

MEXICO

BENEFICIAL OWNERSHIP TRANSPARENCY

Mexico is fully compliant with one G20 Principle (Principle 1). Improvements in the current legal framework are required in order to effectively implement the other Principles. In particular, given the reliance of the current anti-money laundering system on the information collected by financial institutions and DNFBPs, the rules should be strengthened to ensure that at least in high-risk cases the beneficial ownership information collected is independently verified. In order to prevent individuals from easily hiding their identities, current rules on nominee shareholders should also be strengthened.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

Mexico is fully compliant with G20 Principle 1. The Federal Law for the Prevention and Identification of Transactions with Illegal Proceeds defines that a beneficial owner is the natural person(s) who:

- a) Through another person or through any act, obtains the derived benefit from them and, who ultimately executes the usage rights, full enjoyment, exploitation, or disposition of goods and services;
- b) Executes control of a legal entity who, under the attributions of a client or user, carries activities or transactions with other financial entities as well as with those who represent them.

It is considered that a person or group of persons is/are in control of a legal entity through the ownership of securities when, by contract or any other act, they can:

- I. Directly or indirectly impose decisions in the general assemblies of shareholders, partners, or equivalent entities, or appoint or dismiss the majority of counsellors, administrator, or their equivalent;
- II. Maintain the ownership over the rights that directly or indirectly allow the execution of voting concerning over the fifty percent of the total social capital.

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: 40%

Mexico conducted an assessment of the money laundering risks related to legal persons and arrangements in 2012 but there is very little publicly available information related to the assessment. It is not clear whether stakeholders such as non-governmental organisations, business associations and financial institutions were consulted. The results of the assessment were not published and there is limited information regarding whether financial institutions and Designated Non-Financial Businesses or Professions (DNFBPs) were informed about the findings.

An annual report published by the Financial Intelligence Unit mentions areas identified in the risk assessment as high-risk. They include the flow of US dollars in cash between Mexico and the USA, and the variation of ML/FT risks among federative entities according to their geographical location.

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 no requirement for beneficial ownership information to be maintained within Mexico.

The law only requires legal entities to maintain a list of shareholders, including name, nationality, address, and number and class of shares held. According to the law, the individual in which name the shares are registered is considered the owner and therefore must comply with all obligations related to the shares. Changes in share ownership need to be communicated and recorded in the registry, with the exception of public listed companies. Legal entities are also required to register with tax authorities, where information on shareholders is also disclosed.

The law does not require nominees to communicate to the company if they own shares on behalf of a third person. Mexican law does not prohibit a person from holding shares on behalf of someone else based on a contractual arrangement (mandato sin representación). Within this framework, the nominee may buy shares in a company on behalf of another person without information the company (see Principle 10).

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 18%

Access to beneficial ownership information by competent authorities in Mexico is restricted. While the anti-money laundering law establishes that the Ministry of Finance and Public Credit (SHCP), the Financial Intelligence Unit (FIU), the Office of the General Prosecutor (PGR), the Specialised Unit in Financial Analysis (UEAF), the National Bank and Securities Commission (CNBV), and the Service for Tax Administration (SAT) may have access to relevant information on anti-money laundering, currently the only direct source on beneficial ownership information – key to anti-money laundering investigations- is the information collected by financial institutions and DNFBPs.

There is no beneficial ownership registry and legal entities in the country are only required to maintain information on legal ownership – and not necessarily on the individuals who exercise ultimate control.

Authorities may also consult information available in the central company registry (SIGER), but again, the information only refers to legal ownership. Moreover, the information is registered as recorded by the authorities and there is no obligation that changes in legal ownership should be communicated timely. Therefore, the information on legal ownership may not be fully accurate and up-to-date.

G20 PRINCIPLE 5: TRUSTS

Score: 67%

Mexico does not recognize the concept of common law trusts, but allows the administration of foreign trusts. Mexico also has a similar arrangement to common law trusts, the so-called *fideicomiso*, which is regulated under the General Law of Debt Securities (LGTOC).

According to the law, a *fideicomiso* agreement needs to be in writing and the authorities recommend that information on the trustee, settlor and beneficiaries is recorded. This information should also be provided to tax authorities if the *fideicomiso* has tax obligations. The law also provides that only regulated financial institutions can act as a trustee (article 395).

The anti-money laundering law requests financial institutions providing services to *fideicomissos* or foreign trusts to sufficiently identify the parties to the trust, including the beneficial owner.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 50%

Fideicomissos are not required to be registered. In case they have tax obligations, information needs to be recorded with tax authorities. Also, if the assets of the *fideicomiso* involve movable property, they are required to be registered at the Public Registry of Property. There is however no requirement to record the identity of all parties of the trust.

Competent authorities, such as the Ministry of Finance and Public Credit (SHCP), the Financial Intelligence unit, and the National Banking and Securities Commission (CNBV), among others may have access to beneficial ownership information related to *fideicomissos* or foreign trusts by accessing information collected by financial institutions or requesting information from trustees. The law does not determine a guaranteed timeframe within which authorities should gain access to the information.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 74%

Financial Institutions

Score: 69%

The Federal Law for the Prevention and Identification of Transactions with Illegal Proceeds establishes that financial institutions are required to collect and verify information about a customer or beneficial owner. Requirements for the identification of the beneficial owner usually include: full name, date of birth, proof of address, and bank references or commercial references that contain the aforementioned data. There is no requirement that the information provided should be independently verified, not even in high-risk cases.

In cases where the customer is a politically exposed person (PEP), the following obligations exist: (i) to establish in the domestic policy, standards, measures, and procedure documents the criteria to determine the risk level which the clients should be allocated; also, the assessment of whether an individual must be considered as PEP must include the client's background, profession, activity or sort of business, the origins and destination of their resources, their residence and other circumstances determined by the obliged person; (ii) to develop mechanisms to establish the risk level of transactions carried by Mexican PEPs and to determine if the transactional behaviour matches reasonably the functions, level, and responsibility of those people, according to the knowledge and information possessed by the obliged people; (iii) to rely on automated systems to execute an alert system concerning those

transactions carried by PEPs; (iv) the “Communications and Control Committee”, or the person fulfilling such functions, ought to make sure that their automated systems to which the general dispositions refer to, contain the list of PEPs. Moreover, the establishment or continuation of the business relationship requires senior management approval.

According to the law, financial institutions should not proceed with a business transaction if the beneficial owner has not been identified and in suspicious cases, a suspicious transaction report must be submitted.

The National Banking and Securities Commission (CNBV) is the body responsible for supervising financial institutions’ anti-money laundering obligations. Other bodies such as the Ministry of Finance and Public Credit (SHCP), the FIU and the Specialised Unit in Financial Analysis (Unidad Especializada en Análisis Financiero), under the Office of the General Prosecutor (Procuraduría General de la República, PGR) also play a role when regulating and overseeing the sector.

The anti-money laundering law provides for administrative and criminal sanctions for non-compliance. Sanctions against financial institutions’ employees and directors are also possible but a previous complaint from the SHCP is required. (Federal Law for the Prevention and Identification of Transactions with Illegal Proceeds Ch. 8 art. 65. Article 91).

In the past three years, fines imposed for anti-money laundering violations have amounted to USD\$100 million. The CNBV publishes on its web page details as to which institutions were fined, for which breach of compliance (items in Article 115 of the LIC and other related provisions), and the amounts of the fines imposed¹.

DNFBPs

Score: 77%

DNFBPs are subject to anti-money laundering rules under certain conditions. The following DNFBPs are covered by the law:

- Trusts and service providers: Only when transactions are equal or above the equivalent of 8.025 times the current minimum wage in Mexico City².
- Lawyers: when performing services such as real estate transactions; organisation, administration, or transactions of commercial entities; management of clients’ assets; management of banking, savings, or securities accounts.
- Accountants: when performing services such as real estate transactions; organisation,

¹ <http://www.cnbv.gob.mx/CNBV/Paginas/Desarrollo-Regulatorio.aspx>

² The current minimum wage/day in Mexico City is \$70.10 (approx. \$4.50 USD)

administration, or transactions of commercial entities; management of clients’ assets; management of banking, savings, or securities accounts.

- Real estate agents: Only when transactions are equal or above the equivalent of 8,025 times the current minimum wage in Mexico City.
- Casinos: Only when transactions are equal or above the equivalent of 325 the current minimum wage in Mexico City.
- Dealers in precious metals and stones: only for cash transactions that are equal or above the equivalent of 1,605 times the current minimum wage in Mexico City.

Other dealers in luxury goods are not covered by the law and therefore have no anti-money laundering obligations.

As it is the case with financial institutions, DNFBPs are required to identify and verify the identity of the beneficial owner of their clients. There is however no requirement to conduct independent verification of the information collected.

The same rules apply in case of PEPs, where enhanced due diligence and senior management approval is required.

DNFBPs should not continue with a transaction if the beneficial owner has not been identified. However, there is no need to submit a suspicious transaction report.

The anti-money laundering provides for a range of sanctions, administrative and criminal, that can be applied to DNFBPs and senior management in case of non-compliance.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 79%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding beneficial ownership. In Mexico, there is no centralised database that can be used by domestic or foreign authorities to consult information on legal ownership and control. The FIU and other supervisory bodies may access information on beneficial ownership collected by financial institutions and DNFBPs and this information can be shared with other domestic competent authorities upon request or memorandum of understanding. There are no legal impediments for cooperation among the various supervisory bodies and other domestic authorities.

There also no impediments for cooperation with foreign authorities. The FIU may share information on money laundering and predicate offences both spontaneously and upon request (FIU Article 15, Section XXIII of the Internal Regulations). The law provides that the FIU may sign MOUs

in the area of cooperation for the exchange of financial intelligence related to money laundering. Mexico is also a member of the Egmont Group and information can also be exchanged informally with members.

Requests from law enforcement authorities usually take place based on mutual legal assistance treaties and are coordinated by the Ministry of Foreign Affairs.

Competent authorities in Mexico are allowed to conduct inquiries to answer requests from foreign authorities. In particular, the FIU can request and obtain information from reporting entities directly or through their supervisory bodies. The FIU can also access tax, immigration databases but has no access to information maintained by law enforcement authorities. The latter may also use their investigative powers to get support from authorities based on mutual legal assistance agreements.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities in Mexico do not have access to a central beneficial ownership registry, but Mexico's tax authority, the Service for Taxes Administration (SAT, for its acronym in Spanish) is currently involved in the regulation and supervision of financial institutions and therefore has direct access to beneficial ownership information collected by financial institutions.

Mexico is a signatory of the OECD Convention on Mutual Administrative Assistance on Tax Matters and has currently signed bilateral and multilateral agreements with the USA under the Foreign Account Tax Compliance Act (FATCA) (Cumplimiento Fiscal relativo a Cuentas en el Extranjero), the Inter-American Centre of Tax Administrations (Centro Interamericano de Administraciones Tributarias) with other Latin American peers, as well as the Automatic Information exchange Pilot Programme with 5 European countries.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 63%

Bearer shares

Score: 100%

Bearer shares are prohibited in Mexico

Nominee shareholders and directors

Score: 25%

Mexican law does not prohibit a person from holding shares on behalf of someone else based on a contractual arrangement (mandato sin representación). Within this

framework, the nominee may buy shares in a company on behalf of another person without informing the company or disclosing the identity of the actual owner upon registration.

If the nominee is an entity or profession covered by the anti-money laundering rules, there is an obligation to keep information on the customer and beneficial owner. Authorities may request information at any time.