TRANSPARENCY INTERNATIONAL
the global coalition against corruption

UNITED KINGDOM
BENEFICIAL OWNERSHIP TRANSPARENCY

The UK is fully compliant with four of the G20 Principles. Amendments to the Companies Act approved in 2015 addressed many of the previous shortcomings. Access to beneficial ownership information by domestic and competent authorities as well as by the public will soon be possible. However, the country still needs to address existing legal loopholes to ensure that financial institutions and DNFBPs, in particular trust and corporate service providers and real estate agents, effectively identify and verify the identity of the beneficial owner of customers.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

The UK is fully compliant with Principle 1. The term beneficial owner is defined in Regulation 6 of the Money Laundering Regulations 2007:

(1) In the case of a body corporate, "beneficial owner" means any individual who—

> (a) as respects any body other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or
>
> (b) as respects any body corporate, otherwise exercises control over the management of the body.

(2) In the case of a partnership (other than a limited liability partnership), "beneficial owner" means any individual who—

> (a) Ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or
>
> (b) otherwise exercises control over the management of the partnership.

(3) In the case of a trust, "beneficial owner" means—

> (a) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
>
> (b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
>
> (c) any individual who has control over the trust.

In addition, a person with 'significant control' of a company is defined in Schedule 3 Small Business, Enterprise and Employment Act 2015 which amends the Companies Act 2006. According to the schedule at least one of the following conditions must be met for an individual to be a person with "significant control" over the company:

- the individual holds, directly or indirectly, more than 25% of the shares in the company.
- the individual holds, directly or indirectly, more than 25% of the voting rights in the company.
- the individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.
- the individual has the right to exercise, or actually exercises, significant influence or control over the company.
- the trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to company Y, or would do so if they were individuals, and the individual has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

Within this framework, the definition covers all the key issues such as the beneficial owner being a <u>natural person</u> who has <u>direct</u> or <u>indirect</u> <u>ultimate</u> <u>control</u> over a legal person or arrangement.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 100%

During 2014 and 2015 the Treasury and the Home Office undertook the first national risk assessment (NRA) of money laundering and terrorist financing risks to the UK and have engaged closely with supervisors in the process.

The assessment included a consultation process with key stakeholders, including financial institutions and business and professions with anti-money laundering obligations and non-governmental organisations. A survey was sent to supervised entities and NGOs, such as Transparency International UK and Global Witness provided submissions to the government.

The risk assessment has just been published (October 15 2015) and the main findings, including areas / sectors considered as high-risk, have been disclosed.

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 100%

The recently approved legislation which amends the Companies Act reflects the G20 recommendation and is in line with good practice. Under current legislation, companies in the UK are required to keep information on their shareholders. According to the law, every company must maintain a "Register of Members", to be kept at the firm's registered office, that records the names and addresses of the shareholders of an incorporated or registered firm and the number and class of shares held by each shareholder.

Under the new legislation, companies and legal entities will also be required to maintain information that goes beyond legal ownership. This means that the register will contain information on all individuals who:

- hold, directly or indirectly, more than 25% of the shares or the voting rights in the company
- can appoint or remove a majority of the board of directors of the company
- exercise significant influence or control over the company, or
- are trustees or members of a firm that is not a legal person, meet one of the above conditions, and have the right to exercise significant control or influence over the trust or firm.

According to the law, shareholders should also inform the company if they hold more than 25% of the shares on behalf of a third person. In this case, the third person should be entered on the company's register. The company can give notice to the shareholder to declare the identity of the third person. The failure to do so is a criminal offence. The shareholder would also commit an offence if they allowed their details to be entered on the register rather than the third person. Likewise, the third person would commit an offence if they were aware of the error and did not reveal themselves.

Changes in share ownership should also be communicated and recorded in the shareholder register. This requirement helps ensure that the register is kept accurate and up-to-date.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 79%

Timely access to beneficial ownership information by competent authorities in the UK is likely to be ensured with the implementation of the recent approved amendment to the Companies Act. The new law provides that all competent authorities as well as any person can have access to information on "persons with significant control" (PSC) either by accessing the PSC register maintained by the legal entity itself or by accessing the central company registry at Companies House.

The information recorded with Companies House is available immediately online. Requests to inspect a PSC register maintained by a company need to be responded to within five working days.

The information recorded in such registries include: name of the beneficial owner, date of birth (only birth and year are made public, but the full birth information is available to competent authorities), business and usual residence address (the latter also only available to competent authorities), nationality, country of residence, date on which the beneficial owner obtained control, and a description of how control is exercised.

If the PSC register is maintained by the company, a copy of it must be filed on incorporation at Companies House and there will be a requirement to 'check and confirm' the information with Companies House by filing a 'confirmation statement' and notifying changes if necessary at least once every 12 months. If the PSC register is kept at Companies House, changes should be communicated as soon as possible but no later than two months after the change occurred or one month after it was discovered.

Companies House does not conduct any sort of independent verification and the information is recorded as declared by the company. Moreover, Companies House does not have investigatory powers and therefore does not investigate fraud or wrongdoing.

According to the government, companies are expected to establish their PSC register from April 2016 and they will need to start filing this information at Companies House (the central registry) from 30 June 2016.

G20 PRINCIPLE 5: TRUSTS

Score: 67%

The UK has a domestic trust law and also allows the administration of foreign trusts.

The law requires trustees to report trust details to HM Revenue and Customs (HMRC) for tax purposes, including information regarding the trustee, settlors and beneficiaries. This information is registered with HMRC but not made available to the public. However, only information on trusts with tax obligations is recorded and there is no registry or depositor for lodging trust deeds. Also, the law does not specify that the beneficial owner must be identified.

Trustees who act by way of business are required to comply with anti-money laundering rules and customer due diligence applies. In these cases, the beneficial owner, that is, any individual who is entitled to a specified interest in at least 25% the capital of the trust, or the class of persons in whose may interest the trust is set up or operates, or any individual who has control over the trust must be identified.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 50%

The law in the UK does not specify which competent authorities should have timely access to trusts. As this is one of the requirements approved under the European Union Fourth Anti-Money Laundering Directive, the UK will need to adopt legislation to transpose these requirements.

HMRC shares information, including information it hold on trusts, through about 250 'information gateways' with 25 government departments, about 50 agencies, the devolved UK governments, local authorities and the Bank of England. The terms of each information gateway are specific as to the type of information that can be disclosed and the purposes to which it can be put.

Foreign judicial authorities can access trust information through Mutual Legal Assistance (MLA) Treaties and foreign tax authorities can rely on automatic exchange agreements with HMRC.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 81%

Financial Institutions

Score: 88%

Current laws and regulations require financial institutions to conduct customer due diligence and identify the beneficial owner of customers. They should take steps to identify who the customer / beneficial owner is by for instance obtaining the customer's name, photograph on an official document which confirms their identity, residential address or date of birth.

Enhanced due diligence will require enhanced verification of information on the identity of beneficial owners, for example by verifying the beneficial owner's identity based on information from a reliable and independent source, establishing how the beneficial owner acquired their wealth to be satisfied that it is legitimate, among others. This is required in higher risk relationships.

Enhanced due diligence is also required when the financial institution enters in a business relationship with a politically exposed person (PEP) or a close associate of the PEP. The law defines PEP as an overseas member of parliament, a head of state or government or a government minister. Domestic PEPs, that is, UK politicians are not considered politically exposed persons. In the case of PEPs, financial institutions should take adequate measures to establish where the person's wealth and the funds involved come from and carry out stricter ongoing monitoring of the business relationship, Moreover, senior management approval for a new business relationship with a PEP is required.

The law mandates that a financial institution should not proceed with a business transaction if the beneficial owner has not been identified. There is no requirement however that a suspicious transaction report (STRs) needs to be filed if the beneficial owner has not been identified. STRs should only be submitted if financial institutions suspect or have reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist financing.

The Financial Conduct Authority (FCA) is the authority responsible for supervising financial institutions' anti-money laundering obligations. The anti-money laundering law provides for criminal and civil sanctions for both financial institutions and their senior management.

In 2014, almost £8m of fines were issued by the FCA for anti-money laundering (AML) failings. These fines were dominated by a £7.6m fine to Standard Bank PLC. Standard Bank is the UK subsidiary of Standard Bank Group, South Africa's largest banking group. Standard Bank Group is an international banking group with extensive operations in 18 African countries and operations in 13 other countries outside of Africa. The regulator found that Standard Bank did not consistently carry out adequate due diligence measures before establishing business relationships with corporate customers that had connections with PEPs or monitor those relationships for risk. This was the first AML case to use the FCA's new penalty regime, which applies to breaches committed from 6 March 2010. Under the new regime larger fines are expected.

In 2013, the FCA issued £6.6m worth of fines for AML breaches, including a £4.2 fine for EFG Private Bank, who provide a "gateway to the UK financial system for high net worth international customers", for failing to identify or monitor serious corruption and PEP risks over a 3 year period.

Designated Non-Financial Businesses and Professions (DNFBPs)

Score: 77%

DNFBPs covered by the anti-money laundering law are required to conduct customer due diligence, identify the beneficial owner, and take additional measures to independently verify their identity in high-risk cases.

DNFBPs with anti-money laundering obligations in the UK include:

- Trusts and corporate service providers (TCSPs): according to the law, TCSPs have to carry out due diligence checks - including identifying beneficial owner - when establishing an 'on-going business relationship'. TSCPs have taken the position that company formation services are one off transactions and that they are therefore not required to carry out due diligence checks in these cases.
- auditors, insolvency practitioners, external accountants and tax advisers;
- independent legal professionals;
- real estate agents; but due diligence requirements only apply on sellers and not on buyers.
- high value dealers; when they accept cash payments above €15,000
- casinos.

Enhanced due diligence is also required when DNFBPs enter in a business relationship with a politically exposed person (PEP) or a close associate of the PEP. As it the case with financial institutions, domestic PEPs, that is, UK politicians are not considered politically exposed persons. In the case of PEPs, DNFBPs should take adequate measures to establish where the person's wealth and the funds involved come from and carry out stricter ongoing monitoring of the business relationship, Moreover, senior management approval for a new business relationship with a PEP is required.

The law mandates that DNFBPs should not proceed with a business transaction if the beneficial owner has not been identified. There is no requirement however that a suspicious transaction report (STRs) need to be filed if the beneficial owner has not been identified. STRs should only be submitted if DNFBPs suspect or have reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist financing.

DNFBPs are usually supervised by their professional associations or by HMRC. The law provides for criminal and civil sanctions for DNFBPs and senior management. In 2013-14, there were 418 fines issued by public sector supervisors, 61 by legal sector supervisors and 50 fines by accountancy sector supervisors. However, DNFBP sanctions are less publicised than sanctions for financial institutions and are therefore less dissuasive.

The only substantial sanctions to occur for estate agency AML breaches were carried out in March 2014 by the Office of Fair Trading who fined three estate agents almost £250,000 for "significant and widespread" anti-money laundering lapses. These were Hastings International of London (fined £48,000), Jackson Grundy of Northampton (£170,000), and Jeffrey Ross of Cardiff (£29,000).

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 83%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding beneficial ownership. In the UK, the adoption of the new law establishing a beneficial ownership registry guarantees that domestic and foreign authorities can consult information on legal ownership and ultimate control on a timely manner.

Otherwise, information sharing across in-country authorities is somewhat restricted. Most competent authorities in the UK have a confidentiality regime, preventing unrestricted disclosure of confidential information. However, legal 'gateways' exist to allow confidential information to be shared between competent authorities.

UK authorities usually share beneficial ownership or other relevant information with foreign counterparts through mutual legal assistance requests during criminal investigations or through memoranda of understanding in the case of regulatory investigations.

The UK Central Authority (UKCA) for Mutual Legal Assistance (MLA) is responsible for dealing with international cooperation requests. There are clear guidelines available on how requests should be submitted.

Competent authorities in the UK are allowed to use their powers and investigative techniques to attend a request from a foreign authority. In the 2013 calendar year the Home Office dealt with approximately incoming 3700 requests for MLA and approximately 1000 requests for service of process.

Nevertheless, the law sets possible grounds for refusing to share information with foreign authorities, including if the request relates to an investigation or prosecution which is politically motivated; the execution of the request would prejudice the sovereignty, security or other essential interests of the UK; the request relates to a person who, if proceeded against in the UK for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction (double jeopardy);The request relates to an offence that the UK regards as an offence under military law, which is not also an offence under ordinary criminal law, among others.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 100%

Tax authorities in the UK will have direct access to beneficial ownership information with the implementation of the 2015 amendment to the Companies Act.

Moreover, current rules do not impose restrictions and the disclosure of protected information submitted to Companies House is permitted to be disclosed to public authorities, including the tax authority, HMRC, under the Companies (Disclosure of Address) Regulations 2009.

Exchange of information with foreign tax authorities is facilitated by a series of tax agreements. The UK signed the Foreign Account Tax Compliance Act (FATCA) with the US, bilateral agreements with Gibraltar and the UK Overseas Territories and Crown Dependencies and a multilateral agreement with France, Germany, Italy and Spain.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 88%

Bearer shares

Score: 100%

The recently approved Small Business, Enterprise and Employment Act 2015 abolished bearer shares.

Nominee shareholders and directors

Score: 75%

Nominee shareholders and directors are allowed in the UK. With the establishment of the beneficial ownership registry in 2016, nominees will be required to disclose, upon registering the company, the identity of the beneficial owner.

Professional nominees must be registered as Trust or Company Service Providers with HMRC under the Money Laundering Regulations. They should also keep records of the persons who nominated them.

From Russia with Cash

A recent Channel 4 undercover documentary has highlighted estate agents’ lack of compliance with anti-money laundering regulations.[1i]

An imposter Russian minister, Boris, claims to be buying a high-end London property for his girlfriend and confides that he has stolen money from his country’s healthcare budget. In response, he is told that the estate agents are comfortable and familiar with dealing in such matters and that they know lawyers who can help make sure that the purchase is made in secret, through anonymous companies based in offshore financial centres.

The casual familiarity displayed by the estate agents adds to the suspicion that corrupt officials buying property is not an unusual phenomenon in the London luxury market. One estate agent shown specifically explains that they work for the seller and are therefore not required to report any money laundering suspicions with prospective purchasers.

[1] “London estate agents caught on camera dealing with 'corrupt' Russian buyer”The Guardian, 7 July 2015. [i] http://www.theguardian.com/uk-news/2015/jul/07/london-estate-agents-caught-on-camera-russian-buyer