

# FRANCE

## BENEFICIAL OWNERSHIP TRANSPARENCY

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France is fully compliant with two of the G20 Principles. The ability of competent authorities to access beneficial ownership could be significantly strengthened with the establishment of a beneficial ownership registry. Moreover, current rules on financial institutions and DNFBPs customer and beneficial ownership identification requirements should be expanded to cover domestic PEPs.

### G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

France is fully compliant with the G20 Principal 1. The French Monetary and Financial Code provides for a general definition of beneficial owner. It states that “[t]he beneficial owner refers to the natural person who controls, directly or indirectly, the customer or the natural person on behalf of whom a transaction is being conducted or an activity is being performed”.

It also provides for detailed definitions related to customers that are:

- (i) a corporate entity, where the “beneficial owner refers to the natural person/s who either hold/s, directly or indirectly, more than 25% of the shares or voting rights in the corporate entity or the natural person(s) who exercise/s, through any other means, control over the management of the corporate entity”
- (ii) a collective investment fund, where the “beneficial owner refers to the natural person/s who either hold/s, directly or indirectly, more than 25% of the property or shares in the fund or the natural person(s) who exercise/s, through any other means, control over the management of the fund”.
- (iii) other cases, including where the customer is a “fiducie” or any other similar legal arrangements in application of foreign laws, where the “beneficial owner refers to the natural person/s who: 1° is/are, pursuant to the legal arrangement, entitled to benefit more than 25% of the property of

that legal arrangement; OR: 2° in cases where beneficiary/ies has/ve not been appointed yet, the group of persons in whose main interest the legal arrangement was set up or operates; OR: 3° hold/s more than 25% of the property of the legal arrangement; OR: 4° are designated as settlors, trustees or beneficiaries”.

Within this framework, for the purpose of identifying the beneficial owner, French law encompasses both de jure control based on a given percentage of shares, voting rights or property and de facto control through a provision of “control through any other means”. However, in practice, it seems that as long as an individual has been identified as holding (directly or indirectly) more than 25% of the shares, voting rights or property of a legal entity or arrangement, it is considered sufficient for the purpose of identifying the beneficial owner.

Moreover, it is not clear whether the beneficial owner in situations of *de facto* control may include individuals who do not hold any share - both the guidelines provided by the French Financial Markets Authority (“Autorité des marchés financiers”) <sup>1</sup> and the French Prudential Supervision & Resolution Authority (“Autorité de contrôle prudentiel et de résolution” - ACPR) <sup>1</sup> suggest that, to qualify as a beneficial owner in situations of *de facto* control, the individual (still) has to hold a significant part of the shares or voting rights. France should clarify the existing rules to ensure that the law is implemented effectively.

### G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 0%

France has not conducted an assessment of the anti-money laundering risks in the last three years and therefore is not compliant with Principle 2.

The last (and first) risk assessment was conducted over the period 2008-2010. The final report was released in January 2012 and is available [here](#).

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## G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 50%

Current laws and regulations do not require legal entities, other than those with anti-money laundering obligations to maintain information on beneficial ownership. Consequently, there is also no requirement that the beneficial ownership information is maintained within France.

Some legal entities however may be required to collect and, in some cases, disclose through the company registry information on the legal owners of the shares. They may not however, not necessarily natural persons. Legal entities may be further entitled to request information from shareholders on the (legal) ownership of the shares. Shareholders may also be required to report to the legal entities on changes to (legal) ownership when they occur and to declare when they administer shares on behalf of a third person. The rules however vary depending on the type of legal entity concerned, such as partnership or joint-stock companies.

This information, however, may not be sufficient for the purpose of identifying the actual beneficial owners, especially where legal entities are involved in the partnership. The information may not be accurate either (cf. use of nominees/front men in violation of French law) given that, as long as the information provided by legal entities is consistent with corporate/supporting documents and compliant with French laws and regulations, no additional checks are performed.

## G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 21%

Timely access to beneficial ownership information by competent authorities in France is restricted. In the absence of a national beneficial ownership registry or requirements for legal entities to maintain information on beneficial ownership, the information collected by regulated entities as part of their anti-money laundering obligations (if performed properly) may be considered as the most comprehensive source of information on beneficial ownership.

The law does not specify which competent authorities should have access to beneficial ownership information, but beneficial ownership information obtained by regulated entities, for example, is primarily made available to TRACFIN (the French Financial Intelligence Unit) by means of suspicious transaction reports (STRs) or the “declaration de soupçons” in French. TRACFIN may also make use of its disclosure powers (“droit de communication”) to get additional information from regulated entities and cross-check information provided in STRs or obtained from any other sources (Article L561-26 of French Monetary and Financial Code). Law enforcement and tax authorities may also make use of their powers to gain access to information (see Principle 8).

Authorities may also consult basic legal ownership information recorded in the company registry or maintained by legal entities. Company registries include some information on the legal owners of the shares. The degree of transparency depends on the type of legal entity concerned (partnership/joint-stock companies); either way, whenever legal entities are involved in the ownership of the structure, the available information cannot be considered as sufficient for the purpose of identifying the actual beneficial owner given that in such case, no provision requires the disclosure of the identity of the actual shareholders of said legal entities; they just have to indicate the identity of their representative.

Moreover, as mentioned above, the information contained in the company registry may not be accurate either (cf. use of nominees/front men in violation of French law) given that, as long as the information reported in the company registry is consistent with corporate documents, no additional checks are performed.

The law does not specify within which timeframe authorities may gain access to beneficial ownership. In practice this will depend on the sources of information used. Some sources may be available immediately or, at least, in a timely manner (e.g. information contained in registries or databases); others may require formal requests and the timeframe to respond such requests is variable.

Access to beneficial ownership information is likely to improve when France implements the Fourth EU Directive on Anti-Money Laundering approved in May 2015, which foresees the existence of a beneficial ownership registry.

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## G20 PRINCIPLE 5: TRUSTS

Score: 67%

While French law does not recognise the concept of trust, it allows for the conclusion of “fiducies”, a similar legal arrangement.

Moreover, the administration of foreign trusts in France is allowed. There is no obstacle in French domestic law that prevents a French resident from acting as a trustee or for a foreign trust to own assets in France.

In the case of the *fiducies*, there are several provisions aimed at preventing the misuse of this legal arrangement including:

- The obligation to stipulate in the contract the identity of the beneficiaries or, at least, the rules for appointing them (otherwise the contract will be ruled null and void): Article 2018 of French Civil Code.
- The restriction of the exercise of the fiduciary role by certain regulated entities: only credit institutions, investment firms, insurance companies, attorneys and certain financial public institutions and agencies may be trustees. All of them are regulated entities subject to anti-money laundering regulations and, as a result, required to collect and maintain beneficial ownership information.

With regards to foreign trusts, if the administration is the responsibility of professionals such as accountants, lawyers or financial institutions, then anti-money laundering obligations have to be applied<sup>1</sup> and the professional trustee has to collect beneficial ownership information (as defined pursuant to article L.561-2-2 & R.561-3 of French Monetary and Financial Code) keep it for a minimum of 5 years after the business relationship is ended (Article 561-12 of French Monetary and Financial Code).

In all other cases (foreign trustee or French trustee that is not subject to AML regulations), trustees are not required to hold beneficial ownership information about the parties to the trust.

It is noteworthy that in all cases where the trust is subject to tax, trustees must keep any relevant information relating to the trust for the purpose of

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<sup>1</sup> Let's further note that beyond the situations where regulated entities act as professional trustees, AML obligations further apply to any regulated entities providing services to the trust.

determining the amount of taxable income/assets.<sup>2</sup> This may include information about the identity of the settlor and beneficiary/ies of the trust they administer.

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

Score: 83%

The law does not specify which competent authorities should have timely access to beneficial ownership information on trusts, but they may access to information recorded on *fiducies* or use any available/legal means to request access.

France has a Registry of *fiducies*<sup>3</sup> Established by decree n°2010-219 of 2 March 2010, the registry is operated by the tax administration (the General Directorate of Public Finances within the Ministry of Economy & Finances) and compiles information on the settlors, the trustees and, where applicable, the beneficiaries of the *fiducie* – including for natural persons: name, first name, address, date and place of birth; and for legal entities<sup>4</sup> name, registration number (n° SIREN) and address of the registered office – as declared as part of the registration process. In fact, the administration does not exert any control or check over the information provided; it only reports in the registry the information as it appears on papers. The information contained in the registry is not public. It is only available, upon request, to enforcement and judicial authorities, customs agents, tax authorities and TRACFIN.

A Registry of foreign trusts<sup>5</sup> was also established by Law n° 2013-1117 of December 6th 2013. According to the law, a centralised registry of foreign trusts should be established, containing information on the name of the trustee, the settler and the beneficiaries. However, as of today, the application decree has not yet been adopted and the registry is still not active.

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<sup>2</sup> Both the trust and the trustees (that are resident in France) are liable to taxes in France.

<sup>3</sup> “La fiducie” is a legal arrangement that presents similarities with the trust that exist in common-law countries. More details further below.

<sup>4</sup> The information on beneficial ownership as gathered by financial institutions or lawyers (the only professional allowed to act as trustees) are not meant to appear in the register but they have to be maintained by them as part of their AML obligations.

<sup>5</sup> More details on the administration of foreign trusts in France are available below.

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## G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 83%

### Financial Institutions

Score: 75%

Prior to establishing a business relationship with a client or assisting a client with a transaction, financial institutions are required to identify the beneficial owner through appropriate means and to verify his/her identity on the basis of any written documentation of probative value (Article L561-2-1 I of French Monetary and Financial Code). According to the law, this verification process must be adapted to the money laundering and terrorism financing risks. As a minimum, for natural persons, financial institutions are required to be presented with a valid official identity document which includes a photo. They have to collect and maintain the name, first name/s, date and place of birth of the individual as well as information about the document itself.

Enhanced due diligence measures, which must involve independent verification of the identity of the beneficial owner, is required under the following circumstances: (i) where they consider that the client, the product or the operation pose a high money laundering or terrorism financing risk; and (ii) in relation to any operation presenting a high degree of complexity, whose amount is extraordinarily high, or that doesn't seem to have any economic justification or licit purpose.

In addition, enhanced due diligence is also required when the client is a foreign politically exposed person (PEP) or a family member or close associate of the PEP (Article L. 561-10 2° of French Monetary and Financial Code). The decision to establish a business relationship with this person may only be made by a member of the executive body or any person authorised by it. Entities also have a duty to find out the origin of the wealth and the money involved in the business relationship or transaction. Domestic PEPs are however not covered by the law.

According to the law, if the financial institution does not manage to identify the beneficial owner of a customer, the relationship should not be established or should be terminated. Nevertheless, they are only required to submit a suspicious transaction report if there is enough suspicion that the funds derive from an offence punishable for more than one year.

France has entrusted two authorities with the task of ensuring that financial institutions adequately fulfil their anti-money laundering obligations: the Prudential Supervision & Resolution Authority ("Autorité de contrôle prudentiel et de résolution" - ACPR) and the French securities regulator.

Financial institutions are subjected to dissuasive and proportionate administrative sanctions for non-compliance with money-laundering regulations. The Sanctions Committee may impose the following penalties (i) on organisations that are subject to ongoing supervision: (i) warning; (ii) reprimand; (iii) prohibition on conducting certain transactions, for a period of up to ten years; (iv) temporary suspension of managers, for a period of up to ten years; (v) compulsory dismissal of managers; (vi) partial or total withdrawal of license or authorisation; and (vii) striking from the list of licensed persons. Moreover, a fine of up to 100 million euros may be imposed either in addition to or in place of these penalties. Sanctions may also be applied to financial institutions directors and senior management.

### DNFBPs

Score: 88%

DNFBPs covered by the anti-money laundering law are required to conduct customer due diligence and identify the beneficial owner under certain circumstances.

DNFBPs with anti-money laundering obligations in France include:

- Trusts and corporate service providers (TCSPs): trustees are not, as such, subject to AML regulations – but only through other regulated entities (i.e. professions or financial institutions); domiciliation companies are the only service providers covered by AML obligations in French law.
- Lawyers: but only where they act as a trustee, are involved on behalf of a client in a transaction, or assist a client in a specific transaction (including the purchase of selling of real estate, the opening of an account, the incorporation or management of a company or a legal arrangement, the management of assets belong to the client): Moreover, including in these cases, attorneys are exempted from AML obligations when the performance of the above activities is related to a legal proceeding or a legal consultation.
- Accountants
- Auditors

- Real estate agents in relation to the purchase or selling of properties
- Casinos as well as gambling clubs and online gaming operators – it being specified that French law provides for simplified customer due diligence measures for casinos.
- Dealers in precious metals and stones
- Dealers in luxury goods (antiquities & artworks)
- Operator of a public auction
- Sport agents

The same rules that apply to financial institutions regarding the identification and verification of customers and beneficial owners apply to DNFBPs.

DNFBPs are supervised by self-regulatory / professional associations. Both the professional associations and the newly-created National Sanctions Committee may take financial & disciplinary sanctions against physical persons (individual members/directors and senior management). Likewise, under French law, the criminal liability of legal entities does not exclude the prosecution of the natural persons involved either as a perpetrator or an accomplice in the commission of the offence (Article 121-2 of French Criminal code).

## G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 63%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding beneficial ownership. In France, there is no centralised database that can be used by domestic or foreign authorities to consult information on legal ownership and ultimate control. Domestic authorities can consult available registries containing information on legal ownership or request information held by the financial intelligence unit (FIU) and other financial supervisory bodies.

There are no significant restrictions to share information across domestic authorities. As mentioned, TRACFIN as the authority that is most likely to have access to beneficial ownership information collected by financial institutions and DNFBPs may share information with other relevant authorities. According to the law, TRACFIN may share any information with regulators and controlling authorities that are relevant for the exercise of their mission (Article L561-30 of French Monetary and

Financial Code). Information relevant to anti-money laundering, with the exception of STRs, can also be shared informally with law enforcement and judicial authorities (Article L561-29 II of French Monetary and Financial Code). Enforcement & judicial authorities may request TRACFIN to communicate a STR in cases where it is needed for the purpose of prosecuting regulated entities that, based on the results of an ongoing investigation, may be involved in the suspicious transaction they have reported (Article L.561-19 II of French Monetary and Financial Code). In addition, TRACFIN is entitled to report on suspicions of tax fraud to tax authorities (Article L561-29 II of French Monetary and Financial Code).

The law also established mechanisms to ensure that other supervisory, tax, law enforcement and judicial authorities share information with TRACFIN in a timely manner. For instance, TRACFIN has immediate access to all the databases of the tax administration.

There are also no significant restrictions on sharing information with international authorities. French authorities usually share beneficial ownership or other relevant information with foreign authorities through mutual legal assistance requests, letter rogatory (a formal request from a court to a foreign court for some type of judicial assistance) or informally.

In addition, international cooperation between TRACFIN (the French Financial Intelligence Unit) and foreign FIUs is done through several bilateral conventions. TRACFIN may, upon request or on its own initiative, share relevant information with foreign FIUs. The sharing of information is however subject to reciprocity as well as to confidentiality issues. Moreover, French laws prohibit the sharing of information that is related to an ongoing legal proceeding or that may undermine France's sovereignty, its essential interests, its security or its domestic public order.

French competent authorities are allowed to use their power and investigative techniques to respond to a request from foreign judicial or law enforcement authorities. Requests from foreign authorities are dealt with the same power and investigative techniques as in French proceedings.

The central authority responsible for dealing with international cooperation requests is the Bureau of International Criminal Cooperation (BEPI) which is part of the Direction of Criminal Affairs and Pardon of the Ministry of Justice in Paris. There is no specific provision in French law governing international cooperation requests for the purpose of accessing

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beneficial ownership information; foreign authorities have no choice but to rely on the relevant provisions of MLA treaties (where applicable) or on the general rules as provided for by article 694 of French Criminal Code of Procedure.

## G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 58%

Tax authorities in France do not have direct access to beneficial ownership information. They are however allowed to use their powers to request information from other authorities and legal entities (Articles L81, L85 and L94A of French Public Finances Book)

There are no statutory bank secrecy provisions in place, but professional secrecy may restrict information sharing.

France has a vast network of agreement with 143 jurisdictions (114 DTCs and 29 TIEAs) to facilitate the exchange of information (upon request) with foreign tax authorities. The central authority for handling exchange of information on requests is the office of International affairs of the General Directorate of Public Finances within the Ministry of Economy & Finances. Most often, the competent authority will respond to the request directly by means of the available databases; where needed, it may use its information gathering powers, including power of disclosure (“droit de communication”).

## G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 100%

### [Bearer shares](#)

Score: 100%

The issuance of bearer shares is prohibited in France.

### [Nominee shareholders and directors](#)

Score: 100%

Nominee shareholders are not allowed in France. As such, under French law, it is not possible to hold shares on behalf of a third person: the shareholder is meant to be the owner of the share (i.e. the person who actually receives dividends and other benefits from the shares).

The only derogation to this principle is the possibility for non-residents to hold shares issued by publicly traded companies through registered intermediaries (cf. Articles L211-4 of French Monetary and Financial Code & L228-1 of French Commercial Code). However, this intermediation process is transparent given that, when opening the securities account, the intermediary has to declare that he is acting as such: i.e. holding shares on behalf of someone else (Article L228-1 of French Commercial Code). Moreover, the company is entitled to file requests in order to identify the owner/s of the shares.