country are still required to identify and maintain information on beneficial ownership. This can be done for instance by:⁶⁵

- requiring that trustees proactively disclose their status to financial institutions and DNFBPs when forming a business relationship

⁶¹ FATF, 2014.

⁶² FATF Glossary.

⁶³ Transparency International EU Office, 2014.

⁶⁴ Transparency International, 2014. *Ending Secrecy to End Impunity*.

⁶⁵ FATF, 2014.

- requiring professional trustees to maintain information they hold for at least five years after their involvement with the trust ceases

In line with the FATF recommendations, the obligations of professional trustees should be supervised and enforced by a competent authority, and trustees should be subject to dissuasive and proportionate sanctions for non-compliance. Moreover, trustees should be held legally liable for any failure to perform the duties relevant to meeting their obligations.

G20 Principle 5 – Recommendations for implementation

- *Require trustees to collect information on beneficiaries and settlors of the trusts they administer, and to make such information accessible to tax and law enforcement authorities.*
- *Require trustees to collect basic information on other agents of, and service providers to, the trust, including investment advisers or managers, accountants, and tax advisers.*
- *Require trustees to proactively disclose beneficial ownership information when forming a business relationship with financial institutions and DNFBPs.*
- *Ensure that trustees are subject to supervision, and that dissuasive and proportionate sanctions are in place.*
- *Require professional trustees to keep beneficial information they hold for at least five years after the trust ceases.*

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.”

Principle 6 is in line with the FATF recommendations, which require countries to ensure that competent authorities have all powers necessary to be able to obtain timely access to information held by trustees and other parties, such as financial institutions and DNFBPs, regarding beneficial ownership and control of the trust or other similar legal arrangements.⁶⁶ This include obtaining information about the beneficial owner, the residence of the trustee, and about the assets held or managed by the financial institution or DNFBPs in relation to any trustees with which they have a business relationship or for which they undertake an occasional transaction. Competent authorities should also have access to the trust deed, letter of wishes and trustee minutes.

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.⁶⁷

In addition, good practice also requires that the law should not prevent trustees from providing competent authorities with any information related to the trust. This means that even if the terms of the trust arrangement demand trustees conceal their status, they should be obliged to inform competent authorities of their identity and status.⁶⁸

Countries should consider establishing a system for the central registration of trusts, recording information about settlors, trustees, beneficiaries and protectors and other legal arrangements registered in the country to be made available to the competent authorities. Countries should also be encouraged to make this information available to the public. Such disclosure would ensure that public information is limited to that which is strictly necessary.⁶⁹

⁶⁶ FATF, 2010. *Money Laundering using Trust and Company Service Providers*.

⁶⁷ Transparency International, 2014. *Ending Secrecy to End Impunity*.

⁶⁸ FATF, 2014.

⁶⁹ Transparency International, 2014. *Transparency of legal entities and arrangements*.

G20 Principle 6 – Recommendations for implementation

- 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, including professional trusts and other services providers to the trust, as well as by other competent authorities.
- Countries could 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.

G20 PRINCIPLE 7: DUTIES OF 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.”

According to Principle 7, financial institutions and DNFBPs should take reasonable measures to verify the beneficial ownership of their customers. To this end, countries should consider establishing mechanisms to facilitate access to beneficial ownership information by financial institutions and DNFBPs.

Within this framework, good practice calls on financial institutions and DNFBPs to always identify the beneficial owner when establishing a business relationship or conducting transactions for occasional customers.⁷⁰ In certain cases, taking into consideration the risks of money laundering associated with specific legal entities and arrangements, industries, countries or individuals, efforts should be made to verify the information on beneficial ownership provided.⁷¹

The effective implementation of this principle, however, depends on a series of factors, including the following:

COVERAGE

The principle requires financial institutions and DNFBPs, including trust and company service providers (TCSPs), to identify the beneficial owner in their business transactions. However, DNFBPs with money laundering obligations vary quite significantly across countries.⁷² The G20 uses the same approach as that adopted by the FATF, extending the obligation to (i) casinos: when customers engage in transactions equal to or above US\$/€3,000; (ii) real estate agents: when they are involved in transactions for their clients concerning the buying and selling of real state; (iii) dealers in precious metals and dealers in precious stones: when engaged in any cash transaction equal or above US\$/€15,000; (iv) lawyers; (v) notaries; (vi) other independent legal professionals

⁷⁰ FATF, 2013.

⁷¹ Transparency International, 2014. *Transparency of Legal Entities and Arrangements*. FATF, 2014.

⁷² Please see Annex 1 for a definitional overview of DNFBPs in different international mechanisms and jurisdictions.

and accountants – when they prepare for or carry out transactions for their clients concerning the buying and selling of real estate; managing of client money, securities or assets; management of bank, savings or securities account; organisation of contributions for the creation, operation or management of companies; the creation and operation of legal persons arrangements, and buying and selling of business entities; (vii) trust and company services providers: when they prepare for or carry out transactions for a client concerning the following activities: acting as a formation agent of legal persons; acting as a director or secretary of a company; providing a registered office, business address or accommodation, correspondence, or administrative address for a company, partnership, or a similar position in relation to other legal persons; acting as a trustee of an express trust or performing the equivalent function; acting as a nominee shareholder for another person.⁷³

According to the FATF, the decision regarding which businesses and professions to regulate should take into account the money laundering risks related to a specific sector or activity. Against this backdrop, some countries have identified other DNFBPs that may be used for money laundering, including high-value goods dealers (such as car dealers, dealers in jet planes and yachts, arts and auction houses, among others) and have required them to also identify and verify beneficial owners when engaging in business transactions.⁷⁴

Transparency International believes as wide an approach as possible should be taken when deciding which businesses and professions to regulate and require to collect beneficial ownership information.

Regulations of TCSPs are also uneven across countries.⁷⁵ In some countries, TCSPs are not a distinct business category and therefore regulation only applies 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. There are also countries that instead require TCSPs to be licensed as financial institutions in order to operate.

Given the high risk of involvement in money laundering activities, Transparency International believes these professions must not be exempt from regulations to which financial institutions are subject, and therefore they should also be required to identify and verify the identity of the beneficial owner of clients.⁷⁶

IDENTIFICATION OF THE BENEFICIAL OWNER

The G20 principle requires financial institutions and DNFBPs to identify the beneficial owner of their customers. The principle does not explicitly describe when this identification should take place. According to the FATF, beneficial ownership identification should apply to all new customers, and in cases considered to present a high risk (see discussion below), financial institutions and DNFBPs should conduct on-going due diligence after the business relationship is established.

In order to identify the beneficial owner, financial institutions rely on documents provided by the customer. Typically, they request documents that help them to understand the company's ownership

⁷³ FATF, 2012. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations*.

⁷⁴ Martini, M., 2014. *Scoping paper: DNFBPs and corruption*. Transparency International.

⁷⁵ OECD, 2014. *Illicit Financial Flows from Developing Countries: Measuring OECD Responses*: www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf.

⁷⁶ Transparency International, 2014. *Ending Secrecy to End Impunity*.

and control structure, such as the list of shareholders, articles of incorporation, and identity information,⁷⁷ among others. Some financial institutions request a declaration of beneficial ownership from customers, in which they have to declare who is the actual beneficial owner.⁷⁸

Transparency International also believes that financial institutions and DNFBPs should obtain accurate, up-to-date information on the beneficial owner before agreeing to do business with a client, and that they should constantly monitor existing clients, particularly in high-risk situations.⁷⁹

The G20 principle does not specify what should be done if the financial institution or DNFBPs do not manage to identify the beneficial owner. The FATF recommends that in this case the financial institution should be required not to open an account or perform transactions, and DNFBPs should not enter into a business relation, or should be required to terminate a business relation, and should consider filing an with the competent authorities. However, countries have adopted very distinct rules regarding when financial institutions and DNFBPs are required to submit STRs. In some countries all unusual transactions or all transactions above a certain threshold have to be reported (for example, Brazil). In other cases, STRs should only be made if there is enough evidence linking the funds to illegal activity (for example, the United Kingdom). The disparity in rules regarding STR submission requirements makes country comparisons of numbers of STRs difficult, and consequently makes harder the assessment of whether the law is being effectively enforced and the identification of money laundering patterns.

Transparency International calls on financial institutions and DNFBPs to not enter into a business transaction without the proper identification of the client's ownership. In addition, financial institutions and DNFBPs should report all suspicious activities in accordance with existing anti-money laundering regulations.⁸⁰ Ideally, STRs should be submitted in the case of transactions in cash above a certain threshold and in cases when there is evidence that links the funds to illicit activity.

VERIFICATION OF BENEFICIAL OWNERSHIP INFORMATION

In addition to identifying the beneficial owners of their costumers, good practice requires financial institutions and DNFBPs to verify whether the person(s) identified as the beneficial owner are in fact those who exercise control and benefit from the legal entity or arrangement. The literature makes a differentiation between verification and independent verification.⁸¹ Verification means that financial institutions and DNFBPs use documentation, usually government-issued, such as information available in company registries, to confirm the identity information. Independent verification, on the other hand, relates to the process of conducting additional verification using independent sources, such as watchlists, commercial databases, information found on the internet, and social networks, among others.⁸²

⁷⁷ Identify information often consists of a photocopy of the passport, usually notarised or otherwise certified as a true copy of the original, and proof of residence (such as a recent original utility statement).

⁷⁸ StAR Initiative 2011.

⁷⁹ Transparency International, 2014. *Ending Secrecy to End Impunity*.

⁸⁰ Transparency International, 2014. *Transparency of legal entities and arrangements*.

⁸¹ StAR Initiative, 2011.

⁸² According to financial institutions and DNFBPs surveyed within the framework of the BOWNET project carried out by Transcrime, data on companies' shareholdings is the most used information in the identification and verification of beneficial owners (82.7 per cent). Followed by information on companies' board members and managers (47.2 per cent), PEP and other watchlists (37.5 per cent), internet / blogs (23 per cent), news/press (20.2 per cent), tax agency records (18.3 per cent), police and judiciary records (17.7 per cent), and social networks (17.4 per cent).

As previously mentioned, surveys with banks and TCSPs show that some banks and DNFBPs apply a quantitative approach when identifying the beneficial owner, meaning that they are usually satisfied if they identify individuals with legal ownership (for example, persons holding a certain percentage of shares), and in these cases they will rarely request additional documents or conduct independent verification.⁸³ Countries should thus ensure that at a minimum in circumstances considered to present a high risk (these can be defined by laws/ regulations based on risk assessment results), financial institutions and DNFBPs verify whether the information on beneficial ownership is correct.

Transparency International considers the verification of the beneficial information obtained by financial institutions and DNFBPs to be extremely important in order to prevent money laundering. Financial institutions and DNFBPs should thus double-check the information on beneficial ownership with public registries and other sources of information.

RISK AND ENHANCED DUE DILIGENCE

The G20 principle stresses that considering country risks, financial institutions and DNFBPs should be required, in addition to identifying the beneficial owner, in order to verify whether the person(s) identified exercise de facto control and/or benefit(s) from the corporate vehicle. In this context, the FATF provides examples to be used as guidance when analysing the risk of a transaction. For instance, examples of higher risk situations include: if the business is conducted in unusual circumstances, such as there being significant geographical distance between the financial institution and the customer, if the customer is from a country subject to sanctions or embargoes, if the transaction is not face-to-face or the payment received is from unknown or un-associated third parties.

The FATF also explicitly requires enhanced due diligence if the customer is a domestic or foreign PEP. PEPs are “*individuals who hold or held a prominent public function, such as the Head of State or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials. The term often includes their relatives and close associates*”.⁸⁴

Transparency International also calls on financial institutions and DNFBPs to conduct enhanced due diligence procedures on clients selected on the basis of risk, especially if the transaction involves a PEP.⁸⁵

With regard to beneficial ownership, this means that the information on the beneficial owner should be verified and updated more frequently. Appropriate mechanisms should be in place to ensure that the financial institutions or the DNFBP can determine whether the customer or the beneficial owner is a PEP or a family member or a close associate of a PEP.⁸⁶ If this is the case, financial institutions and DNFBPs should be required to inform senior management before completing the transaction, conduct enhanced scrutiny of the whole business relationship with the customer, and consider making an STR. Several countries show deficiencies concerning rules on how to detect and treat customers who are PEPs. In some countries, such as Australia, there is no requirement to conduct

⁸³ StAR Initiative 2011.

⁸⁴ Transparency International, 2013. *Financial Jargon Buster*: www.transparency.org/glossary#/beneficial-ownership

⁸⁵ Transparency International, 2014. *Transparency of legal entities and arrangements*.

⁸⁶ Transparency International, 2014. *Transparency of legal entities and arrangements*.

enhanced due diligence when the customer is a PEP, and no mention of this issue.⁸⁷ In others, such as Germany, the rules apply only to foreign PEPs but not to domestic ones.⁸⁸

According to financial institutions, situations in which they usually require additional measures to verify the identity of the beneficial owner include: when the customer is a PEP, or high net-worth person; when they come from jurisdictions classified as having higher risks of money laundering; or when they are involved in high-risk industries. Some financial institutions also may revise beneficial ownership data after identifying an atypical transaction activity.⁸⁹

However, enhanced due diligence on PEPs seems not to be fully implemented in practice. In the United Kingdom a review conducted by the FSA in 2011 showed that one-third of banks failed to conduct adequate due diligence on PEPs, even when they had enough information to be able to identify clients as PEPs.⁹⁰

ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Countries should facilitate access to beneficial ownership information by financial institutions and DNFBPs.⁹¹ The G20 principle does not specify how this should be done, but Transparency International believes that the existence of a public registry containing beneficial ownership information would guarantee that financial institutions and DNFBPs can have immediate access to beneficial ownership information.⁹² Countries adopting a beneficial ownership registry but not making it publicly available should at a minimum grant access to the registry to financial institutions and DNFBPs.

SUPERVISION

Regulatory and supervisory measures are also essential to ensure that financial institutions and DNFBPs comply with anti-money laundering requirements. Such measures may be carried out by a supervisor or by an appropriate self-regulatory body. Good practice suggests that regulators should conduct random on-site inspections to verify whether information on beneficial ownership is being correctly obtained.⁹³

The establishment of a financial intelligence unit (FIU) that serves as the national centre for the receipt and analysis of STRs and other information relevant to money laundering is also considered an important step to prevent and detect illicit activity. The FIU should have adequate powers to be able to obtain additional information from reporting entities and from financial institutions, and from DNFBPs and other natural or legal persons, as well as to search persons and premises, to take witness statements, and to seize and obtain evidence.⁹⁴

⁸⁷ PricewaterhouseCoopers, 2014. *Proposed reform to strengthen customer due diligence*: www.austrac.gov.au/sites/default/files/documents/cdd_ris_may2014.pdf

⁸⁸ FATF, 2010. *Mutual Evaluation Germany*: www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/Sicherheit/Terrorismus/fatf.pdf?__blob=publicationFile

⁸⁹ StAR Initiative, 2011.

⁹⁰ OECD 2014. *Illicit financial flows from developing countries: measuring OECD responses*: www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf

⁹¹ Transparency International, 2014. *Ending Secrecy to End Impunity*.

⁹² Transparency International, 2014. *Ending Secrecy to End Impunity*.

⁹³ StAR Initiative, 2011.

⁹⁴ FATF, 2013.

SANCTIONS

A range of administrative, civil and criminal sanctions should be available to punish both natural and legal persons, including financial institutions and DNFBPs' directors and senior management.⁹⁵

G20 Principle 7 – Recommendations for implementation

- *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 TCSPs when providing services to legal entities. The list should be expanded to include other business and professions according to identified money laundering risks.*
- *The identification of the beneficial owner should apply to all new customers, and on-going due diligence should be conducted in cases considered as high-risk.*
- *The failure to identify the beneficial owner should inhibit the continuation of the business transaction and / or require the submission of a STR to the oversight body.*
- *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 on-going monitoring of the business relationship and provenience of funds, should be conducted when the customer is a PEP or a close associate.*
- *Financial institutions and DNFBPs should have access to beneficial ownership and company registries.*
- *Administrative, civil and criminal sanction for non-compliance should be applicable for financial institutions and DNFBPs as well as to their senior management.*

⁹⁵ Transparency International, 2014. *Transparency of legal entities and arrangements.*

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.”

The G20 principles call for enhanced cooperation both at the national and international level. Good practice suggests that effective cooperation depends on a series of factors, including: (i) the existence of adequate laws that allows authorities to share non-confidential as well as confidential information with other counterparts; (ii) the existence of simple process and procedures, particularly for accessing non-confidential information; (iii) the publication of guidelines explaining the mechanisms that are in place for accessing information, the type of information that is available, the authorities that are responsible for handling requests, among other things.⁹⁶ This is of particular relevance to foreign authorities.

SHARING INFORMATION BETWEEN DOMESTIC AUTHORITIES

Cooperation between domestic authorities that hold information on beneficial ownership or information that could be helpful in identifying the beneficial owner is essential.⁹⁷ 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.

For example, as part of the Arab Forum on Asset Recovery, some jurisdictions such as Jersey, Liechtenstein, the United States, and the United Kingdom published an investigator’s guide to company ownership information.⁹⁸ The guide aims to provide assistance to investigators regarding the type of information that is available on / related to beneficial ownership and the conditions that need to be met to be able to access such information.

Information sharing between domestic authorities may happen: (i) automatically, for example, through shared or centralised databases (such as a public registry), online access to registries, among others; (ii) through memorandums of understanding, where two or more public bodies agree to share information; and (iii) written requests or court orders.

⁹⁶ OECD, 2001. *Behind the Corporate Veil: Using corporate entities for illicit purposes*: www.oecd.org/corporate/ca/43703185.pdf; FATF, 2014.

⁹⁷ Transparency International, 2014. *Six things to know*.

⁹⁸ Arab Forum 2014 Resources. *Beneficial ownership technical guides*: <https://star.worldbank.org/star/ArabForum/arab-forum-2014>

Transparency International believes that public registries that include beneficial ownership information should reduce red tape relating to law enforcement, enabling government institutions to do their work better.⁹⁹

Here is also important that the legal framework does not impose restrictions on information sharing, including with regard to confidential information. In the United Kingdom, for example, the Serious Fraud Office is allowed to share information with any other supervisory body and with regulators. In other countries, however, competent authorities may be obliged to obtain a court order to access beneficial ownership information held by other public bodies.

INTERNATIONAL COOPERATION

Criminals often choose to conceal their identities behind a chain of different companies incorporated in different jurisdictions, thus making it harder for law enforcement authorities to locate and obtain information on the ownership and control structure. Accessing foreign data on beneficial ownership is one of the main challenges reported by legal authorities surveyed in the European Union.¹⁰⁰ Against this backdrop, it is important that countries facilitate access to beneficial ownership information by foreign authorities in a timely and effective manner.

Information sharing between domestic and international authorities usually happens through four main channels:

- A mutual legal assistance treaty: this is the formal process of cooperation between two or more jurisdictions, for example on cross-border [money laundering](#), [asset recovery](#) and [tax evasion](#) cases. Through this cooperation a state can ask for and receive assistance in gathering information and evidence from private and public sources, including on beneficial ownership, for use in official investigations and prosecutions. Authorities usually complain that mutual legal assistance processes involve lengthy delays or that jurisdictions to which requests are made are unresponsive. Countries should seek to have clear procedures for receiving mutual legal assistance requests and should clearly communicate those to foreign jurisdictions (for example, through the publication of guidelines). In general, the capacities of the authority responsible for receiving and processing these requests should also be strengthened.
- A letter rogatory: this is a request from a judge in one jurisdiction to his counterparts in a foreign jurisdiction for assistance in obtaining records or in compelling testimony to be provided in the foreign jurisdiction. This is not a timely mechanism for accessing information since the processing of the request may take several months. In addition, some jurisdictions do not accept letters rogatory in all circumstances. For instance, countries where there is bank secrecy may only accept such requests after criminal charges have been filed or may prohibit its use to obtain bank records.¹⁰¹
- A memorandum of understanding: this is an arrangement entered into between governmental agencies in different jurisdictions. These memorandums form the basis for cooperation between supervisors or law enforcement authorities domestically and internationally without them having to resort judicial measures. Information to be shared under a memorandum could include information already in the possession of the authority, information the release of which can be compelled by the authority, and

⁹⁹ Transparency International, 2014. *Transparency of legal entities and arrangements*.

¹⁰⁰ Transcrime, 2013.

¹⁰¹ OECD, 2001.

information that can be obtained only through an investigation – the memorandum should define the terms of the agreement, including rules on confidentiality.¹⁰²

- An informal arrangement: in many cases, information can be obtained via informal channels with foreign law enforcement counterparts. Informal channels may allow foreign competent authorities to access beneficial ownership information quicker, but it is important that competent authorities in the requested countries have a clear understanding of what type of information they can share on an informal basis. Informal arrangements usually do not allow the sharing of confidential information.

According to recommendations made by the FATF, access can also be facilitated simply by allowing foreign authorities to access company registries online or by facilitating access to any information held by registries or other domestic authorities on legal arrangements.¹⁰³ Facilitating the exchange of information about shareholders, including when this information is held by the company or stock exchange, also may enable foreign authorities to understand the ownership and control structures of a legal entity, and to more quickly identify the beneficial owner.

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.¹⁰⁴

In addition to the issues discussed above, countries should also ensure that their legal framework does not contain provisions that could harm, or pose challenges, to international cooperation. This includes, for example, ensuring that authorities are allowed to share confidential information with foreign authorities without obtaining the consent of the affected parties, ensuring that domestic competent authorities have powers to obtain beneficial ownership information from third parties (such as financial institutions or DNFBS on behalf of foreign counterparts (that is, at the request of foreign authorities, not only when conducting their own investigations)).

G20 Principle 8 – Recommendations for implementation

- *Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner, through, for instance, access to central beneficial ownership registries.*
- *Domestic authorities should have the power to obtain beneficial ownership information from third parties on behalf of foreign parties or to share information without the consent of affected parties.*
- *Governments should publish guidelines explaining what type of information is available and how it can be accessed.*

¹⁰² OECD, 2001.

¹⁰³ FATF, 2014.

¹⁰⁴ Transparency International, 2014. *Transparency of legal entities and arrangements.*

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

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

Similarly to what has been discussed above, countries should ensure that tax authorities have access to beneficial ownership information. Immediate access could be ensured by the establishment of a public registry. When this is not yet available, at a minimum tax authorities should be given access to private beneficial ownership registries and / or the power to request beneficial ownership information held by companies, financial institutions, and other government bodies that hold such information.

The G20 principle also requires countries to ensure that the information on beneficial ownership held or obtained by tax authorities can be exchanged with relevant international counterparts in a timely and effective manner. This can be done via informal channels or via memorandums of understanding between tax authorities and foreign counterparts.

G20 Principle 9 – Recommendations for implementation

- *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 memorandums of understanding or treaties, to ensure that information held by domestic tax authorities are exchanged with foreign 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.”

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*”.¹⁰⁵ 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.

Transparency International believes bearer shares should be prohibited.¹⁰⁶ In countries where bearer shares are still allowed, they should be regulated until they are phased out, to ensure that they are not misused. Regulations usually involve requirements to convert them into registered shares (dematerialisation), or to place them with a custodial agent who holds the share for the beneficial owner and is not allowed to make unrecorded transfers (immobilisation).¹⁰⁷ Countries may also require controlling shareholders to notify the company of their ownership of bearer shares and any changes in ownership and the company to be held responsible for updating its records.

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. 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. Professional nominees are paid a fee for their services but otherwise have no interest in the transactions. Nominees could also be family members or friends. Often, nominees pre-sign documentation, such as letters of resignation, which the beneficial owner can choose to put into effect at any time.¹⁰⁸

In order to avoid nominees being misused, countries should require nominees to disclose, upon registration of the legal entity, the fact that they are nominees, and the identity of the person who nominated them.¹⁰⁹ Nominees should not be permitted to be registered as the beneficial owner in any registry that requires such information.

¹⁰⁵ StAR Initiative, 2011.

¹⁰⁶ Transparency International, 2014. *Ending Secrecy to End Impunity*.

¹⁰⁷ Transparency International, 2014. *Ending Secrecy to End Impunity*.

¹⁰⁸ Transparency International, 2013. *Financial Jargon Buster*.

¹⁰⁹ Transparency International, 2014. *Ending Secrecy to End Impunity*.

Countries should also require that service providers acting as professional nominees are obliged to be licensed.¹¹⁰ There should be legal requirements for these providers to maintain records of the person who “hired” / nominated them.

G20 Principle 10 – Recommendations for implementation

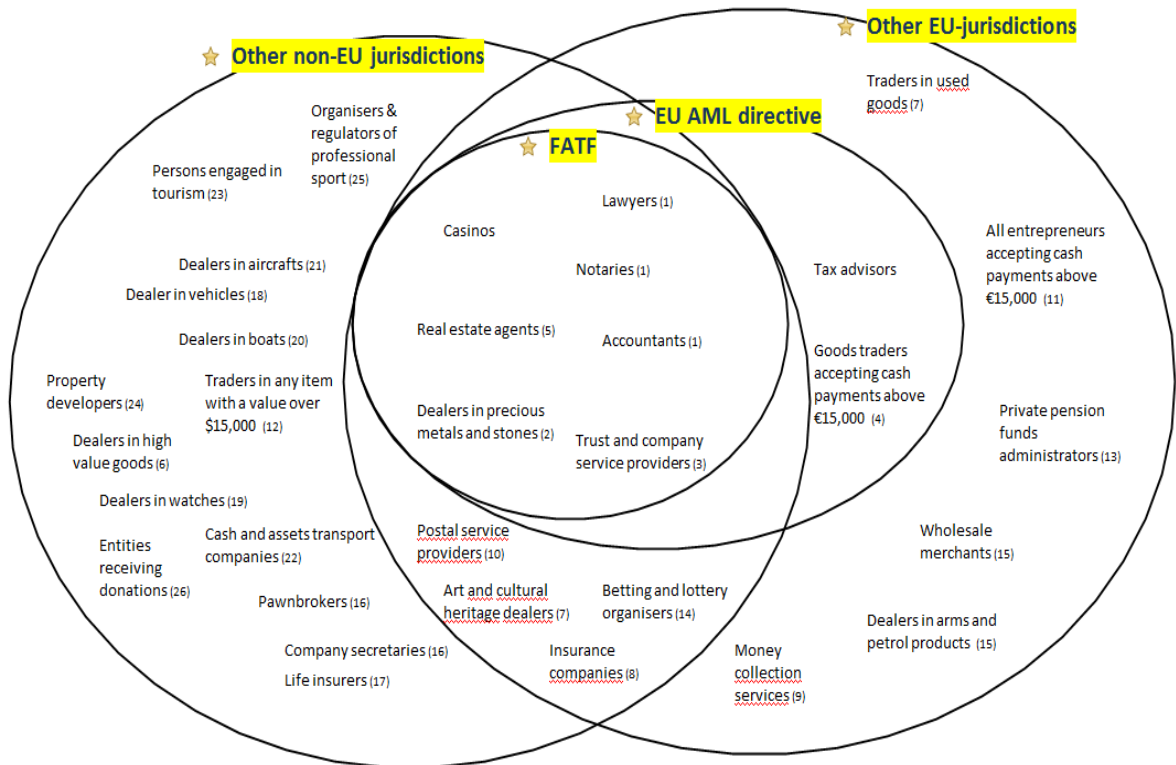
- *Bearer shares should be prohibited.*
- *Until bearer shares are phased out, they should be converted into registered shares or share warrants (dematerialisation), or required to be held with a regulated financial institution or professional intermediary (immobilisation). Individuals in possession of bearer shares should be required to notify the company, and the company should be required to record their identity.*
- *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.*
- *Professional nominees should be required to keep records of the person(s) who nominated them.*

¹¹⁰ Transparency International, 2014. *Ending Secrecy to End Impunity*.

ANNEX 1

DEFINITIONAL OVERVIEW OF DNFPBs

DNFPBs Definitonal overview



(1) When involved in the following activities:

- buying and selling of real estate
- managing of client money, securities or other assets
- management of bank, savings or securities accounts
- organisation of contributions for the creation, operation or management of companies

- creation, operation or management of legal persons or arrangements, and buying and selling of business entities

(2) When they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

(3) When involved in the following activities:

- acting as a formation agent of legal persons
- acting as (or arranging for another person to act as) a director or secretary

of a company, a partner of a partnership, or a similar position in relation to other legal persons

- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement
- acting as (or arranging for another person to act as) a nominee shareholder for another person

(4) To be cut to €7.500 in the 4th EU AML directive

(5) The 4th EU AML directive includes letting agents.

(6) British Virgin Islands

(7) Czech Republic, Slovakia, Argentina, Mexico

(8) Finland, France, United States

(9) Latvia

(10) Lithuania, Italy, Slovakia, Bulgaria, United States

(11) Slovakia

(12) United Arab Emirates

(13) Romania

(14) Portugal, Slovakia, Latvia, Malaysia

(15) Bulgaria

(16) Malaysia, United States

(17) Canada

(18) Argentina, British Virgin Islands, Cayman Islands, Mexico, United States

(19) Cayman Islands

(20) British Virgin Island, Argentina, United States

(21) Argentina, United States

(22) Argentina, Mexico

(23) Cayman Islands, United States

(24) Mexico

(25) Argentina

(26) Mexico

Note: some countries, such as the United States, do not require all FATF-designated DNFBPs to comply with AML rules

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