

CHINA

BENEFICIAL OWNERSHIP TRANSPARENCY

China is not fully compliant with any G20 Principle. Areas needing urgent attention include financial institutions and DNFBPs so that they adequately identify and verify the beneficial owner of their customers, the misuse of bearer shares and opacity around nominees and the lack of requirements for legal entities to collect and maintain beneficial ownership information.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 50%

China is not fully compliant with G20 Principle 1.

Section 2.3, Notice of the People's Bank of China on Further Reinforcing Work Related to Anti-Money Laundering by Financial Institutions, Yin Fa [2008] Circular 391, states that "the natural person that actually controls a customer and the beneficial owner of transactions shall include, but not be limited to the following two categories of people: (i) the actual controller of a company; and (ii) the person who actually controls financial transaction process or is ultimately entitled to a relevant economic benefit (excluding a principal), however, the relevant customer fails to disclose information on such person."

While Chinese legislation therefore covers that the beneficial owner is a natural person, with direct or indirect ultimate control, the concept of control is still only extended to shareholders with voting rights, and does not include other forms of de facto control.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 0%

China 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.

G20 PRINCIPLE 3: ACQUIRING

ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 25%

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 China.

Chinese Company Law requires limited liability companies to maintain a shareholder register containing the names and domiciles of the shareholders, amount of capital contribution made by each shareholder and the serial number of each capital certificate. Shareholders are required to inform the company regarding changes in company ownership, but there are no rules obliging nominees to inform the company if they own shares on behalf of a third person.

In the case of listed companies, the law establishes that they should submit annually to the securities authority a list containing the actual controllers of the company. "Actual controllers" are understood as those able to actually control the acts of the company through investment relations, agreements or other arrangements, including investors who control more than 30% of the voting rights or with powers on the selection of members of the board of directors of the company, for example.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 21%

Timely access to beneficial ownership information by competent authorities in China is not fully guaranteed. As there is no beneficial ownership registry and legal entities are not required to maintain beneficial ownership information, authorities have to rely on the information collected by financial institutions or on basic information contained in the company registry, but there is also only a limited guarantee that access to those is timely.

The law provides that China Anti-Money Laundering Monitoring and Analysis Centre, the People's Bank of China, the China Banking Regulatory Commission, China Securities Regulatory Commission and China Insurance Regulatory Commission can have access to beneficial ownership information recorded by financial institutions.

Law enforcement and tax authorities as well as the public can access online basic information on directors and shareholders recorded in company registries, but not on beneficial ownership. Also, information recorded in the company registry is not verified by the registry authority and it may not be accurate or up-to-date.

G20 PRINCIPLE 5: TRUSTS

Score: 67%

China has a domestic trust law but does not recognize the administration of foreign trusts. According to the Trust Law of the People's Republic of China, trustees are required to maintain information on settlors and beneficiaries. Also, financial institutions dealing with trusts are required to collect information on parties to the trusteeship, register the names and ways of contact of the trustor and the beneficiary.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 50%

Trust companies in China are subject to approval and administration by the China Banking Regulatory Commission and information about these trusts is registered with the commission. However, trusts that are not operated by trust companies are not subject to registration or approval of the commission.

China's trust regulation provides that Banking Regulatory Commission, the authority responsible for overseeing trusts, should have access to beneficial ownership information on trusts operated by trust companies. The commission may also access information on trustees and beneficiaries collected by financial institutions.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 19%

Financial Institutions

Score: 38%

Financial institutions are required to identify the client's identity, get information about the natural person who actually controls the client and the actual beneficiary of the transaction. Current rules, however, do not require financial institution to verify the identity of the beneficial owner (only of the client) nor to conduct independent verification of the beneficial ownership information provided.

The law provides that financial institutions should take additional measures in cases where the customer is a foreign political leader. These measures include obtaining the approval of senior management prior to opening an account and verifying the source of funds. There is no mention however of family members or close associates of PEPs, or to domestic PEPs.

There is also no provision stating that financial institutions should terminate a business relationship if it fails to identify the beneficial owner, but the law does provide that a suspicious transaction report should be submitted in cases where financial institutions find, or reasonably suspect, that the customer conceals information of due diligence or precludes the due diligence of the financial institution on the customer's actual controller and beneficial owner.

The People's Bank of China (PBOC) is the main enforcement body carrying out on-site inspections and applying fines if violations are found. The law provides sanctions to both financial institutions and their senior management. Directors and senior managerial personnel are subject to: (i) disqualification for, and prohibition from, engaging in any work relating to financial industry; (ii) disciplinary punishment; and (iii) criminal liability. There is no publicly available information on cases where financial institutions have been subject to sanctions for non-compliance with anti-money laundering rules.

DNFBPs

Score: 8%

DNFBPs are not subject to anti-money laundering rules in China. Only trusts have anti-money laundering obligations as they are considered financial institutions. Within this framework, trust companies should check the valid identity certificate of customers, gain knowledge about the sources of the trust property, and register the basic identity information of the trustor and the beneficiaries.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 71%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding beneficial ownership. In China, 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. There are however no significant restrictions to share information across domestic authorities.

The central government intends to set up a national electronic platform for compulsorily sharing various information (e.g. corporate, credit and law violations etc.) of enterprises collected by different authorities, pursuant to the Opinions on Adopting Big Data to Strengthen Services for and Regulation on Enterprises issued by the State Council of the PRC on 1 July 2015. This could significantly facilitate domestic cooperation especially if beneficial ownership information is included as a dataset.

At the same time, only information on listed companies is currently provided for in domestic information sharing agreements. With regards to private limited liability companies, only limited types of information thereof (e.g. registered capital, shareholders and law violations etc.) are required to be reported to, and collected by, relevant authorities and made available to other authorities and the public via the company registry system. Given that private limited companies are not required to disclose the information of their beneficial owners under PRC laws, there is no mechanism for sharing information of beneficial owners between limited liability companies and competent authorities exists.

With regard to international cooperation, The People's Bank of China is the central authority designated with the task of dealing with international cooperation requests. China has developed mutual legal assistance treaties, MoUs and letter rogatories to share beneficial ownership information with foreign authorities. There are no legal restrictions on the provision or exchange of information. As of 31 December 2013, China has entered into mutual legal assistance agreements (including MoUs) with 22

countries (2013 Report on China Anti-money Laundering). Current laws do not provide clear procedural arrangements for foreign jurisdictions to request beneficial ownership information and so procedures differ per country, depending on the adopted legal mechanism. It is positive that figures on assistance provided to foreign authorities are released each year within the Annual Report on China Anti-Money Laundering.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities do not have direct access to a beneficial ownership registry, but no restrictions on sharing beneficial ownership information with domestic tax authorities can be found in existing laws.

China has entered into several international treaties/agreements relating to tax matters which facilitate the exchange of information between Chinese tax authorities and foreign counterparts. In 2013, China signed the Multilateral Convention of Mutual Administrative Assistance in Tax Matters, and as of January 2015, China has signed tax information exchange agreements with 10 countries.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 0%

Bearer shares

Score: 0%

Bearer shares are allowed in China. Since 1992 joint stock companies have been permitted to issue shares in bearer form. There are no requirements that these should be converted into registered shares or be held by a regulated financial institutions or professional intermediary. Likewise, companies do not need to record the identity of the owner of the bearer share, but only the amount, serial numbers, and date of issue of the stock certificate.

Nominee shareholders and directors

Score: 0%

Nominee shareholders and directors are allowed in China and there is currently no requirement that they should disclose the identity of the beneficial owner(s).

There are also no registration requirements for professional nominees.