

SOUTH KOREA

BENEFICIAL OWNERSHIP TRANSPARENCY

South Korea is not fully compliant with any of the G20 Principles. Information on beneficial ownership is not collected by government authorities and only collected by financial institutions in case of suspicious. Moreover, domestic PEPs are not covered by the law. The legal framework with regards to Designated Non-Financial Businesses and Professions (DNFBPs) and nominee shareholders should be strengthened in order to effectively curb money laundering and corruption.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 50%

South Korea is not fully compliant with the G20 Principle 1. The Presidential Enforcement Decree of the Act on Report on Scheduled to Come into Force in 2016 defines beneficial owner as:

1. The natural person who owns 25% or more of shareholdings in a legal person or entity
2. Where there is doubt as to whether the person identified under 1. is the beneficial owner or where there is no natural person who has 25% or more of shareholdings, the natural person who exercises control of the legal person or entity through other means
3. Where there is no natural person identified under 2., the chief executive of the legal person or entity.

This definition of beneficial owner is not fully in accordance with good practice. While the beneficial owner is always a natural person, having someone who legally owns 25% of shares is considered sufficient for the purpose of identifying the beneficial owner. The issue of whether someone is the ultimate owner by exercising de facto control over a legal entity is only considered if there is doubt as to whether the person identified as the legal owner is not the beneficial owner or if there is no one who holds 25% of shares.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 0%

South Korea has not conducted an assessment of the anti-money laundering risks related to legal entities and arrangements in the past three years.

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 South Korea.

Legal entities, including listed companies and limited liability companies, are nevertheless required to maintain a list of shareholders and members, including their names and percentage of shares held. There is also an obligation to shareholders and members to inform the legal entity regarding changes in share ownership. There is however no requirement to communicate the company if the shares are held on behalf of a third person.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 11%

Timely access to beneficial ownership information by competent authorities in Korea is restricted. There is no beneficial ownership registry, legal entities are not required to maintain beneficial ownership information, and the information collected by financial institutions does not always include the real beneficial owners.

Within this framework, authorities have to rely on basic information available on company registries or collected by financial institutions or use their powers to request information.

The law does not specify which competent authorities should have timely access to beneficial ownership information. The anti-money laundering legal framework include provisions specifying that the information received by the financial intelligence unit on suspicious transactions reports can be shared with law enforcement agencies such as the Public Prosecutor's Office, National Tax Service, Korea Customs Service, National Election Commission, Financial Services Commission, Ministry of Public Safety and Security and National Policy Agency. But again these reports may not include information on the beneficial owners.

All legal entities are required to register with the Registry Office which is an affiliated authority of the Judiciary Branch. Information on directors and shareholders is recorded in the registry and made available online to competent authorities. The public may also access the registry upon registration and payment of a fee.

Nevertheless, the information is recorded as declared by the legal entity without any independent verification by the registry authority. Moreover, the law does not establish a timeframe within which changes in share ownership should be communicated to the registry office.

Tax authorities in South Korea maintain a register with information on company ownership. The information recorded is even verified by authorities against other public databases and available data, but the registry is not available to other competent authorities,

G20 PRINCIPLE 5: TRUSTS

Score: 33%

South Korea regulates domestic trusts through the Trust Act. Both personal and business trusts are allowed. There is no prohibition against the administration of foreign trusts, in which case the rules established by the Trust Act also apply.

In the case of personal trusts there is no legal requirement for trustees to maintain records on the beneficiaries or settlors of the trust. Nevertheless, given the responsibilities of the trustee when managing the trust, it is likely that in practice the trustee holds information regarding all parties to the trust.

Business trusts on the other hand can only be administered by banks and financial institutions who acquire a license. They are regulated by the Financial Investment Services and Capital Markets and subject to anti-money laundering rules, including customer due diligence.

Moreover, pursuant to the Act on Reporting and Use of Certain Financial Transactions Information (FTRA) and the anti-money laundering law, financial institutions are required to identify and verify the identity of their customers in transactions that are related to trusts. Customer identification in the case of trusts relate to the identification of all beneficiaries.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 17%

The law does not specify which competent authorities should have timely access to beneficial ownership information on trusts. In the case of business trusts, the Financial Supervisory Service may request information at

any time and the Financial Intelligence Unit may receive suspicious transaction reports. This information can be thus shared with other competent authorities. Tax authorities may also request information on trusts.

There is no registry of personal or business trusts. Certain assets that are part to the trust require registration and in this case the identity of the settlor and beneficiaries is acquired. The information in property registries is available to competent authorities

Overall, the current legal framework does not require adequate transparency concerning the beneficial ownership and control of trusts; although law enforcement agencies have powers to obtain information on legal arrangements, there is minimal information concerning the beneficial owners of legal arrangements that can be obtained.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 17%

Financial Institutions

Score: 31%

Current laws and regulation require financial institutions to identify the customer and verify the accuracy of the identity with the means of reliable documentation. Within this framework, financial institutions have to identify the natural persons who ultimately own or control the customer (hereinafter referred to as beneficial owners) with means of reliable documentations in consideration of the risks of money laundering and terrorist financing. Likewise, financial institutions have to take the necessary measures to identify whether a legal person customer is the beneficial owner when there is suspicion or concern that the customer might not be the beneficial owner and involved in money laundering.

The law however only requires the identification of the beneficial owner of a legal entity in suspicious cases and cannot be considered fully in accordance with good practice.

Moreover, the law does not require the independent verification of the beneficial ownership information obtained under any circumstance, not even in cases considered as high-risk.

In the case of foreign politically exposed persons, approval from senior management start or maintain a business relationship is required. Enhanced due diligence requirements for when customers or beneficial owners are identified as PEPs are also in place. This includes taking reasonable measures to identify the source of funds or assets and identifying family members with authority over account transaction or a person with a close relationship with foreign PEPs. Domestic PEPs are not however covered by the law.

The Act on Real Name Financial Transactions and Guarantee of Secrecy prohibits financial institutions to proceed with the business transaction without identifying the customer, but there is no specific mention to beneficial ownership. Financial institutions are not allowed to open accounts under fictitious name, but it does not necessarily mean that the beneficial owner needs always to be identified.

The Korea Financial Intelligence Unit (KoFIU) and the Bank of Korea are responsible for supervising financial institutions (FTRA, Article 11).

According to the FTRA (article 11), senior management of financial institutions are subject to sanctions in case of AML/CFT violations, including recommendation of removal and suspension of service of up to 6 months.

DNFBPs

Score: 8%

DNFBPs, with the exception of casinos, are not covered by the anti-money laundering law and therefore do not have obligation to conduct due diligence and identify the beneficial owner of clients. Casinos are subject to the same rules that apply to financial institutions (see above).

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 46%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding beneficial ownership. In Korea, there is no centralised database that can be used by domestic or foreign authorities to consult information on legal ownership and ultimate control. Domestic authorities can consult available registries containing information on legal ownership or request information held by the financial intelligence unit (FIU) and other financial supervisory bodies.

There are no significant restrictions to share information across domestic authorities or foreign counterparts. Three governmental authorities deal with international cooperation requests, including the National Tax Service (NTS), KoFIU and the Public Prosecutors' Office, but there is no detailed guidance on the processes of requesting information.

Information is usually shared with foreign counterparts based on memorandum of understanding (MOU). KoFIU may also share information on suspicious transaction reports informally through the Egmont Group. Competent authorities may also use their powers and investigative techniques to attend a request from a foreign authority.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 58%

Tax authorities in Korea rely on the basic information collected by the legal entities. They may also request information from other legal authorities and Korean residents including to respond to a request from foreign authorities. Nevertheless, professional secrecy rules applicable in tax matters may restrict the information revenue authorities may share.

There are three main types of mechanisms that facilitate the exchange of information between tax authorities and foreign counterparts, the Tax Convention on Income and on Capital (Art.26), Tax Information Exchange Agreements, and the Convention on Mutual Administrative Assistance in Tax Matters.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 50%

Bearer shares

Score: 100%

The Commercial Act of Korea was amended in 2014 to prohibit the issuance of bearer shares.

Nominee shareholders and directors

Score: 0%

In Korea, there is no statutory law dealing with the issue of nominee shareholders.

In 1998, the Supreme Court of Korea set the principle (Case No. 96da45818 (Sep. 8, 1998)) that "it is unlawful for a corporation to allow the voting of a registered owner of a share, when it knows or should have known but for recklessness that the registered owner is not a real shareholder". This principle is understood as an obligation on corporations to know and identify the real shareholders. Nevertheless, there is scepticism around whether the principle set by the Supreme Court is legally binding. As a result, there have been highly disputed court cases in relation to the issue. More often than not, final decisions tend to uphold the principle set by the Supreme Court.