

SOUTH AFRICA

BENEFICIAL OWNERSHIP TRANSPARENCY

South Africa is not fully compliant with any G20 Principle. Existing rules do not provide for a definition of beneficial owner and there are no requirements for legal entities to maintain or financial institutions and DNFBPs to collect information on the natural persons who ultimately own legal companies. Consequently, the ability of competent authorities to access beneficial ownership information is seriously restricted. The country is currently discussing amendments to law that could close existing loopholes.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 0%

Currently, there is no law defining beneficial ownership in South Africa.

Amendments to the Financial Intelligence Centre Act, currently under review, include a definition of beneficial owner. According to the draft, 'beneficial owner' in respect of a juristic person, means a natural person who, independently or together with a connected person, directly or indirectly, including through bearer share holdings—

- (a) owns the juristic person; or
- (b) exercises effective control of the juristic person;

The approval of the draft law would address current shortcomings in the South African legal framework as the proposed definition is in line with the G20 Principle and good practice.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 0%

South Africa has not in the past three years conducted a review identifying anti-money laundering risks related to domestic and foreign legal entities and arrangements.

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 38%

Current laws and regulations do not require legal entities to maintain information on beneficial ownership. Consequently, there is also no requirement that the beneficial ownership information is maintained within South Africa.

According to the Companies Act 2008, legal entities are required to keep an up-to-date register of its issued securities, including shares. The register should contain, among other things, the names and addresses of persons to whom the securities were issued. For public companies, the register should contain information on whether the shares are held by a nominee and the identity of the real owner disclosed. In the case of other legal entities, nominee shareholders are not obliged to proactively disclose that they are acting as nominees, but if the company has reasonable cause to believe that any of the shares are held by a nominee it may require the nominee to disclose the identity of the real owners within 10 days. These securities registries can be a good source of ownership information, but they do not offer definitive information on the actual beneficial owners.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 21%

Timely access to beneficial ownership information by competent authorities in South Africa is extremely restricted. There is no beneficial ownership registry, legal entities are not required to maintain beneficial ownership information, and neither are financial institutions nor Designated Non-Financial Businesses of Professions (DNFBPs). The law does not define which competent authorities should have access to beneficial ownership information.

Currently, competent authorities in South Africa have to rely on basic information on company legal ownership, such as names of directors and shareholders, available in the company registry or collected by financial institutions. The Company Law requires that the information on the company registry should be accurate and kept up to date. To this end, changes in share ownership should be communicated to the registry authority within 10 days, but the information recorded does not pass through any verification process.

Competent authorities may also request information to legal entities, which have 14 days to comply with requests.

G20 PRINCIPLE 5: TRUSTS

Score: 67%

South Africa has a domestic trust law and also allows the administration of foreign trusts. Trustees are required by law to lodge the instrument of the trust with the Master of the High Court. The instrument should contain the names and ages of the beneficiaries, the full name and copies of the identity documents of the trustees, the name of the bank and branch thereof at which the trust banking account will be kept, and what steps will be taken by the Trustee(s) to maintain accurate records of the trust; whether he will exercise direct personal control over the trust, if not, what agent or firm has been instructed by him and to what extent. The Master of the High Court maintains a trust register with the information provided by the trustee.

Trusts and trustee administrators are also subject to customer due diligence requirements and must identify and keep records of all the parties to the trust.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 83%

The law does not specify which competent authorities should have timely access to beneficial ownership information on trusts, but all competent authorities may request information on trusts to the Masters of High Court and to the Financial Intelligence Centre, responsible for overseeing trust and trustee administrators' anti-money laundering obligations.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 5%

Financial Institutions

Score: 6%

Current laws and regulations do not require financial institutions to identify the beneficial owner of their customers. Financial institutions have to comply with due diligence requirements, but this only includes the requirement to establish the identity of the client and not necessarily of the natural persons who exercises ultimate control (beneficial owner) (Section 21 of the FIC Act). For instance, in the case of legal entities, in the process of identifying the client the following information is required: identity of the manager of the company; each natural person who purports to be authorised to establish a business relationship or to enter into a transaction; and

partnership or trusts holding 25% or more of the voting rights at a general meeting of the company concerned.

The draft amendments to the FIC Act, currently under discussion, further extend the identification of beneficial ownership information in the case of a juristic person, trust or other corporate vehicle.

Financial institutions are required to conduct enhanced due diligence if the client is a domestic or a foreign politically exposed person (PEP). This includes obtaining senior management approval in order to continue with the transaction, taking reasonable measures to establish the source of wealth and the source of funds and ongoing monitoring of the relationship. However, as there is no requirement that the beneficial ownership should be identified, cases in which the beneficial owner of a client is a PEP may not be properly identified and monitored.

The Financial Intelligence Centre (FIC) is the authority responsible for supervising financial institutions' anti-money laundering obligations. The FIC may impose an administrative sanction if a reporting institution fails to comply with the FIC Act. Current legislation does not mention the application of sanctions to directors and senior management, but the draft amendment to the FIC Act provides for sanctions to be imposed on board of directors or senior management, or both, if an institution fails to ensure compliance.

DNFBPs

Score: 4%

DNFBPs are not required to identify the beneficial owner of their customers and therefore South Africa does not comply with Principle 7.

DNFBPs covered by the FIC Act include trust and some corporate service providers, lawyers, accountants, casinos, real estate agents, dealers in precious metals and stones, and dealers in luxury goods. However, as it is the case with financial institutions they are only required to establish the identity of their clients without having to identify the natural persons ultimately exercising control.

Obligated DNFBPs are required to conduct enhanced due diligence if the client is a domestic or a foreign politically exposed person (PEP). This includes obtaining senior management approval in order to continue with the transaction, taking reasonable measures to establish the source of wealth and the source of funds and ongoing monitoring of the relationship. However, as there is no requirement that the beneficial ownership should be identified, cases in which the beneficial owner of a client is a PEP may not be properly identified and monitored.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 46%

Investigations into corruption and money laundering require that authorities have access to relevant information, including on beneficial ownership. In South Africa, there is no centralised database that can be used by domestic or foreign authorities to consult information on legal ownership and ultimate control. In fact, information on beneficial ownership is neither collected nor made available to any competent authority. Domestic authorities holding any relevant information related to beneficial ownership can exchange with other authorities upon written requests.

In the case of FIC, the law states that any information held by the body can be provided to "an investigating authority inside the Republic, the South African Revenue Service and the intelligence services, which may be provided with such information— (i) on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or (ii) at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity."

The government also maintains thematic working groups, such as the Anti-Corruption working group, where information can be shared informally.

South African authorities usually share beneficial ownership or other relevant information with foreign authorities through mutual legal assistance requests or memorandum of understanding.

There is no designated body responsible for dealing with international cooperation requests. The task is shared by different authorities, including the Department of Justice, South African Revenue Service, Financial Intelligence Centre and Department of International Relations and Cooperation. There are also no clear guidelines or instructions on how requests for beneficial ownership information should be made.

Competent authorities in South Africa are allowed to use their powers and investigative techniques to attend a request from a foreign authority in accordance with mutual legal assistance agreements.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities in South Africa do not have direct access to beneficial ownership information, but they may, according to

the law, request all sorts of information from any tax payer, regardless of whether the person is required to keep that information. Tax authorities are also allowed to request information from banks, other government agencies and regulatory bodies directly. They also have access to basic information recorded by the CIPG in the company registry and are allowed to request information on trusts held by the Masters of the High Court and by the FIC.

South Africa is party to a range of mechanisms that allow for exchange of information, including the USA FATCA Intergovernmental Agreement, which allows for automatic exchange of information with US Treasury department as of 2015, the Multilateral Mutual Administrative Assistance (MAA) Conventions / Agreements, a [series](#) of bilateral Tax Information Exchange Agreements (TIEAs), and the Standard for Automatic Exchange of Financial Account Information in Tax Matters (CRS) which will come into effect in 2017.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 75%

Bearer shares

Score: 100%

Bearer shares are no longer allowed in South Africa.

Nominee shareholders and directors

Score: 50%

Nominee shareholders and directors are allowed in South Africa, but in the case of listed companies there is a requirement that they should disclose the identity of the beneficial owner(s) in the securities register. There is no requirement for professional nominees to be licensed or keep records of the persons who nominated them.