

AUSTRALIA

BENEFICIAL OWNERSHIP TRANSPARENCY

Australia is only fully compliant with one Principle (Principle 1). Serious improvements in the current legal framework are required in order to effectively implement the other Principles. In particular, given the size of Australia's financial sector and its attractiveness to other countries in the region, more needs to be done to ensure that financial institutions and DNFBPs adequately identify and verify the beneficial owner of their customers.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

Australia is fully compliant with the G20 Principle 1. The 2007 Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument was amended in 2014 to address shortcomings of the previous definition.

The current definition states that: "the beneficial owner

(1) of a person who is a reporting entity, means an individual who owns or controls (directly or indirectly) the reporting entity;

(2) of a person who is a customer of a reporting entity, means an individual who ultimately owns or controls (directly or indirectly) the customer;

(3) In this definition: control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to determine decisions about financial and operating policies; and

(4) In this definition: owns means ownership (either directly or indirectly) of 25% or more of a person.

Within this framework, the definition covers all the main issues such as the beneficial owner being a natural person, the exercise of direct or indirect ultimate control, as well as the alternative between "own" or "control." The definition is thus in accordance with good practice.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 0%

Australia has not conducted an assessment of the money laundering risks related to legal persons and arrangements in the last three years and therefore is not considered compliant with Principle 2.

A general money laundering risk assessment – National threat assessment on money laundering (NTA) – was conducted in 2011, but there is no information on whether the assessment will be conducted again any time soon.

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 13%

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 Australia.

The law only requires legal entities to maintain a register of members, including directors and shareholders. The Corporations Act 2001 requires a shareholder to advise the company that they are holding those shares "non-beneficially" and the company must indicate in the share register that those shares are not held beneficially. However, there is no requirement to disclose who the beneficial owner of these shares is. As such, beneficial ownership information is only recorded if the legal owner of the shares happens to be the beneficial owner.

Shareholders are also not required to inform the company regarding changes in shares ownership, making it more difficult to guarantee that basic information in the share registry is kept up-to-date.

The issue of nominee shareholders has been partially addressed in Australia in relation to public listed

companies. In this case, the Australian Securities and Investment Commission (ASIC) has been given powers to trace beneficial owners of shares

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 14%

Access to beneficial ownership information by competent authorities in Australia is restricted. There is currently no law or regulation that defines which authorities may have direct and timely access to beneficial ownership information. Australia also does not have a beneficial ownership registry and authorities have thus to rely on the information recorded in the company registry and the information collected by financial institutions.

Information obtained by financial institutions is accessible on a case-by-case basis using the investigative powers of the competent authority in question and these vary according to the authority.

There is a central company registry in Australia and all legal entities operating in the country are required to provide a list of directors and a list of shareholder upon registration. This information, however, relates only to legal ownership and not to ultimate direct or indirect control. While this information can be used by competent authorities to trace beneficial ownership information, the use of fronts and arrangements involving foreign shareholders may make it very difficult to find the ultimate beneficial owner. Information on nominees is only registered in the case of listed companies.

Moreover, there is no real guarantee that the information recorded in the company registry is fully accurate, as the registry authority does not have the mandate to verify the information provided.

Basic information such as the name of the company, legal form, and status and address is available for free online. Information on shareholders, however, can only be accessed upon registration and payment of a fee.

G20 PRINCIPLE 5: TRUSTS

Score: 33%

Australia has a domestic trust law and also allows the administration of foreign trusts. However, the current

legal framework is still not fully in line with the G20 Principles.

Trustees are not required to obtain, verify or retain information on beneficial ownership. In particular, the settlor, trustee, protector and the beneficiaries of express trusts are not explicitly recorded, except at times on the trust deed. If the trust has tax obligations, then the beneficiaries of the trust need to be recorded with the Australian Tax Office.

According to the anti-money laundering law, reporting entities are required to collect information on trusts when it provides a designated service.

Registration of trusts are only required if the trust has a business name or if the trustee requires a license for business activities.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 50%

While the Australian legal framework does not emphasize the role of trustees in keeping beneficial ownership information, it still provides that some competent authorities may have access to beneficial ownership information. However, this information can only be accessed if the trust is known – either because it has tax obligations or because the trust is administered by a reporting entity.

For instance, AUSTRAC is able to obtain information on beneficial ownership of trusts from reporting entities (e.g. trust service providers). The anti-money laundering act also provides that AUSTRAC, the Australian Federal Police and the Australian Crime Commission may require a reporting entity to produce information in relation to proceedings under the act, including on beneficial ownership information. This information can then be shared with agencies designated under the law.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 19%

Financial Institutions

Score: 50%

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 establishes that reporting entities are required to collect and verify information about a customer or beneficial owner.

In 2014, the government adopted new requirements for customer due diligence (CDD). While these amendments will only come into force in January 2016, they establish stricter rules regarding the collection and verification of beneficial ownership information. Among other things, financial institutions should determine the beneficial owner of each customer, including each beneficial owner's full name, date of birth and residential address, either before the provision of a designated service to the customer or as soon as practicable after the designated service has been provided.

In the case of foreign customers, the application of the law can be simplified. There is no requirement for independent verification of the beneficial ownership provided, but only verification through, for instance, certified copies of a primary photographic document.

The recently passed amendment to the anti-money laundering law also requires financial institutions to have procedures to identify whether any individual customer or beneficial owner is a politically exposed person (PEP) or an associate of a PEP. In these cases, enhanced due diligence is necessary and the continuation of the relationship requires senior management approval.

As mentioned previously, the law does not require financial institutions to identify the beneficial owner necessarily before the relationship starts, but the identification can happen after the service can be provided. Consequently, the law does not mandate that a financial institution should not proceed with a business transaction if the beneficial owner has not been identified. Equally, financial institutions are not required to submit a suspicious transaction report (STR) if the beneficial owner has not been identified.

The law does not establish sanctions to financial institutions' directors and senior management for failures to apply the anti-money laundering legal framework.

AUSTRAC is the body responsible for supervising financial institution's anti-money laundering obligations. While the body is formally independent from financial institutions, experts consulted within the framework of the project have highlighted that the financial sector has exerted influence over AUSTRAC

in the past, which may explain the low number of financial institutions sanctioned in the past years.

DNFBPs

Score: 0%

DNFBPs are not subject to anti-money laundering and counter terrorism financing rules.

Real estate and money laundering

The latest FATF mutual evaluation of **Australia's** anti-money laundering regime noted that Australian real estate is seen as an attractive destination for foreign corruption proceeds.¹ The Australian Federal Police estimates that AUS\$200 million of corrupt money is laundered from Papua New Guinea each year,² often transferred through bank accounts and into the real estate sector. Recovery of these funds has been difficult.³

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 38%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding beneficial ownership. In Australia, there is no centralized database that can be used by domestic or foreign authorities to consult information on legal ownership and control. Domestic authorities usually share beneficial ownership information – where it exists – through informal, ad hoc mechanisms or formal agreements. AUSTRAC is the competent authority that most often holds

¹ Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures - Australia, Fourth Round Mutual Evaluation Report*, April 2015, www.fatf-gafi.org/topics/mutualevaluations/documents/mer-australia-2015.html

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

³ US Department of State, *Countries/Jurisdictions of Primary Concern - Papua New Guinea*, www.state.gov/j/inl/rls/nrcrpt/2015/supplemental/239281.htm

beneficial ownership information, as it receives reports from financial institutions. However, only designated agencies, specified officials or a specified class of officials may access information held by AUSTRAC. This information may only be exchanged with other domestic and foreign authorities pursuant to an agreement from AUSTRAC, if they are not against provisions of the Privacy Act.

With regard to international cooperation, the International Crime Cooperation Central Authority within the Attorney's General Department is designated as the central authority for extradition and mutual legal assistance matters generally, and for the provisions of assistance in proceeds of crime and asset recovery matters. There is a specific guideline on making mutual legal assistance requests to Australia, but nothing specific on requesting beneficial ownership information. This can be done informally through police-to-police or agency-to-agency.

Competent authorities in Australia are allowed to use their power and investigative techniques to respond to a request from foreign judicial or law enforcement authorities if a mutual legal assistance request has been made, including the production, search and seizure of information, documents and evidence from financial institutions or other natural or legal persons and a broad range of other powers and investigative techniques, such as the use of surveillance devices and forensic procedures.

There are some restrictions in the legal framework that may hamper the timely exchange of information with foreign authorities, such as for example, the requirement that there must be a "proceeding" in the foreign country before the Minister can issue an authorization to take evidence.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities in Australia do not have access to a central beneficial ownership registry, but the law does not impose any significant restriction on having beneficial ownership information held by other authorities shared with tax authorities. Australia is a signatory of the OECD Convention on Mutual Administrative Assistance on Tax Matters has currently signed tax information exchange agreements with 39 countries.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 50%

Bearer shares

Score: 100%

Bearer shares are prohibited in Australia

Nominee shareholders and directors

Score: 0%

Nominee shareholders and directors are allowed in Australia and there is currently no requirement that they should disclose upon registering the company the identity of the beneficial owner(s). There are several companies offering nominee services in Australia, but no special requirement for these nominees to be licensed or keep records of the persons nominating them.