

INDIA

BENEFICIAL OWNERSHIP TRANSPARENCY

India is fully compliant with one G20 Principle (Principle 1). Recently, the country made significant progress by requiring companies to maintain beneficial ownership information in their membership registry. The law however fails to define beneficial ownership in this context. Also, improvements are still necessary to ensure that this information is readily and easily available to competent authorities. In addition, the anti-money laundering law should be extended to cover other relevant DNFBPs and enhanced due diligence in the case of PEPs should be a requirement to all obliged entities, including DNFBPs, and should cover both foreign and domestic PEPs.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

India is compliant with the G20 Principle 1. The Prevention of Money-laundering (Maintenance of Records) Rules, 2005 defines the beneficial owner as:

“ (a) where the client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means. Explanation.— For the purpose of this sub-clause—

1. Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;
2. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements; voting agreements;

(b) where the client is a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to more than fifteen per cent. of capital or profits of the partnership;

(c) where the client is an unincorporated association or

body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen per cent of the property or capital or profits of such association or body of individuals;

(d) where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(e) where the client is a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen per cent. or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership; and

(f) where the client or the owner of the controlling interest is a company listed on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.”

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 control, as well as provides the alternative between “own” and control”.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 0%

India 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 75%

The Company Act approved in 2013 is closely in line

with the G20 Principle 3. According to the Act every company shall keep and maintain the following register of members (ROM):

- (a) ROM indicating separately for each class of equity and preference shares held by each member residing in or outside India;
- (b) Register of Debenture-holder; and
- (c) Register of any other security holders.

A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, needs to file with the company, a declaration to that effect with the names and other particulars of the person who holds the beneficial interest in such shares.

The person whose name is recorded in the register as the beneficial owner also needs to make a declaration to the company within a period of 30 days. Declarations received by the company need to be filed in its register of members and also with the Registrar of Companies – India’s company register.

Changes in the beneficial interest of shares need to be communicated to the company by the registered shareholder and by the beneficial owner within 30 days.

The law also provides that the Central Government may establish rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under, including on the type of information to be disclosed.

However, the law does not define “beneficial interest” or “beneficial owner”. It is not clear whether the definition provided in the anti-money laundering law also applies in this case.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 71%

Competent authorities have access to beneficial ownership information recorded in the company register of members and in the Registrar of Companies (ROC). The Company Act also provides that the Central Government may appoint at any point inspectors to investigate a company’s real ownership (Part II, section 216).

Competent authorities such as the Director, Financial Intelligence Unit (FIU) and the Director Enforcement have powers under the anti-money laundering law may also access beneficial ownership information held by financial institutions and DNFBPs and share it as appropriate with national and international authorities. The Securities Exchange Board of India (SEBI), the Reserve Bank of India (RBI), and the Insurance Regulatory Department Authority (IRDA) also have powers to access beneficial ownership information as provided by the anti-money laundering law.

The information registered in the Registrar of Companies (ROC) include company information (such as name of the company, proof of incorporation, legal form and status, address of registered office, list of directors, list of shareholders) as well as beneficial ownership information (such as name of the beneficial owner(s), date of birth, business address, nationality, and description of how ownership is exercised. Information in the registry is recorded as declared for the company and should be updated before 30 days after the change in ownership or control occurred. These registries are available at the sub-national level and can be inspected by members of the public on payment of a fee. Company information is also partially available online on the website of the Ministry of Corporate Affairs but in many cases information beyond the name and registration number of the company is not available.

G20 PRINCIPLE 5: TRUSTS

Score: 33%

India has a domestic trust laws (Indian Trusts Act 1882), and, In general, there are two types of trusts in India: private and public trusts. Private trusts are constituted for the benefit of one or more individuals who are, or within given time may be, definitely ascertained. A Private Trust may be created either inter vivos orally or through a written instrument (for example, a will). Public trusts are constituted wholly or mainly for the benefit of the public at large.

A document creating a trust usually state the intention on the part of the author of the trust or settlor to create a trust;the purpose of the trust;the beneficiary;the trust property; andtransfer of the property to the trustee. However, there is no legal requirement that the trustee needs to maintain information on the parties to trust, including on the settlor and beneficiaries. There is also no requirement for professional trustees to identify the beneficial owner of the trust.

Financial institutions when they have a trust as a client are required to identify the beneficial owner(s), including the author of the trust, the trustee, grantors, protectors and beneficiaries with 15% or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 33%

Anti-money law legislation in India provides that the FIU must have access to information held by financial institutions on clients that are trusts. However, there are currently no measures that guarantee timely access to beneficial ownership of private trusts. Private trusts are not registered and can even be established orally, making it difficult to assess information. Public trusts are required to register under the Registration Act 1908, providing information on the name and description of the public trust as well as the immovable properties.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 67%

Financial Institutions

Score: 81%

The Anti-Money Laundering law provides that financial institutions should obtain and verify information about the identity of their clients and beneficial owners. Within this framework, financial institutions are required to at the time of commencement of an account-based relationship to (i) identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and (ii) determine whether a client is acting on behalf of a beneficial owner, the identify the beneficial owner and take all steps to verify the identity of the beneficial owner (as defined in Principle 1).

According to 2014 Circular published by the Bank of India, banks should also not allow opening and / or holding of an account on behalf of a client/s by professional intermediaries, like lawyers and chartered accountants, who are unable to disclose the

true identity of the owner of the account / funds due to professional obligation of customer confidentiality.

The Circular also provides that banks should gather sufficient information on any customer or beneficial owner who is a foreign politically exposed person (PEP) or a close associate / family member and check all the information available on the person in the public domain. In addition to verifying the identity of the person, financial institutions should also seek information about the sources of funds before accepting PEP as a customer. The decision to open an account for or continue a relationship with a PEP should be taken at a senior level. Domestic PEPs are not covered by the rules.

Financial institutions are not allowed to proceed with a business transaction if the beneficial owner has not been identified. Suspicious transaction reports are to be submitted in case there is suspicious that it may involve proceeds of an offence specified in the money laundering act, but not in case the beneficial owner has not been identified.

The Financial Intelligence Unit (FIU) is the body responsible for overseeing financial institution's anti-money laundering obligations. Other supervisory and regulatory bodies include the RBI, SEBI and IRDA. The anti-money laundering law provides for sanctions to financial institutions as well as designated directors or any employees of a reporting entity for failing to comply with the obligations imposed on it. The sanction for directors was introduced by a 2013 amendment and includes financial penalties.

DNFBPs

Score: 58%

Amendments to the anti-money laundering law extended the obligation to identify and verify the identity of customers and beneficial owners to the following DNFBPs:

- real estate agents
- dealers in precious stones and metals,
- Registrar or Sub-Registrar for property
- Persons engaged in safekeeping of valuables (lockers operators).
- Casinos

Trust and corporate service providers, lawyers, and accountants are not covered by the law and therefore not required to conduct due diligence on their clients.

Obligated DNFBPs are not allowed to proceed with a business transaction if the beneficial owner has not been identified. STRs must be submitted to the FIU in case of suspicious that the funds are the proceeds of illegal activity.

The anti-money laundering nor other regulations provide for enhanced due diligence by DNFBPs in the case of PEPs or close affiliates.

As it is the case with financial institutions, director or employees of obliged DNFBPs may also be sanctioned for non-compliance with the anti-money laundering law.

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 India, competent authorities may access the information collected in the ROM and ROC databases, but this information is not available in a central unified database, which could impose challenges to the timely access of information.

The FIU and other regulatory bodies such as RBI, SEBI, IRDA also have access to beneficial ownership information collected by obliged entities. They have signed a memorandum of understanding (MOU) that enables a regular and structured exchange of information among themselves. The FIU also signed MOUs with the Central Bureau of Investigation (CBI).

With regard to international cooperation, the FIU law enforcement bodies and custom authorities may deal with international cooperation requests. Information can be shared based on mutual legal assistance treaties or MOUs. The FIU for instance has signed MOUs with FIUs of several other countries. There are however no clear procedural requirements or guidelines published regarding how countries should proceed to request beneficial ownership information.

However, international cooperation in relation to AML/CFT is to a certain extent restricted in the financial sector, because the financial sector supervisors (with the partial exception of the Securities Exchange Board of India) currently lack a specific legal basis for exchanging confidential information with supervisors in other

countries. Information is usually exchanged at a higher level, but access to customer-specific information may be limited.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities in India can consult the information recorded in the ROM and ROC registries. The income tax department also signed an MOU with the FIU to facilitate the exchange of information which is relevant for investigations into tax evasion.

India is a member of the OECD Global Forum on Transparency and Exchange of Information for tax purposes and has to date signed two tax information exchange agreements (with Bahamas and Bermudas) and [several](#) double taxation avoidance agreements.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 75%

Bearer shares

Score: 100%

Bearer shares are prohibited in India.

Nominee shareholders and directors

Score: 50%

Nominee shareholders are required to declare to the company if they own shares on behalf of a third person (Section 89, Companies Act 2013).