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JUST ON PAPER?

Beneficial Ownership Legal
Frameworks in BVI, Cayman &
Montserrat

Just on paper?

An assessment of beneficial ownership transparency provisions in a sample of the UK's Overseas Territories

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FOREWORD

It is well established that companies based in the UK's Overseas Territories (OTs) and Crown Dependencies are widely used in money laundering and grand corruption cases.¹ The absence of any public information about them allows corrupt beneficial owners to buy luxury goods and property with anonymity and enjoy their ill-gotten gains with impunity. Journalists, citizen investigators and businesses looking to find out who's behind these anonymous corporate entities hit a brick wall whenever they encounter them, and rely almost entirely on periodic leaks like the Panama Papers to unveil who really owns them.² Their use is so problematic that the UK's National Crime Agency (NCA) has openly cited their opacity as a strategic risk to the UK.³

Although there is very little information about individual companies based in these jurisdictions, there are some basic metrics that illustrate the scale of their use. We now know from the Panama Papers that over half of the 200,000+ companies managed by Mossack Fonseca were registered in the British Virgin Islands (BVI) alone, one of the UK's OTs. At the time of writing there are over 400,000 live companies in that jurisdiction, which is equivalent to over seventeen for each of the Islands' 24,000 inhabitants,⁴ and this number is growing with over 44,000 registered just in 2015.⁵ Although the Cayman Islands featured less prominently in the Panama leaks, we know from Land Registry data that companies based in this jurisdiction own almost 1,500 land titles throughout the UK, over a third of which are in London. According to the latest available data the Caymans are hosts to almost 100,000 companies,⁶ which is around two for every islander.⁷

Despite their widespread use in money laundering schemes, we recognise that not all companies registered in these jurisdictions are necessarily involved in illicit activities. There is an argument that they provide essential privacy for those at risk, for example people seeking to hide for security reasons. However, as the UK's new Persons of Significant Control (PSC) register has shown, these exceptions can be accommodated for whilst still ensuring there is greater transparency about who ultimately is behind a corporate entity. In short, there are few substantive reasons why there shouldn't be greater transparency about companies in these territories.

To an extent, the OTs we have examined in this report – the BVI, Cayman Islands and Montserrat – recognise that their old way of doing things is no longer tenable. In 2016, they all signed commitments pledging to increase law enforcement agencies' access to information about the beneficial owner of companies on their turf. However, our assessment of their compliance with key anti-money laundering measures shows that until they implement these and the other principles outlined in this report, they are falling well short of the mark.

For the sake of simplicity the ten principles within our assessment have been given equal weight; however, the foundation of a useful framework for beneficial ownership information is the provision of accurate information. Whilst some believe this can be achieved behind closed doors, the Panama Papers have highlighted that it is easy for this not to be the case in practice.⁸ To ensure beneficial ownership information is accurate it needs to be out in the open. As David Cameron stated about the UK's

¹ Transparency International, Policy brief 02/2014: *Ending secrecy to end impunity: Tracing the beneficial owner* (June 2014) https://www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial

² <https://panamapapers.icij.org/> [Accessed 2 December 2016]

³ National Crime Agency, *National Risk Assessment of Serious and Organised Crime 2016* (September 2016) p.30 <http://www.nationalcrimeagency.gov.uk/publications/731-national-strategic-assessment-of-serious-and-organised-crime-2016/file>

⁴ <http://www.bvi.gov.vg/content/our-islands-0> [Accessed 28 November 2016]

⁵ BVI Financial Services Commission, *Statistical bulletin, Q2 2016 Vol. 43 / June 2016* p.2 <http://www.bvifsc.vg/Portals/2/2016%20Statistical%20Bulletin%20Qtr%202.pdf>

⁶ <http://www.ciregistry.gov.ky/portal/pls/portal/docs/1/12330502.PDF> [Accessed 2 December 2016]

⁷ <http://www.ciregistry.gov.ky/portal/page/portal/reghome/companies> [Accessed 28 November 2016]

⁸ See the case study below for an example.

beneficial ownership register, “it’s better for us all to have an open system which everyone has access to, because the more eyes that look at this information the more accurate it will be”.⁹

As recent events have shown, it is becoming increasingly difficult to hide this information from public view. At the time the Panama Papers represented the largest leak of its kind in history. Millions of confidential documents laid bare the role of secretive corporate structures in various illicit activities, which has further damaged the already tarnished reputation of the OTs. Yet this is only one of hundreds of companies who run the global secrecy industry and given past precedent it is almost inevitable there will be more releases in the future. Less than six months after Mossack Fonseca’s business made front page news throughout the world, the details of over 175,000 anonymous companies registered in the Bahamas were released to journalists. Both of these revelations also follow the Swiss Leaks of 2015.

A number of the OTs promote themselves as reputable international financial centres, like London. Whilst our recent research has shown the UK still has a long way to go to get its own house in order,¹⁰ businesses here are registered in an open and transparent manner. If the OTs want to be seen in a similar light, they need to make some bold steps to win the trust of the public and business; there needs to be three fundamental shifts.

Firstly, they need to have a stronger legislative framework to protect against money laundering. Although our assessment found that some of these elements are already in place, there are still some major flaws that need to be addressed, most notably around the opacity of company beneficial ownership information. Secondly, when this legal framework is implemented, they then need to make sure it is then enforced in practice. Although Mossack Fonseca was recently fined by the BVI’s regulators for multiple AML failings,¹¹ it took a massive leak for the jurisdictions’ Financial Services Commission to figure out what was going on in its own backyard. Both this and the embarrassingly inadequate sanction it imposed raise serious questions about its ability to proactively identify poor practice and deter non-compliance. We have already outlined how the UK needs to improve its system policing of money laundering rules, and the same standards should be applied to these jurisdictions, too. Thirdly, there needs to be the political will to confront vested interests determined to maintain the status quo. There will inevitably be efforts by some to water down reforms, reduce resources and scaremonger to prevent change. Overcoming these challenges is the real test of how committed the OTs are to fighting corruption.

⁹ <https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013> [Accessed 1 December 2016]

¹⁰ Transparency International UK, *Don’t Look, Won’t Find: Weaknesses in the supervision of the UK’s anti-money laundering rules* (November 2015) <http://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/>

¹¹ <http://www.bvifsc.vg/Publications/EnforcementAction/tabid/378/ctl/EnforcementSummary/mid/1188/actionId/17069/language/en-US/Default.aspx> [Accessed 8 December 2016]

The Lynden Management case: why laws need to be implemented in practice

According to information released in the Panama Papers, Mossack Fonseca received a request from the BVI's Financial Investigation Agency in November 2011 to provide beneficial ownership details for a company they handled called Lynden Management. Under the BVI's anti-money regulations, companies are required by law to hold information on companies' beneficial owners, including verified identification documents and proof of address. Enhanced checks on clients and their source of wealth are especially required where the individual is a Politically Exposed Person (PEP). These are people who hold a prominent public position, and therefore access to state funds and opportunities to solicit bribes, and their family members and associates.

Although Mossack Fonseca was ordered by the Financial Investigation Agency to produce these details within seven days, it took them three weeks to provide just basic information about the beneficial owner – Bidzina Ivanishvili – a wealthy businessman who in 2016 was estimated to be worth \$4.8 billion.ⁱ The Financial Investigation Agency closed its inquiry in 2011 with no action taken. However, it took until August 2015 for Mossack Fonseca to obtain a copy of Ivanishvili's passport. During this period he established a political party in his home country, the Republic of Georgia, and served as Prime Minister of the Georgian government between 2012 and 2013.ⁱⁱ

ⁱ <https://drive.google.com/file/d/0B2R3kygpOk0fQUQyZVZuM3czUDg/view> [Accessed 8 December 2016]

ⁱⁱ <http://www.forbes.com/profile/bidzina-ivanishvili/> [Accessed 2 December 2016]

ⁱⁱⁱ <https://www.occrp.org/en/panamapapers/georgia-ivanishvili-offshore/> [Accessed 2 December 2016]

This refusal can be traced through dozens of e-mails and attached documents from 2011-15, according to internal data of Mossack Fonseca obtained by the German newspaper Süddeutsche Zeitung and shared by the International Consortium of Investigative Journalists (ICIJ) with OCCRP and over 110 media partners from 82 countries. Süddeutsche Zeitung received the files through an anonymous source and shared them with ICIJ which organized the global collaboration.

INTRODUCTION

This report identifies areas of strength and weakness in the current beneficial ownership transparency legal framework in a sample of the UK's OTs – the BVI, Cayman Islands and Montserrat – against the G20 Beneficial Ownership Transparency Principles adopted by the UK in November 2014. It also compares their scores against the UK's.

The 10 G20 principles cover the following elements:

1. The definition of a beneficial owner
2. Risk assessments relating to legal entities and arrangements
3. Beneficial ownership information of legal entities
4. Access to beneficial ownership information of legal entities
5. Beneficial ownership information of trusts
6. Access to beneficial ownership information of trusts
7. Roles and responsibilities of financial institutions and businesses and professions
8. Domestic and international cooperation
9. Beneficial ownership information and tax evasion
10. Bearer shares and nominees

For each principle, the scores were averaged across questions and then transformed into percentages. Five performance bands (very weak: 0–20 per cent; weak: 21–40 per cent; average: 41–60 per cent; strong: 61–80 per cent; very strong: 81–100 per cent) were defined to assess the overall quality of each jurisdiction's respective framework.

The full methodology, questionnaire and scoring criteria for each of the questions is available in Annexes 1 and 2 of Transparency International's report *Just For Show?*¹²

¹² Transparency International, *Just For Show? Reviewing G20 promises on beneficial ownership* (November 2015) http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises

NOTES ON THE METHODOLOGY

The research assesses current national legal frameworks for beneficial ownership transparency and other areas covered by the G20 principles. Scores are based on the current arrangements at the time of the assessment and not on prospective or forthcoming changes.

We have noted underneath the scores any prospective changes that the OTs have recently committed to undertake. Most of these are contained within the Exchange of Notes between the relevant jurisdictions and the UK Government,¹³ or part of a joint statement with other countries.¹⁴ A summary of their intent can be found in the Communique from the UK Overseas Territories' Joint Ministerial Council.¹⁵ The deadline for implementing these commitments is 30 June 2017. The UK also has some prospective changes due under its transposition of the EU's Fourth Money Laundering Directive (4MLD). The UK Government has stated that it intends that these new provisions will come into force in national law by 26 June 2017.¹⁶

TI-UK considers compliance with the G20 principles as a basic minimum and they should not be seen in themselves as a sign that a jurisdiction necessarily has a robust framework for protecting against money laundering. In order to assess the robustness of these jurisdictions' AML systems there needs to be further research to establish how these principles are implemented and enforced in practice.

Moreover, this assessment focuses on what we consider to be the key issues necessary to implement the G20 principles and to ensure an adequate beneficial ownership transparency framework. There may be other issues that are also relevant but not covered by this assessment.

The principles have not been weighted but seek to give an indication of the strength of the beneficial ownership legal framework in each jurisdiction based on the principles adopted by the UK with other G20 leaders in November 2015 in Brisbane. Our detailed recommendations for what jurisdictions wishing to meet the G20 principles must implement can be found in our separate Technical Guide.¹⁷

The background research for this assessment was undertaken by pro bono legal support and reviewed by TI-UK to provide the final scores. It is based on publicly available information that we have not been able to verify for its completeness or accuracy.

The relevant legislation for the OTs assessed as part of this research can be found in the following locations:

BVI

<http://www.bvifsc.vg/LegislationResources/tabid/358/articleType/CategoryView/categoryId/63/language/en-GB/Anti-Money-Laundering.aspx>

Cayman Islands http://www.cimoney.com.ky/AML_CFT/default.aspx?id=136

Montserrat <http://www.fscmontserrat.org/legislations/>

¹³ Cayman Islands

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518310/Exchange_of_information_between_UK_government_and_the_government_of_the_Cayman_Islands.pdf [Accessed 2 December 2016] and BVI

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518300/Exchange_of_information_between_UK_government_and_the_government_of_the_British_Virgin_Islands.pdf [Accessed 2 December 2016]

¹⁴ Montserrat

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520459/statement_on_the_initiative_for_exchange_of_beneficial_ownership_information.pdf [Accessed 2 December 2016]

¹⁵

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565228/Overseas_Territories_Joint_Ministerial_Council_2016_Communique.pdf [Accessed 2 December 2016]

¹⁶ HM Treasury, *Consultation on the transposition of the Fourth Money Laundering Directive* (September 2016) p.5

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553409/4mld_final_15_sept_2016.pdf

¹⁷ Transparency International, *Technical guide: Implementing the g20 beneficial ownership principles* (July 2015)

http://www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles

KEY FINDINGS

Positive characteristics

There are certain principles in which the OTs have the relevant provisions to be classified under this assessment as having ‘strong’ in-law frameworks. These are principally around the obligations imposed on financial institutions and other businesses subject to AML rules, international cooperation with competent authorities and the management of bearer shares where they remain in use. All of the OTs have made some form of commitment to improve their legislative frameworks for defining beneficial ownership information and providing access to foreign competent authorities. However, these are yet to be implemented at the time of writing, so have not impacted on the scoring.

Accessing beneficial ownership information

Despite commitments to improve the mechanisms for sharing beneficial ownership with foreign competent authorities, **none of the OTs in this research have committed to introducing centralised and public beneficial ownership registers**. Their proposed arrangements under their respective Exchange of Notes with the UK Government promise some progress in this area, but as access will be limited to law enforcement agencies, sometimes only on request, it still falls short of this fundamental principle. The UK introduced its PSC register in June 2016 and has been consulting on making further improvements to this in order to transpose the EU’s 4MLD.¹⁸

Poor identification and mitigation of risk

Unlike the UK,¹⁹ **none of the OTs assessed in this research have undertaken and published the findings of a national risk assessment for money laundering within the last three years**. These are integral to ensuring governments are identifying key strategic threats in this area, including key sectors at risk, and developing measures to help mitigate them. Undertaking risk assessments on a regular basis ensures government and the industries regulated by money laundering regulations are up-to-date on key threats. Although the BVI and Cayman Islands are reported to have undertaken risk assessments, it is not clear how robust these were as they have not been published.

Acquiring beneficial ownership information

There is scope for tightening the rules on acquiring beneficial ownership information in all of the OTs included in this research. The UK is the only jurisdiction that complies completely with this principle, with the BVI and Cayman Islands needing to tighten their rules on the declaration of third party owners and storing information on beneficial owners within their own territory.

¹⁸ Department for Business, Energy and Industrial Strategy, *Discussion paper on the transposition of Article 30: beneficial ownership of corporate and other legal entities* (November 2016) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565095/beis-16-38-4th-money-laundering-directive-transposition-discussion-paper.pdf

¹⁹ UK Government, *UK national risk assessment of money laundering and terrorist financing* (October 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf

PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

WHY IS THIS IMPORTANT?

An adequate legal definition of beneficial ownership establishes the framework from which all legal responsibilities and obligations emerge. A strong and clear definition assists relevant stakeholders, such as competent authorities or entities with reporting obligations, to understand the scope of their duties. Weak definitions lead to weaknesses in the regulatory and enforcement framework, and to uncertainty in the duties and obligations of reporting entities.

An adequate definition of beneficial ownership in national legislation should focus on the natural (not legal) persons who actually own and take advantage of the capital or assets of the legal person, rather than just the persons who are legally (on paper) entitled to do so. It should also cover those who exercise de facto control, whether or not they occupy formal positions or are listed in the corporate register as holding controlling positions.

WHAT SHOULD BE IN PLACE?

Top scoring jurisdictions define a beneficial owner as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means in addition to legal ownership. Lesser scoring jurisdictions may define beneficial owners as natural persons, for example owning a certain percentage of shares, but there is no mention of whether control is exercised directly or indirectly or if control is limited to a percentage of share ownership. Lowest scoring jurisdictions have either no legal definition of beneficial ownership or the control element is not included.

SCORES

British Virgin Islands	100%
Cayman Islands	0%
Montserrat	100%
United Kingdom	100%

Under their current arrangements the UK, BVI and Montserrat have a definition of beneficial ownership that is defined in statute and based on the EU's 4MLD. This covers both individuals who have formal direct control of companies through shares or directorships as well those exerting indirect, de facto control. The Cayman Islands currently do not have a clear definition of beneficial owner in law – it is only defined in guidance on good practice for companies.

WHAT HAVE THEY COMMITTED TO?

British Virgin Islands and Cayman Islands: in order to implement the Exchange of Notes with the UK Government, it is anticipated that both jurisdictions will adopt introduce a new legal definition of beneficial ownership that would cover both direct and indirect control of companies in early 2017.

PRINCIPLE 2. IDENTIFYING AND MITIGATING RISK

WHY IS THIS IMPORTANT?

An effective anti-money laundering regime requires a good and current understanding of how domestic and/or foreign corporate vehicles and other legal arrangements can be misused for criminal purposes within their jurisdictions, and an understanding of the areas that pose greater risks. A clear understanding of the types of legal persons and arrangements that exist in the jurisdiction, their formation and registration processes, their different forms and structures and the risks they pose, is crucial to a substantive risk assessment. If they do not understand where the risks lie, jurisdictions are not able to effectively regulate and detect money laundering-related offences. For instance, in some jurisdictions companies incorporated abroad may be frequently used for laundering the proceeds of corruption. The government needs, then, to ensure that the right policies are in place regarding the registration and operation of foreign companies in their jurisdictions. Risk assessments are important because the results help to inform and monitor the jurisdiction's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies. A national risk assessment is also a new requirement within the strengthened Financial Action Task Force (FATF) recommendations, adopted in 2012.

WHAT SHOULD BE IN PLACE?

High scoring jurisdictions have conducted recent risk assessments within the last three years, with the consultation of external stakeholders, such as financial institutions, Designated Non-Financial Business and Professions (DNFBPs) (such as accountants, lawyers, real estate agents and casinos), as well as civil society organisations. The results, including information on high-risk areas, will have been communicated to financial institutions and DNFBPs and the results of the assessment would have been made public. The risk assessment will at a minimum identify specific sectors or areas at high risk that require enhanced due diligence measures.

SCORES

British Virgin Islands	40%
Cayman Islands	60%
Montserrat	0%
United Kingdom	100%

The UK is the only jurisdiction to have undertaken a national risk assessment for money laundering involving full consultation with key stakeholders within the last three years, and then published the findings online. The BVI and Cayman Islands are reported to have undertaken risk assessments, but neither of these jurisdictions have published their results and the BVI has not shared its findings with financial institutions and DNFBPs. Montserrat has been subject to mutual evaluations on its compliance with FATF standards however it does not appear to have undertaken a risk assessment that would comply with this principle.²⁰

WHAT HAVE THEY COMMITTED TO?

British Virgin Islands: they have committed to undertaking a national risk assessment, which is being taken forward by the National Risk Assessment Council.²¹ Its risk assessment is reported to have been completed, but its findings have not been published.

Cayman Islands: they committed to undertaking a national risk assessment in 2014 and began undertaking this in 2015 with a view of completing it in December 2015.²² The findings are yet to be published.

²⁰ Mutual evaluations can be found on the Caribbean Financial Action Task Force website <https://www.cfatf-gafic.org/> [2 December 2016]

²¹ <http://www.bvinra.org/Who-We-Are/National-Risk-Assessment-Council> [Accessed 22 November 2016]

²² <http://www.gov.ky/portal/pls/portal/docs/1/11464081.PDF> [Accessed 5 December 2016]

PRINCIPLE 3: ACQUIRING BENEFICIAL OWNERSHIP INFORMATION

WHY IS THIS IMPORTANT?

Information on beneficial ownership should be adequate – that is, sufficient to identify the beneficial owner. This means that the information should contain the full name of the beneficial owner, an identification number, their date of birth, nationality, country of residence and an explanation of how control is exercised. Companies should ensure that the actual beneficial owners are identified, not just the legal owners. The information needs to be accurate and current, both at the time the legal entity is created and over time.²³ This means that information about all changes in the ownership and control structure should be updated promptly. Companies should therefore be able to request information from shareholders to ensure that the information held is accurate and up-to-date and shareholders should be required to inform the company about changes to beneficial ownership.

The information must be available in the jurisdiction where the company is incorporated, even when, as is often the case, a company does not have a physical presence there. An absence of information in the jurisdiction of incorporation makes it difficult for supervisors and law enforcement authorities to obtain information when necessary.

WHAT SHOULD BE IN PLACE?

Top scoring jurisdictions require legal entities to maintain information on all natural persons who exercise ownership or control of the legal entity, and that information needs to be maintained within the jurisdiction of incorporation regardless of whether the legal entities have or do not have a physical presence in the jurisdiction. The law would require shareholders to declare if control is exercised by a third person and there would be a requirement in place for beneficial owners and shareholders to inform the company when there are changes in ownership, or control.²⁴

Mid scoring jurisdictions may require legal entities to maintain information on natural persons who own or control shares but only in certain cases would shareholders need to declare if control is exercised by a third party. Lowest scoring jurisdictions will have no requirement for legal entities to hold beneficial ownership information, nor would nominee shareholders have to declare if they own shares on behalf of another person, nor if there is a change in the ownership of those shares.

SCORES

British Virgin Islands	50%
Cayman Islands	38%
Montserrat	25%
United Kingdom	100%

The UK is the only jurisdiction that has a system to ensure all companies incorporated in its jurisdiction have to collect and maintain accurate beneficial ownership information within their territory. In some circumstances the BVI requires this information to be held in its jurisdiction; however, it also allows for it to be held outside its jurisdiction in certain circumstances and does not currently require for shareholders to declare if their control is exercised by a third party. Montserrat does not require companies to maintain beneficial ownership information and the Cayman Islands allows beneficial ownership information to be maintained outside its territory and does not require shareholders to declare if they own shares on behalf of a third party.

WHAT HAVE THEY COMMITTED TO?

British Virgin Islands and Cayman Islands: under their respective Exchange of Notes with the UK Government these jurisdictions have committed to establishing systems that would require companies to maintain adequate, accurate and current beneficial ownership information.

²³ Transparency International, *Ending secrecy to end impunity, Tracing the beneficial owner* (February 2014)

www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secretcy_to_end_impunity_tracing_the_beneficial

²⁴ For the full scoring criteria see Annex 1 on the methodology in *Just For Show?*

PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

WHY IS THIS IMPORTANT?

Government bodies responsible for anti-money laundering and control of corruption and tax evasion / avoidance, amongst others, need to have timely access to sufficient, legitimate and verified, and up-to-date information on beneficial ownership, in order for them to be able to conduct their work effectively. Obstacles to accessing information or delays in transferring the information make it harder for competent authorities to follow the money back to the source, and this increases the likelihood of impunity for those that have engaged in corrupt or illegal acts.

As an example, the US Department of Justice's June 2015 indictment of FIFA outlined in detail the methods and mechanisms, including the creation and use of shell companies and nominees, that were used to hide and transfer stolen funds. Significantly, the indictment explicitly states that these mechanisms were "designed to prevent the detection of their illegal activities, to conceal the location and ownership of proceeds of those activities, and to promote the carrying on of those activities".²⁵

WHAT SHOULD BE IN PLACE?

Top scoring jurisdictions explicitly state that all law enforcement bodies, tax agencies and the financial intelligence unit should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Higher scores are given for jurisdictions with a central beneficial ownership or company registry that includes all relevant information that grants access within 24 hours. Additional points are given to jurisdictions where this information is public. A public, central (unified) register is the most effective and practical way to record information on beneficial ownership and facilitate access to competent authorities. A central registry also supports the harmonisation of the jurisdiction's legal framework, avoiding double standards.

SCORES

British Virgin Islands	18%
Cayman Islands	29%
Montserrat	0%
United Kingdom	79%

Under the current arrangements, none of the jurisdictions perform anywhere near as well as the UK because they do not currently have any arrangements for storing or publishing beneficial ownership information in a central location. The UK has the most advanced arrangements, with a centralised and public register, with this information updated on an annual basis.

WHAT HAVE THEY COMMITTED TO?

British Virgin Islands: under the Exchange of Notes with the UK Government it has committed to establishing a searchable electronic platform that will allow the BVI government to immediately access adequate, accurate and current beneficial information on corporate and legal entities registered in its jurisdiction. However, there are currently no plans to establish a public register of beneficial ownership.

Cayman Islands: under the Exchange of Notes with the UK Government it has committed to establishing a centralized platform for searching beneficial ownership information that will be accessible by Cayman Island law enforcement agencies.

Montserrat: it has committed to introducing a public register of beneficial ownership that would be accessible for a fee.²⁶

²⁵ United States District Court, *Eastern District of New York, United States v Webb et al* (20 May 2015) www.justice.gov/opa/file/450211/download

²⁶ Christian Aid et al, *The UK's corruption problem* (December 2015) p.6 <http://www.transparency.org.uk/publications/the-uks-corruption-problem/>

PRINCIPLE 5: BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

WHY IS THIS IMPORTANT?

Trusts are the second most used vehicle for corruption, after companies.²⁷ Efforts to tackle money laundering must also tackle secrecy and misuse of trusts, foundations and other legal structures. Trusts enable property or assets to be managed by one person on behalf of another and one challenge to tackling the misuse of trusts is that control and ownership are explicitly separate. Multiple individuals with different statuses (settlor, beneficiary, trustee, for example) could qualify as beneficial owners, making it especially difficult for law enforcement to follow money trails if not all relationships are captured.

WHAT SHOULD BE IN PLACE?

Top scoring jurisdictions require trustees to collect beneficial ownership information for the trusts they administer, including information on the settlor (who donates the assets), the trustee (who manages the arrangement and is the legal owner), the protector (who may act as an intermediary between the settlor and the trustee) and the beneficiaries (who receive the funds).²⁸ Lower scoring jurisdictions typically require trustees to maintain information on only some parties to the trust, or only impose such obligations on professional trusts. In jurisdictions where domestic trusts are not allowed but the administration of foreign trusts is possible, high scoring jurisdictions require trustees to proactively disclose beneficial ownership information to financial institutions and DNFBPs with which they establish a relationship.

SCORES

British Virgin Islands	67%
Cayman Islands	67%
Montserrat	17%
United Kingdom	67%

None of the jurisdictions have legal requirements that would give them full marks for the collation of beneficial information for trusts. Although the Cayman Islands recommends in guidance notes – which are a statutory defence against alleged breaches of the law – that information on all parties to the trust should be collected, this is not defined in statute and is merely a proposal for good practice. The UK requires trustees to collect information on parties to the trust, but not beneficial owners. The BVI requires trustees to collect information on settlors, protectors, other trustees, and beneficiaries, but – unlike Montserrat – does not require foreign trusts to proactively disclose information about parties to the trust to financial institutions or DNFBPs.

WHAT HAVE THEY COMMITTED TO?

United Kingdom: under the EU's 4MLD the UK will have to make it a legal requirement for trustees of any express trust to obtain and hold adequate, accurate and up-to-date information on beneficial ownership if the trust has a "tax consequence". The UK Government recently consulted on the transposition of 4MLD into UK law however at the time of writing there are still EU level negotiations on this issue, which mean its implementation may subject to change.

Cayman Islands: under the Exchange of Notes with the UK Government it has committed to collecting beneficial ownership information in accordance with 4MLD, as per the UK.

Montserrat: under the joint initiative of April 2016, Montserrat has committed to arrangements that would allow for the automatic exchange of trust beneficial ownership information with tax and law enforcement agencies in the UK. This should require trustees to collect all information on parties to the trust.

²⁷ World Bank/UNODC, 2011: 3

²⁸ Transparency International EU Office, Fighting money laundering in the EU: From secret companies to public registries, January 2014, www.transparencyinternational.eu/wp-content/uploads/2014/01/TI-EU-Policy-Paper-Beneficial-Ownership.pdf

PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

WHY IS THIS IMPORTANT?

Trustees should be required to share with legal authorities all information deemed necessary to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. This is necessary to identify or exclude individuals that are sought in relation to investigations. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs. Transparency International also believes that tax and law enforcement authorities should have timely, preferably immediate, access to the information (within 24 hours) held by trustees, but we have been unable to score this in this analysis.

WHAT SHOULD BE IN PLACE?

Top scoring jurisdictions have laws in place that allow competent authorities to request and access information on ownership and control of trusts held by trustees and other parties, such as financial institutions or DNFBPs. In high scoring jurisdictions, the law also clearly states which competent authorities are granted access. In lower scoring jurisdictions, competent authorities are not permitted access or only a limited number of authorities are granted access. Finally, additional points are given to jurisdictions that collect and maintain information on trusts in a registry. Lower scoring jurisdictions may have a registry that is either non-compulsory or does not collect adequate information to identify beneficial ownership.

SCORES

British Virgin Islands	67%
Cayman Islands	83%
Montserrat	33%
United Kingdom	50%

At the moment the UK only has a register of trusts with tax liabilities, which does not currently collect beneficial ownership information, and it does not specify in law which competent authorities should have access to trust beneficial ownership information. The BVI does not have a register of trusts however it does not have any legal impediments to competent authorities accessing information on trusts and specifies which authorities can request beneficial ownership information. The Cayman Islands has a register that is limited to 'exempt trusts'²⁹ however the law does specify which competent bodies have timely access to beneficial ownership information on these entities. Montserrat does not impose any legal impediments on competent authorities requesting information from trusts however it also does not specify which authorities should have timely access and it does not have a central register of trusts.

WHAT HAVE THEY COMMITTED TO?

United Kingdom: under the UK Government's proposed approach for implementing the 4MLD, there will be a central registry of trusts with tax consequences in the UK that will include beneficial ownership information that can be accessed by specific competent bodies.

British Virgin Islands and Cayman Islands: see Principle 4.

Montserrat: see Principle 4.

²⁹ For a definition of 'exempt trusts' read <http://www.ciregistry.gov.ky/portal/page/portal/reghome/trusts> [Accessed 5 December 2016]

PRINCIPLE 7: FINANCIAL INSTITUTIONS, BUSINESSES AND PROFESSIONS

WHY IS THIS IMPORTANT?

Corrupt figures require financial institutions to be willing to receive and transfer their money, and often seek out the help of professional intermediaries, such as accountants, lawyers and Trust or Company Service Provider (TCSPs) to facilitate the process. Corrupt money often then ends up in the hands of another set of DNFBPs, such as casinos and luxury goods dealers. This is for two purposes: ultimately to enjoy the proceeds of their criminal activities; and to launder the money to allow it to enter the market later as seemingly “clean” assets.

As an example, two TCSPs based in Latvia acted as the nominee directors and shareholders for a number of companies involved in criminal activities ranging from defrauding governments and investors to arms dealing in Eastern Europe. They acted as nominees for hundreds of companies incorporated in jurisdictions that included the British Virgin Islands, Panama, Cyprus, New Zealand, the US, the UK and Ireland, many of whom were in turn nominal shareholders of many other companies.³⁰

In addition, a review conducted by the UK Financial Standards Authority in 2011 showed that 75 per cent of the banks surveyed failed to carry out proper checks to detect and stop the proceeds of corruption.³¹ In order to make it less lucrative and less easy to launder money, financial institutions and this group of professionals must be supervised so as to not be complicit in money laundering, and they must face sanctions if they do not comply with their obligations under law. Among other measures to curb money laundering, financial institutions and DNFBPs should be required to identify and verify the identity of the beneficial owners of clients when establishing a business relationship or conducting transactions for occasional customers, and to report all suspicious activities in accordance with existing anti-money laundering regulations.³² Where financial institutions and DNFBPs cannot properly identify the client’s ownership, they should not enter into a business transaction.

Furthermore, it is crucial that both financial institutions and DNFBPs conduct enhanced due diligence on clients who are Politically Exposed Persons (PEPs), individuals (and often relatives or close associates of individuals) who hold or have held a prominent public function, such as a head of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials.³³

WHAT SHOULD BE IN PLACE?

Financial institutions and DNFBPs should be required by law to identify the beneficial owners of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as TCSPs providing services to legal entities.

Higher scoring jurisdictions require financial institutions and DNFBPs to verify the beneficial ownership information of their customers and clients and in high-risk cases this should be done independently.

Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer or the beneficial owner is a domestic or a foreign PEP or a close associate of a PEP. If the financial institution or DNFBP cannot identify the beneficial owner, high scoring jurisdictions would not be permitted to proceed with the transaction. High scoring jurisdictions

³⁰ Alex Marriage, *Secret structures, hidden crimes: Urgent steps to address hidden ownership, money laundering and tax evasion from developing countries*, EUROADAD, 2013 p. 12 <http://eurodad.org/files/integration/2013/01/Secret-structures-hidden-crimes-web.pdf>

³¹ UK Financial Services Authority, *Banks’ management of high money laundering risk situations* (June 2011) www.fsa.gov.uk/pubs/other/aml_final_report.pdf

³² Transparency International, *Transparency of legal entities and arrangements* (May 2014) www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_BeneficialOwnership_EN.pdf

³³ Transparency International, *Financial Jargon Buster* www.transparency.org/glossary#/beneficial-ownership

require a suspicious transaction report to be submitted to law enforcement agencies if they cannot identify the beneficial owner.

Financial institutions and DNFBPs should have access to beneficial ownership information collected by governments. High scoring jurisdictions would make that information available online, for free – for example within a beneficial ownership registry. Lower scoring jurisdictions would make it available online, upon registration or upon payment of a fee. Limited points are awarded to jurisdictions in which information is only made available upon request or in person.

Finally, high scoring jurisdictions permit the application of sanctions to financial institutions' directors and senior management.

SCORES

	Financial Institutions	DNFBPs	Sum
British Virgin Islands	69%	92%	83%
Cayman Islands	69%	71%	70%
Montserrat	63%	75%	70%
United Kingdom	88%	85% ³⁴	86%

Across all jurisdictions there was relatively strong in-law requirements for businesses and professionals to help prevent money laundering. There are in-law requirements for financial institutions to identify beneficial owners and apply enhanced due diligence measures to at least foreign PEPs. Apart from Montserrat, all of them did not allow financial institutions to proceed with a business transaction if the beneficial owner was not identified. However, none of them have a mandatory requirement to submit a suspicious transaction report if this information cannot be found – in all apart from Montserrat this is only done when there is suspicion of money laundering – and both the BVI and Cayman Islands allow the verification of beneficial ownership information to be waived if the customer is introduced by a third party subject to similar verification requirements. Out of all of the jurisdictions, the UK is the only one to allow financial institutions access to beneficial ownership information collected by government, which is available through the UK's PSC register. However, it does not require TCSPs to establish beneficial ownership information for one-off transactions, which is a relative weakness compared to the other jurisdictions.

WHAT HAVE THEY COMMITTED TO?

United Kingdom: the UK Government is currently reviewing the system for suspicious transaction reporting and the policy approach for domestic PEPs within money laundering regulations. It also proposes, as part of its transposition of the EU's 4MLD, to clarify that TCSPs should collect beneficial ownership information in one-off transactions through guidance.³⁵

³⁴ In our previous assessment of the UK this was scored incorrectly and has since been amended to reflect the current legislation.

³⁵ HM Treasury, *Consultation on the transposition of the Fourth Money Laundering Directive* p.48

PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

WHY IS THIS IMPORTANT?

Cooperation between domestic authorities that hold information on beneficial ownership or information that could be helpful in identifying the beneficial owner is essential. Governments should thus ensure that there is a good understanding regarding which parties / bodies hold and have an obligation to maintain basic and beneficial ownership information. This will also help to avoid duplication of work and resources.

Criminals often choose to conceal their identities behind a chain of different companies incorporated in different jurisdictions, thus making it harder for law enforcement authorities to locate and obtain information on the ownership and control structure. Accessing foreign data on beneficial ownership is one of the main challenges reported by legal authorities surveyed in the EU.³⁶ Against this backdrop it is important that jurisdictions facilitate access to beneficial ownership information by foreign authorities in a timely and effective manner.

WHAT SHOULD BE IN PLACE?

Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the jurisdiction in a timely manner – for instance, through access to central beneficial ownership registries.

High scoring jurisdictions have no restrictions in place related to sharing information between domestic bodies, and accessing that information is efficient. A central database therefore scores more points than several databases. Lower scores are given to jurisdictions in which domestic authorities can only access beneficial ownership information through written requests or memoranda of understanding – or worse, through court orders.

In relation to international cooperation, high scoring jurisdictions have clear procedural requirements to guide foreign jurisdictions making requests. High scoring jurisdictions have laws in place that allow competent authorities to use their investigatory powers to respond to international requests. Low scoring jurisdictions have significant legal restrictions in place that prevent good cooperation and sharing of information.

Moreover, Transparency International believes that ensuring information on beneficial ownership is accessible would help cross-border investigations, allowing foreign law enforcement authorities to access relevant information discreetly and at short notice. Public registries containing beneficial ownership information would also reduce the need to make lengthy mutual legal assistance requests, which is especially helpful for jurisdictions with limited resources.

SCORES

British Virgin Islands	63%
Cayman Islands	63%
Montserrat	67%
United Kingdom	83%

Overall, the provisions for sharing information between domestic and international authorities in all jurisdictions is reasonable; however, there is scope for improving the timeliness of information exchange with international authorities in the BVI, Caymans and Montserrat, which are recognised by virtue of their Exchange of Notes and commitments with the UK Government. Despite these proposed improvements, the BVI will still not provide direct access to beneficial ownership information to international authorities.

³⁶ Transcrime, 2013 <http://www.transcrime.it/wp-content/uploads/2013/11/BOWNET3.pdf>

WHAT HAVE THEY COMMITTED TO?

British Virgin Islands: under the Exchange of Notes with the UK Government it has committed to allowing UK law enforcement agencies to request information on beneficial ownership via Virgin Islands law enforcement agencies. Information requested under these arrangements will be provided within 24 hours, or in urgent cases within one hour. However, there are currently no plans to establish a public register of beneficial ownership.

Cayman Islands: under the Exchange of Notes with the UK Government it has committed to allowing law enforcement agencies in the UK to have automatic access to beneficial ownership information via a central electronic database or similarly effective arrangement. However, there are currently no plans to establish a public register of beneficial ownership.

Montserrat: under the joint initiative of April 2016, Montserrat has committed to arrangements that would allow for the automatic exchange of beneficial ownership information with tax and law enforcement agencies in the UK.

PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

WHY IS THIS IMPORTANT?

Current estimates of undeclared offshore wealth range from conservative estimates of US\$7 trillion³⁷ (which still amounts to 8 per cent of the world's personal financial wealth) to US\$21–32 trillion.³⁸ Similar methods and vehicles are used by individuals wishing to evade or avoid paying tax as are used by those siphoning off corrupt funds out of a country. It is important that tax authorities also have access to beneficial ownership information to prevent tax evasion and recover funds, and that they face no restrictions on sharing information internationally in light of the cross-border nature of the theft taking place.

WHAT SHOULD BE IN PLACE?

High scoring jurisdictions permit tax authorities to access beneficial ownership information maintained by domestic authorities online and for free, for example through a registry. Jurisdictions receive fewer points if they can only access the information upon submission of a specific motivated request. Jurisdictions in which the law imposes significant restrictions on sharing beneficial ownership information with domestic tax authorities score worst.

With regard to the sharing of tax information internationally, points are awarded where there are mechanisms in place, such as memoranda of understanding or treaties, to facilitate the exchange of information between tax authorities and foreign counterparts.

SCORES

British Virgin Islands	75%
Cayman Islands	67%
Montserrat	67%
United Kingdom	100%

Across the jurisdictions, the UK provides the fullest access to beneficial ownership to tax authorities through a central registry, no significant restrictions on conditions of access and mechanisms to share this information with foreign counterparts. The BVI and Caymans both have mechanisms to share this information with foreign counterparts and impose no significant restrictions on tax authorities accessing this information if it is held by other domestic authorities. However, beneficial ownership information in the BVI can only be accessed on request and Cayman Island tax authorities do not collect or have access to beneficial ownership information on companies or other entities. Montserrat has signed a number of tax information exchange agreements, but there is currently no access for tax authorities to beneficial ownership information held by other domestic authorities.

WHAT HAVE THEY COMMITTED TO?

British Virgin Islands: see Principle 8.

Cayman Islands: see Principle 8.

Montserrat: see Principle 8.

³⁷ www.nytimes.com/2014/06/16/opinion/a-piketty-protoges-theory-on-tax-havens.html [2 December 2016]

³⁸ Tax Justice Network, *The Price of Offshore Revisited* (July 2012) www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf

PRINCIPLE 10: BEARER SHARES AND NOMINEES

WHY IS THIS IMPORTANT?

Bearer shares are “company shares that exist in a certificate form ... whoever is in physical possession of the bearer shares is deemed to be the owner”.³⁹ As the transfer of shares requires only the delivery of the certificate from one person to another, they allow for anonymous transfers of control and pose serious challenges for money laundering investigations.

Nominees act as the legal manager, owner or shareholder of limited companies or assets. They act on behalf of the real manager, owner or shareholder of these entities and often are the only names indicated in paperwork. These nominees obscure the reality of the company’s ownership and control structure, and are often used when the beneficial owners do not wish to disclose their identity or role in the company.

WHAT SHOULD BE IN PLACE?

Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary. High scoring jurisdictions prohibit bearer shares by law. Lower scoring jurisdictions permit bearer shares but there is a process in place for them to be converted into registered shares. Limited points are available to jurisdictions where bearer share holders should notify the company of their identity, and that information is recorded by the company.

Jurisdictions that also prohibit the incorporation of companies using nominees score highly. Where nominees are permitted, jurisdictions can gain points if nominees are required by law to disclose the identity of the beneficial owners on whose behalf they are working at the time of registering the company. Additional points can be gained by jurisdictions where nominees are licensed and if the law requires that professional nominees keep records of their clients for a certain period of time.

SCORES

British Virgin Islands	63%
Cayman Islands	63%
Montserrat	63%
United Kingdom	88%

Whilst the UK and Cayman Islands have both prohibited the use of bearer shares, they continue to be available in the BVI and Montserrat, albeit with restrictions that immobilise them i.e. they must be retained in a specified office by a custodian. All jurisdictions permit the use of nominee shareholders, with all of them apart from the Cayman Islands currently requiring beneficial ownership information to be held for most types of nominees. All of the jurisdictions require nominees to be licensed in some form and keep records of those who nominated them for a certain period of time.

WHAT HAVE THEY COMMITTED TO?

Cayman Islands: as under Principle 3 above, it is expected that upcoming legislation will require companies to hold this information.

³⁹ World Bank/UNODC Stolen Asset Recovery Initiative, 2011

