

JAPAN

BENEFICIAL OWNERSHIP TRANSPARENCY

Japan is fully compliant with three G20 Principles (Principles 1, 2 and 10) but does not require legal entities or trusts to maintain beneficial ownership information, nor to report beneficial ownership information to a central company or trust registry. Nevertheless, by improving the definition of beneficial owner, and adopting requirements for enhanced due diligence on foreign (but not domestic) Politically Exposed Persons, Japan has made progress in 2015.

As a priority, Japan should strengthen requirements on collecting and verifying beneficial ownership and ensuring that this information is readily and easily available to domestic and competent authorities.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

In September 2015, Japan adopted amendments thus bringing the country in line with G20 Principle 1. A recent amendment to Article 11 of the Enforcement Rules of the Act on the Prevention of Transfer of Criminal Proceeds Rules (September 18, 2015, to come into force on October 1, 2016) will add two crucial elements to the existing language in the Act that defined a beneficial owner as ownership of more than 25% of the shares of the company.

The new amendments will ensure that the definition covers that the beneficial owner is a natural person, and that a beneficial owner is a person who has a controlling influence on the legal entity. The definition is thus in accordance with good practice.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 100%

Japan's National Policy Agency conducted a detailed risk analysis with agencies including the Financial Services Agency and the Ministry of Finance in December 2014 (the "Risk Assessment Report 2014"). In addition, the National Public Safety Commission conducts a risk assessment and publishes its results

every year. Japan's Financial Intelligence Center publishes an Annual Report each year on money laundering including an overview of cases completed.

External stakeholders including financial institutions, Designated Non-Financial Businesses or Professions (DNFPBs) and industry associations were consulted during the assessment. The risk assessment was published in full.

The latest assessment recognised that specific products and services were at risk of being misused for money laundering purposes in Japan, and identified non-face-to-face transactions, cash transactions, international transactions with countries/regions identified by FATF as having deficiencies, specific criminal gangs in Japan, PEPs, entities whose beneficial owners are not clear and customers without photo identification to be at high risk.

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 25%

Current laws and regulations do not require legal entities to maintain information on beneficial ownership. Consequently, there is no requirement of beneficial ownership information being maintained within Japan.

Under the Companies Act, shareholders do not need to declare to the company if they own shares on behalf of another individual. However they may not exercise shareholders' rights unless that individual notifies the company regarding the acquisition.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 14%

Timely access to beneficial ownership information by competent authorities in Japan is not fully guaranteed. As there is no beneficial ownership registry and legal entities are not required to maintain beneficial ownership information nor provide that information upon registration, authorities have to rely on

the information collected by financial institutions or on basic information contained in the central company registry. Japan's Criminal Procedure Law specifies that the Prosecutors' Office and the National Police Agency can access beneficial ownership information, and the National Tax Agency has investigative power including access to beneficial ownership information if it is a tax related case. There are other agencies such as the Securities and Exchange Surveillance Commission and the Fair Trade Commission that are given general investigative powers under various statutes in respective areas.

The law permits the Prosecutor's Office to access information recorded in company registries, maintained by legal entities and obtained by financial institutions and DNFPBs but no timeframe is specified to ensure the "timely" element of the G20 principle.

Legal entities are under no obligation to submit beneficial ownership information to the registry, even though the law requires that legal entities inform the registry authority of a change of Directors within two weeks.

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

G20 PRINCIPLE 5: TRUSTS

Score: 33%

Japan has a domestic trust laws and also allows the administration of foreign trusts.

Competent authorities such as financial intelligence units, tax authorities, or public prosecutors cannot access information on beneficial ownership of trusts since trustees are not required to hold beneficial ownership information about the parties to the trust and there is no registry to collect the information.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 33%

The law permits the National Police Agency and Prosecutors Office to make a request for information on trusts held by trustees, financial institutions or DNFPBs themselves. In case of a tax related investigation, the National Tax Agency may request such information and if it relates to a securities or

derivative transactions investigation into a criminal case, the Securities and Exchange Surveillance Commission may request such information.

However since the law does not require trustees to maintain beneficial ownership, competent authorities cannot gain access to the information directly.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 55%

Financial Institutions

Score: 63%

The Act on the Prevention of Transfer of Criminal Proceeds requires financial institutions to identify the beneficial owner when establishing a business relationship with a client, and obliges some business operators to verify the information when the customer is a legal person. Only in some cases must a financial institution conduct independent verification of the beneficial owner.

FIs conduct enhanced customer due diligence when; (i) there is suspicion that the customer is trying to deceive the financial institution by misrepresenting their identity, (ii) there is suspicion that the customer deceived the financial institution by answering the financial institution's request for identification before, or (iii) the transaction is with a high risk country.

Japan has recently passed an amendment to the Act on the Prevention of the Transfer of Criminal Proceeds (September 18, 2015) that will come into force in October 2016. This amendment will require financial institutions to undertake enhanced customer due diligence on transactions with foreign Politically Exposed Persons (PEPs) PEPs and their families. Whilst this is a welcome development, it only applies to foreign PEPs and not domestic PEPs who also pose a money laundering risk.

Equally, financial institutions may proceed with business transactions even when the beneficial owner in a business transaction has not been identified. Financial institutions must submit a suspicious transaction report (STR) when the beneficial ownership of a client cannot be identified, but only if there is evidence or suspicion that the funds have been gained through criminal activity.

The law establishes sanctions of up to two years' imprisonment and/or a fine of up to three million yen to financial institutions' directors and senior

management for failures to apply the anti-money laundering legal framework. However, the Japan Financial Intelligence Center, a body responsible for supervising anti-money laundering obligations, makes no report of cases against financial institutions within its most recent report of 2014.

DNFBPs

Score: 50%

A number of DNFBPs, including Trusts and Company Service Providers, real estate agents, dealers of precious metals and stones and others such as credit card companies are subject to anti-money laundering rules. They have the same duties to identify beneficial owners as financial institutions as outlined above. However there are some concerning omissions from those subject to the rules, including accountants, lawyers and casinos.

The rules that apply for financial institutions apply to the DNFBPs described above.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 54%

The law does not impose restrictions to the sharing of confidential information between national level authorities in Japan. The Act on the Prevention of Transfer of Criminal Proceeds stipulates that information on suspicious transactions including beneficial ownership information could be shared as long as it is contributing to an investigation into criminal cases such as money laundering.

However whilst there are no legal restrictions, it is not clear how easy the transfer of this information is. There is no centralized registry or database, nor do competent authorities sign MoUs. Information is only shared on an ad-hoc basis.

With regard to international cooperation, the FIU is the designated central authority for mutual legal assistance matters. Information held by the FIU can be accessed by foreign counterparts through memorandums of Understanding.

Procedures for foreign jurisdictions to request beneficial ownership information in Japan are not easily available.

Nevertheless, Article 18 of the International Assistance in Investigation and Other Related matters permits competent authorities to use their power to respond to requests from foreign authorities. As a result, Japan provided information to law enforcement authorities in other countries 4,801 times in 2012, 3,761 times in 2013, and 3,666 times in 2014.

There are some restrictions in the legal framework that may hamper the timely exchange of information with foreign authorities. Article 2 of the International Assistance in Investigation and Other Related Matters provides cases where cooperation is not permitted when (i) the crime for cooperation is a political crime, or (ii) it could not be punishable under Japanese law if it had been committed in Japan, or (iii) the country requesting cooperation does not submit a request document which states that the witness examination or evidence is indispensable for investigation.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities in Japan 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 domestic authorities shared with tax authorities.

Japan is a signatory of the OECD Convention on Mutual Administrative Assistance on Tax Matters and also has concluded tax agreements with tax treaty partner jurisdictions in a number of countries.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 100%

Bearer shares

Score: 100%

Bearer shares have been prohibited in Japan since the amendment of the Commercial Code by Law No.64 in 1990.

Nominee shareholders and directors

Score: 100%

The concept of nominee shareholders and directors does not exist in the Japanese legal framework.