

Beneficial Ownership Transparency in Cambodia's Land & Property Sector

INVESTIGATIVE REPORT

2023



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Transparency International Cambodia is a fully-accredited National Chapter of Transparency International and was officially founded on 05 July 2010 by a group of anti-corruption activists and professionals committed to the creation of transparent and accountable Cambodia. It has since built a strong institution arduously fighting corruption and promoting integrity, transparency and accountability in the country.

We work together with individuals and institutions at all levels including government, civil society, business, media and the wider public to achieve sustainable economic development, promote integrity and fight corruption.



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Acknowledgement

This report was produced with the financial assistance of the Department of Foreign Affairs and Trade (DFAT) of Australian Government and the Ministry of Foreign Affairs and Trade (MFAT) of New Zealand Government through Transparency International Secretariat.

Transparency International Cambodia (TI Cambodia) would like to thank the Advisory Group members and stakeholders who shared their knowledge and expertise during the consultation process. Our investigation into Beneficial Ownership Transparency in Cambodia's Land & Property Sector would not have been possible without your time and commitment.

We also acknowledge and thank those colleagues and individuals who are not mentioned but provided invaluable assistance, feedback and guidance. Your contributions have shaped the findings within this report.

Abbreviations

ACU	Anti-Corruption Unit
AML	Anti-Money Laundering
AML Law	Law on Anti-Money Laundering and Combating the Financing of Terrorism (2020)
APG	Asia-Pacific Group on Money Laundering
CDD	Customer Due Diligence
CDD Directive	National Bank of Cambodia's Directives on Customer Due Diligence Measures (2021)
FATF	Financial Action Task Force
FIU	(Cambodian) Financial Intelligence Unit
GDT	General Department of Taxation
MOC	Ministry of Commerce
MEF	Ministry of Economy and Finance
NCAC	National Council against Corruption
PEP	Politically Exposed Persons
STRs	Suspicious Transaction Reports
TI Cambodia	Transparency International Cambodia
UNCAC	United Nations Convention Against Corruption
UN Guiding Principles	UN Guiding Principles on Business and Human Rights

INTRODUCTION

Cambodia is one of the fastest-growing economies in the world. In 2015, Cambodia reached lower middle-income status, driven by an average annual rate increase of 7.7%. The government now has set its sights set on upper middle-income status by 2023.

The land and property sector has been a key contributor to the country's rapid economic success. Despite the impacts of the COVID-19 pandemic, a report published by the Ministry of Economy and Finance (MEF) found that in 2022, the sector grew by 2.5%. The number of residential and commercial property development projects funded by domestic and foreign investors continues to rise throughout the country. In the first 5 months of 2022, Cambodia recorded a 6.7% increase in home sales and a 183% increase for construction of apartments. These results indicate a market that is rebounding from the impacts of COVID-19.

However, continued economic success requires authorities to address vulnerabilities to financial stability that can arise from rapid growth and change. Land and property transactions are an effective avenue for criminal and corrupt individuals to hide assets and launder dirty money that can undermine a country's financial stability. A 2017 Transparency International Report Real Estate Data: Shining a Light on the corrupt, found that a lack of data, insufficient governance, difficulty in obtaining information, and a lack of sanctions made it very easy for anonymous companies or trusts to acquire property and launder money. Beneficial ownership transparency plays a role in preventing this form of corruption and other related illegal activities.

The findings of the Transparency International Report are applicable to Cambodia's real estate sector. Overall Transparency International's Corruption Perceptions Index 2022 scores Cambodia 24/100 which affords Cambodia a global ranking of 150/180. This investigative report shows that Cambodia's money laundering vulnerabilities are exacerbated by weak governance and laws, limited oversights, inadequate capacity of the real

estate or finance sector to oversee the rapid changes, and a weak judiciary. In the land and property sector, the absence of beneficial ownership transparency measures facilitate a landscape for illegal activities.

Cambodia has been making progress to address its vulnerabilities in relation to corruption. In February 2023, Cambodia was removed from the Financial Action Task Force's (FATF) grey list. The FATF has welcomed Cambodia's significant improvements to its anti-money laundering and counter-terrorism financing regime. To note is the new law on Anti-Money Laundering and Combating the Financing of Terrorism (AML Law 2020). The law includes sanctions (both disciplinary and criminal) for violations and the ability to freeze or confiscate assets on suspicious money transactions.

In 2021, the government also formed: The Task Force for Anti-Money Laundering, Terrorism Financing and Proliferation Financing to act as the MFAIC's point of contact for all matters related to AML/CFT/CPF; and the Taskforce for Conducting a Risk Assessment of the Non-Government Organizations or Non-Profit Organization particularity for matters in relation to foreign NGOs.

Despite improvements, Cambodia remains a high-risk country for money laundering and corruption. The country falls short of that international standards that require a minimum level of transparency in relation to the beneficial owners of companies and trusts for anti-money laundering purposes. Moreover, in the land and property sector there is an complete lack of awareness and difficulty in obtaining beneficial ownership information.

This investigative report into Beneficial Ownership Transparency in Cambodia's Land & Property Sector is an opportunity to understand the gaps and challenges that persist in the sector that make way for corrupt activities. The report provides an overview of beneficial ownership in Cambodia, an analysis of the existing international and national legal and policy frameworks of beneficial ownership transparency that relate to land and property, and gaps and recommendations to combat money laundering in Cambodia's land and property sector. The recommendations target various stakeholders, including the government ministries, lawyers, civil society organizations, financial institutions, and the land and property sector. They are intended to guide decision-makers and provide practical solutions to address the gaps identified in this report.

METHODOLOGY

The objective of the report is to provide an overview of international beneficial ownership transparency standards and identify the gaps that allow corruption to exist in Cambodia's Land and Property sector. For this, TI Cambodia carried out rigorous research that included a desk-review, stakeholder engagement, and case study review to understand the practices of people involved in the land and property sector.

At the outset, the research team formed an Advisory Group. The Advisory Group consisted of seven experts on anti-corruption, anti-money laundering, and beneficial ownership including from different United Nations agencies and civil society. In an initial workshop, the group provided the research team guidance on developing the research and investigation methodology as well as identifying the key legal frameworks on beneficial ownership transparency. The resulted was a research tool that was used to guide the investigation. At the end of the process, the Advisory Group validated the findings and recommendations contained within the report.

An initial desk-top review was carried out on all the national and international legal and policy frameworks of beneficial ownership transparency, anti-money laundering and the land and property sector. A regional comparative study was done to identify gaps and inconsistencies between Cambodia and its regional neighbors - Indonesia, Malaysia, Myanmar, Philippines, and Thailand. A review was also done to understand the recent steps that the United States and the United Kingdom had taken to reform beneficial ownership transparency.

The desk-top review then moved to investigate Cambodia's track record for implementation and enforcing these laws, identifying common patterns and practices in the land and property sector, and identify challenges faced by private sector, civil society, and others in accessing beneficial ownership information.

To provide insight into common patterns and practices, the research team conducted interviews with key stakeholders, including government officials, lawyers, and representatives from property development companies. The research team hoped to understand the challenges these groups faced in accessing data and information that would facilitate the recommendations within this report. However, despite anonymity, the research team had difficulty finding participants who would speak freely about the issues of corruption within the land and property sector. Of the 15 people identified and approached for an interview, only seven agreed to speak with the research team. All requested anonymity. These interviews were conducted via secure communications platforms during the COVID-19 restrictions.

The research team also undertook an investigation to identify case studies in the land and property sector, within Cambodia and internationally. Studies from within Cambodia looked to determine the degree of difficulty in accessing beneficial ownership information. Common patterns from these case studies have been workshopped into hypothetical examples to guide the reader and provide them with an understanding of the ease of money-laundering, corruption and other illegal information.

In 2023, a final review was done of the first investigative report. Updates were made in line with changes that had occurred since the completion of the first report. Key changes were found in relation to the FATF reports of 2022 and 2023. A desktop review was done to validate the research however it is noted that some information in relation to changes between 2022 and 2023 were not accessible in English. In these instances, a note has been made.

The report's findings and recommendations are based on these investigations. All personal details have been removed for the safety and protection of all concerned.

Beneficial Ownership Transparency

BENEFICIAL OWNERSHIP TRANSPERENCY

Beneficial ownership transparency is the availability of information of the beneficial owner (ie the natural person) of a legal entity or arrangement. It promotes transparency and accountability in the effort to combat corruption, money laundering and other illegal activities around the world. Knowing the identity of the natural person behind a transaction helps countries to fight financial crimes and prevents individuals from hiding behind complex legal structures across different jurisdictions to evade a financial trail, and ultimately the law.

A beneficial owner is the ultimate beneficiary or controller of a legal entity (ie. company, trust, or foundation). When there are multiple layers within a legal structure, identifying a beneficial owner becomes more complex. Effective control over a legal entity can be through having a controlling interest in a structure or holding significant voting rights. However, less evident ways may be through family links. Therefore, determining the beneficial ownership can be complex and in financial transactions it is important to understand the chain of ownership or effective control to identify illegal activities and eradicate corruption.

Understanding Chain of Ownership and Ultimate Effective Control

If Land Plot 1 is legally owned by Company A, which is owned in whole (100%) by Company B, then the beneficial owner would be the Natural Person, who owns or controls Company B, e.g., by holding 30% of Company B's voting shares. However, if the Natural Person owns or controls Company B on behalf of Politician X (through a familial relationship) then Politician X would be one of the beneficial owners. Politician X ultimately and effectively exercises control over Land Plot 1 through Companies B and A and his familial relationship with the Natural Person.

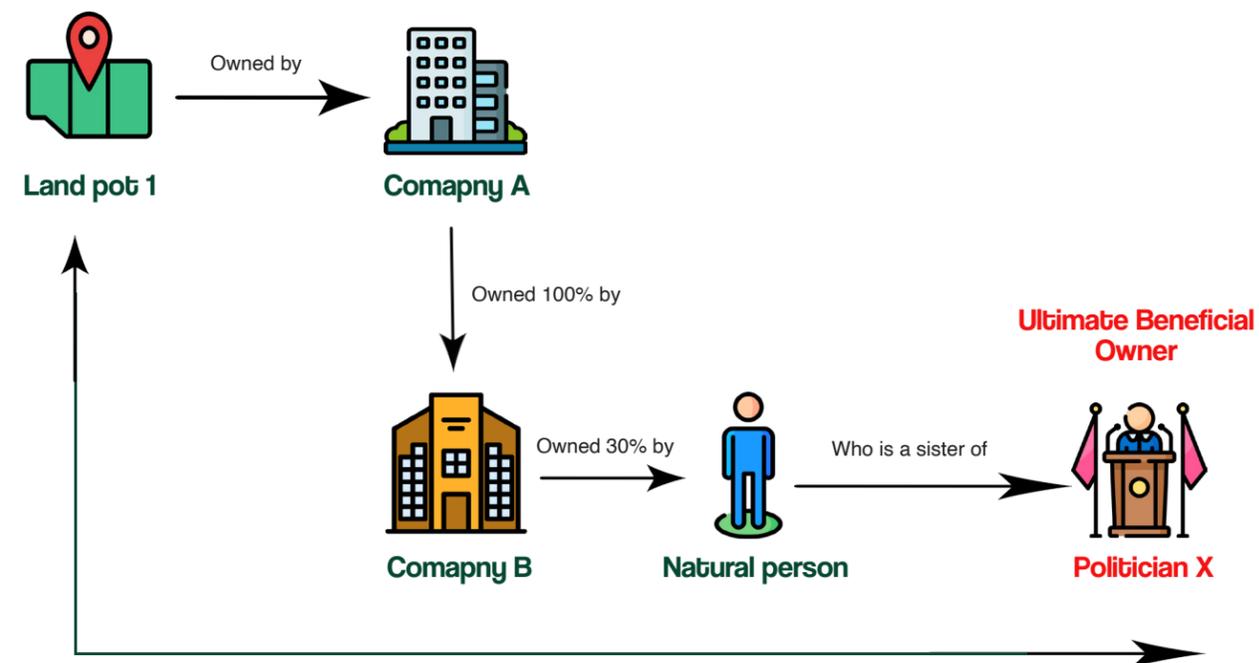


Diagram 1: Explaining chain of ownership and ultimate effective control

Defining Beneficial Ownership in Cambodia

Beneficial ownership in Cambodia is defined as the natural person(s) who is the customer that owns and is ultimately in control of a transaction. If the customer is a legal entity, then beneficial owner is defined as:

- the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a portion of the shares or voting rights of which the percentage is to be prescribed by the Cambodia FIU in a directive [,] or[:];
- the natural person(s) who exercises control over a legal entity through other means where no natural person having a controlling ownership interest is found or doubt exist as to whether the person(s) with controlling ownership is the beneficial owner.

Cambodia's definitions do not provide for trusts or persons exercising ultimate control over a legal person or arrangement and the term legal entity is also not clearly defined. For these reasons, the Asia-Pacific Group on Money Laundering (APG) state that Cambodia's definition is not in line with the FATF's internationally recognized definition.

Legal and Policy Frameworks

LEGAL AND POLICY FRAMEWORKS

A. International Legal and Policy Framework

The following mechanisms are applicable to Cambodia:

- **United Nations Convention Against Corruption (UNCAC)**

The UNCAC is an international legally binding anti-corruption framework. It was signed and ratified by Cambodia on 5 September 2007. The convention recommends that State parties “safeguard the integrity of private entities, [...] by inter alia [...] establish[ing] measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.” It invites State parties to institute comprehensive regulatory and supervisory regimes for bank and non-bank financial institutions regarding beneficial owner identification. In November 2021, TI Cambodia published a civil society report assessing Cambodia’s progress in implementing selective chapters of the convention.

- **Asia-Pacific Group on Money Laundering (APG)**

The APG is an inter-governmental organization that supports member countries to implement international standards against money laundering, including FATF recommendations. Cambodia became an APG member in 2004.

- **Financial Action Task Force (FATF)**

By virtue of its membership to the APG, Cambodia is subjected to monitoring by the FATF and its international standards (forty recommendations), including recommendation 24 and 25 on transparency and beneficial ownership.

Recommendations 24 and 25 relate to transparency, beneficial ownership, and the misuse of legal persons and other legal arrangements for money laundering or terrorist financing.

They emphasize that countries should ensure that competent authorities can obtain and access – in a timely fashion – adequate, accurate, and timely information on the beneficial ownership and control of legal persons and legal arrangements, including express trusts (e.g., the settlors, trustees, and beneficiaries). In particular, the FATF warns against the ability for legal persons to issue bearer shares or bearer share warrants or allow nominee shareholders or nominee directors, as these types of transactions are at high risk of money laundering and terrorist financing.

A 2022 Amendment to Recommendation 24 added a multi-pronged approach to collect beneficial ownership information that facilitates the availability of data to competent authorities in a timely manner. For example, companies must obtain and hold adequate, accurate and up-to-date information on their own beneficial ownership, the information must be made available to authorities, and the information must be held by a public authority or body functioning as beneficial ownership registry (or an alternative, equivalent mechanism).

The FATF's decision-making body, the FATF Plenary, meets three times per year and holds countries to account if they do not comply with the Standards. If a country repeatedly fails to implement FATF Standards then it can be named a Jurisdiction Under Increased Monitoring (grey list) or a High Risk Jurisdiction (black list). The FATF set out a comprehensive and consistent framework of measures which countries should implement to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction.

In February 2023, Cambodia was no longer subjected to increased monitoring and removed from the grey list.

• **UN Guiding Principles on Business and Human Rights (UN Guiding Principles)**

The UN Guiding Principles is a non-binding legal instrument, that provides clarity for States and business enterprises regarding their roles and responsibilities in human rights. In a recent statement, the UN's Office of the High Commissioner for Human Rights (OHCHR) confirmed that financial institutions have responsibilities under the UN Guiding Principles when they act as nominee shareholders for their clients. OHCHR stated that a nominee shareholder relationship between a financial institution and company constitutes a "business relationship" under these principles.

It also outlined a two-pronged approach for financial institutions to assess actual and potential adverse human rights risks in the context of nominee shareholding: Financial institutions must assess the risks connected to their beneficial owner clients; and where a risk is identified (particularly high risk section of its nominee shareholder portfolio) the financial institutions must undertake due diligence. Financial institutions should also their leverage with the beneficial owners to address these risks or impacts, e.g., through contractual clauses, or ending the relationships. If the financial institutions cannot leverage their relationships with the beneficial owners, then they should engage with the investee companies.

While Cambodia is not a member, three other intergovernmental bodies or initiatives to note are:

• **The Anti-Corruption Working Group of the G20 (G20 ACWG)**

The G20 ACWG developed a list of 10 principles for State members regarding beneficial ownership, ranging from having an adequate definition of beneficial ownership to accessing information and international cooperation.

• **The Extractive Industries Transparency Initiative (EITI)**

The EITI developed global standards in the extractive industry for its 56 implementing countries related to beneficial ownership, e.g., having a publicly available register of beneficial owners of corporate entities having interests in an exploration or production oil, gas or mining license or contract.

• **The Open Government Partnership (OGP)**

The OGP is a coalition of 78 countries, 76 local governments, and civil society members, developed principles related to beneficial ownership that include the strengthening of disclosure requirements.

B. National Legal and Policy Framework

I. Laws relating to Beneficial Ownership Transparency

• Law on Anti-Money Laundering and Combating the Financing of Terrorism (2020) (AML Law 2020)

The AML Law governs the measures that must be taken to combat money laundering and financing terrorism in Cambodia. It is the primary law governing beneficial ownership transparency obligations and defines and sets out the processes for reporting entities, establishes the Financial Intelligence Unit (FIU), and outlines sanctions for non-compliance or violations of the AML.

Beneficial Ownership Reporting Requirements

The AML Law requires reporting entities to take reasonable measures to identify beneficial ownership information. This includes determining whether beneficial owners may be Politically Exposed Persons (**PEP**), family members, or close associates. These measures must be taken before establishing a business relationship or carrying out a transaction. If the reporting entity is unable to identify the beneficial ownership it must not open an account, commence business relations or perform the transaction. If it is an existing business relationship, the reporting entity must terminate the relationship.

The reporting entity must retain the information and make it available to the competent authorities for at least five years after the customer account is closed or the business relationship ends.

The definition of a reporting entity in Article 4 of the AML Law includes all financial institutions as defined by the FATF standards. Cambodia has a comprehensive list of reporting entities which include:



Diagram 2: Professionals and businesses in the land and property sector that are reporting entities under Article 4 of the AML Law. Additional reporting entities can be found in the law.

A fit and proper test is applied to the management and shareholders of reporting entities. The FIU is responsible for overseeing the test in order to prevent criminals and their associates from ultimately being the beneficial owner or holding a significant or controlling interest in a reporting entity. The FIU, also receives suspicious transaction reports (STRs) from reporting entities to assess transactions for money laundering, refer reasonable suspicions to the relevant law enforcement agencies, collate data and statistics on suspicious transactions and enhance public awareness and understanding on money laundering and financing of terrorism matters.

The STRs submitted to the FIU must contain: (i) the identity and identifying particulars of the reporting entity, including the name and contact details of the reporting officer; (ii) the identity and identifying particulars of the customer and of the beneficiary involved in the transaction; (iii) the type and details of transaction such as amount, currency, date, parties involved in the transaction that is reported as suspicious, including the account number and identifying particulars of the account holder; and (iv) a short description of the circumstances and reasons that justify the suspicion.

Moreover, lawyers, notaries, accountants, auditors, investment advisors, and asset managers are required to obtain data and information for reporting on business activities that include:

- Buying and selling immovable property, building, and land;
- Managing of client money, securities, or other assets;
- Establishment, operation, or management of legal persons or arrangements;
- Buying and selling of business entities; and
- Trust or company services, e.g., acting as a formation agent of legal persons; acting as, or arranging for another person to act as, a director or secretary of a company, a trustee of an express trust.

Where a legal person is involved, reporting entities must take reasonable measures to understand the nature of business, ownership and control structure of the customer.

The MEF oversees the real estate sector. Real estate agents must be licensed and satisfy the requirements set out in Prakas No 1222 and No 142, e.g., passing criminal record checks.

Further laws and regulations that apply:

- *Criminal Code of Cambodia (2009) particularly articles 404-409.*
- *Anti-Corruption Law (2010), particularly articles 32 and 44.*
- *National Bank of Cambodia's Directives on Customer Due Diligence Measures (2021) (CDD Directive): The CDD Directive directs reporting entity requirements in the event of unsatisfactory identification or verification requirements and enhanced due diligence measures for foreign or domestic PEPs. See Table 3 below for a summary of the directive applicable to real estate agents.*
- *National Bank of Cambodia's Guideline on the Submission of the Suspicious Transaction Report of the Reporting Entities regulated by the Law on Anti-Money Laundering and Financing of Terrorism (2018)*
- *Directive on Remittance and Wire Transfer (Remittance Directive) (2022)*
- *Directive on Internal Controls for Reporting Entities (2022)*
- *Prakas on Anti-Money Laundering and Combating the Financing of Terrorism (2008)*
- *Prakas on Anti-Money Laundering and Combating the Financing of Terrorism relating to All Reporting Entities not regulated by the National Bank of Cambodia (2010).*

Sanctions for Lack of Compliance

Articles 28-30 of the AML Law set out the processes and options available to FIU to impose on any reporting entity that does not comply with the laws. This includes disciplinary sanctions for reporting entities that do not comply with sections of the AML Law, such as a warning, prohibition or limitation to carry out transactions, fine or in serious violations, a formal complaint to the courts. Financial sanctions with fines up to 5,000,000 Riels and/or a prison sentence of up to five year for offences that involve a failure to provide information to the authorities, failure to report suspicious transactions, failure to report knowing of unlawful information and so on. The FIU also has the power to freeze or confiscate property in the event of the proceedings being the result of a violation of money laundering or financing terrorism. Further penalties are available under Article 405-409 for money laundering under the Cambodian Criminal Code (2009).

The FATF maintains that the sanctions under the different law are not “proportionate and dissuasive”.

Table 3

CDD Measures for Real Estate Agents, Companies, and Others in the Land and Property Sector under the AML Framework in Cambodia (Article 8 AML Law)

a) Apply a risk-based approach to the management and mitigation of their risks of money laundering and terrorist financing, including assessing and understanding their own risks and then managing and mitigating these risks;

b) Undertake CDD (i) prior to establishing business relations, such as opening accounts, keeping or taking stocks, bonds or other securities into safe custody, granting safe-deposit facilities or engaging in any other business dealings; (ii) prior to carrying out occasional or one-off transactions, including wire transfers; (iii) if the reporting entity has a suspicion of money laundering and/ or financing of terrorism irrespective of the sum involved in the transaction; (iv) if the reporting entity has any doubts about the veracity or adequacy of previously obtained;

c) Identify the customer by obtaining at the minimum name, family name, birth date, and address for natural persons and name, articles of incorporation or registration, tax identification number, address, telephone number notably, for legal persons as defined by a directive issued by the FIU and verify the customer's identity using reliable, independent source documents, data or information by using a national ID card, a passport or any other officially recognized photo ID document;

d) Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner such that the reporting entity is satisfied that it precisely knows who the beneficial owner is. For legal persons and legal arrangements, the reporting entity should take reasonable measures to understand the nature of business ownership and control structure of the customer. Where no natural person is identified as the beneficial owner of legal persons, the natural person who holds the position of senior managing official should be identified as the beneficial owner;

e) Obtain information on the purpose and intended nature of the business relationship;

f) Identify whether the customer or beneficial owner is a PEP or a family member or close associate of a PEP; and apply appropriate CDD measures to this customer based on the level of assessed risk and in accordance with the requirements of the AML Law and CDD Directive;

g) Conduct ongoing due diligence concerning the business relationship including:

(i) scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting entity's knowledge of the customers, their businesses and risk profiles including, where necessary, the sources of funds; and **(ii)** ensuring that documents, data, or information collected under the CDD process are kept up-to-date and relevant, by undertaking reviews of existing records, particularly for high-risk categories of customers;

h) Apply enhanced CDD measures where the risk of money laundering or terrorist financing is high and may apply simplified CDD measures where the risks are low. Specifically, enhanced CDD should be done to determine **(i)** business relations and transactions with institutions or persons in jurisdictions having high risk of money laundering and/ or financing of terrorism; **(ii)** business relations and transactions with foreign PEPs and with persons who are family members or close associates of such persons; **(iii)** business relations and transactions with domestic PEPs and international PEPs and with persons who are family members or close associates of such persons where the risk of the business relations or transactions are assessed to be high; and **(iv)** business relations or transactions that are assessed to pose a high risk for money laundering or financing of terrorism; and

i) Ensure the establishment of appropriate internal control systems for managing and mitigating the risks.

II. *Laws Related to Commercial Activities in Cambodia*

Cambodia has a good legal framework for business registration. However, this framework falls short of requiring companies to report and maintain verified, up-to-date beneficial ownership information to the government. To register a company, only basic information is required to be provided to the Ministry of Commerce (MOC).

Laws and regulations that apply to commercial and investment activities:

- *Law on Commercial Rules and Register (1995)*
- *Law on Commercial Enterprises (2005)*
- *Law on the Amendment of the Law on Commercial Rules and Register (1999)*
- *Law on Taxation (1994)*
- *Law on Amendment of Law on Taxation (2003)*
- *Trust Law (2019)*

See below key information from these laws:

Law on Commercial Rules and Register (1995) and Law on Commercial Enterprises 2005)

To ensure beneficial ownership transparency, information on business ownership needs to be up-to-date and easily available. The Law on Commercial Rules and Register defines a merchant as a natural person or legal entity who regularly practices a trade, including buying and selling real estate. The law sets out the process for registration for both domestic and foreign businesses. Entity types may include sole proprietorships, private or public limited liability companies, partnerships, associations, non-profit and non-governmental organizations, and foreign companies.

In June 2020, the Royal Government of Cambodia launched a new online business registration portal through which businesses can register simultaneously with relevant ministries: MOC, General Department of Taxation (GDT), Ministry of Labour and Vocational Training, Ministry of Interior, Council of Development of Cambodia, and MEF.

In January 2022, the government introduced key amendments to the Law on Commercial Enterprises and the Law on Commercial Rules and Register. It made amendments to Articles 14 and 17 which now requires the following to be declared on in the register:

(1) phone number and / or email address of the person or shareholder(s);

(2) and the business activities in accordance with the International Standard Industry Classification of All Economic Activities.

The MOC and the MEF provide additional information about business registration on their websites. However, no beneficial ownership information is required.

The MOC is responsible for verifying the information submitted by applications. The MOC must maintain the commercial register with the required information, and all entities are responsible for updating the MOC within 15 days of a company resolution, or a minimal penalty may be imposed. Stakeholder interviews support the findings of the APG, which show that there is an over reliance on the self-declarations making accuracy of the register problematic. Coupled with a lack of enforcement of the obligations, information is also often outdated. The MOC can rescind the registration if there has been a false declaration.

Basic information is publicly available via the online business search system: company name; legal form and status; registration number; tax identification number, incorporation date; business activities; date of last annual report, registered address; contact email and telephone number; number of Cambodian and foreign employees, and the name and address of directors. Documents that could be used to identify beneficial owners (eg. shares, shareholder information, or articles of incorporation) are not publicly available. The MOC may request this information however, stakeholder interviews conducted highlight the limited understanding of beneficial ownership. For example, beneficial ownership was explained to the research team as simply being the shareholders listed on registration documents. Beyond this detail there was limited understanding of issues, like chain of ownership, nominee shareholders, or effective control.

Recent amendments to the Law on Commercial Enterprise also removed articles permitting the issuance of bearer shares and bearer share warrants. This removes complications and lack of transparency that are involved with bearer shares.

Law on Taxation

Cambodia's tax laws and relevant prakas require businesses to be registered with the GDT. The information required is the business name, proof of incorporation, legal form and status, business address, business owner's information, original or certified copies of personal identification documents, and other verification documents. Information maintained by the GDT is not publicly available.

GDT verifies the identity of the board chairman or company owner by taking a photograph or fingerprints. If the person is abroad, then a representative may be used. Any changes to the address, form, name or object of the business, the transfer or cessation of the business, the leadership, or person in charge of tax matters must be given to the department within 15 days. Penalties may be imposed for a failure to notify the department.

Trust Law

A more extensive legal regime for trusts was adopted in January 2019. The Trust Law (2019) sets out four types of trust – commercial trusts, public trusts, social trusts, and private trusts. Supervision for their registration and management is done by the MEF. A 2022 investigation found ten licensed trustee companies in Cambodia that mostly assist foreign investors to secure property and land titles through nominee and trustee services.

The Sub-Decree No. 114 (trust registration) and Prakas No. 854 (service fees for trust registration) provides for the trust registration process. Under this law, an applicant must submit the following documents to the MEF: the application for registration, trust instrument, trustee's compliance documents, and insurance policy. Trust inspectors from the ministry have broad powers with respect to supervision of trustees, and the sub-decree provides for sanctions, including penalties, for non-complying trustees. For transparency, all trustees must also disclose the records of trust, financial statements, and other relevant information to the ministry. This information is not available to the public.

Trusts are reporting entities under the AML Law and must conduct CDD, including identifying and verifying beneficial owners.

III. Laws Related to Land and Property

Land and property ownership in Cambodia is regulated by the following laws:

- *Constitution of the Kingdom of Cambodia, as amended through 2021, provides that "[o]nly Khmer legal entities and citizens of Khmer nationality shall have the right to own land".*
- *Land Law (2001), and the Civil Code of Cambodia (2007) (and amended in 2011), sets out the framework for private property rights of Cambodian citizens.*
- *New Law on Investment (2021) and the Sub-Decree on the Implementation of the Amendment to the Law on Investment of the Kingdom of Cambodia, No. 111 (27 September 2005) establish the framework to promote domestic and foreign investments and socio-economic development in Cambodia.*
- *Law on Providing Foreigner with Ownership Rights in Private Units of Co-Owned Buildings (2010), sets out the ownership rights of foreigners in private units of co-owned buildings from the first floor up (the land and ground floors cannot be owned by foreigners).*

These laws do not provide for transparency in beneficial ownership of real estate:

Land ownership and Land Registry

Cambodia's history of land ownership is historically complicated by a lack of processes that afford formal title over land. An official land registry system was created in 2001 which started the formal land titles process. There are three primary types of land title that Cambodian citizens can secure:

- (1) hard title, which is registered with the National Land Office and supersedes claims of ownership by possession;*
- (2) soft title, which refers to the right of possession and is issued by a local cadastral office; and*
- (3) strata title, which is known as private ownership in co-owned buildings and generally relevant to ownership of condominiums by foreigners.*

Cambodia has a Land Registry and the cadastral registry unit is responsible for recording the sale and purchase of land. The register records the names of the owner(s), as well as details of the land: identification of the land parcel, the size of land parcel, the easements, and any other encumbrances. Land owners are responsible for submitting any changes in ownership to the relevant cadastral office, however, no beneficial ownership information is required. The information contained on the Land Registry is in principle publicly available (for a fee), but in practice real estate agents or developers are unable to access the information.

Prior to 2018, requesting the information needed to be in person. Today landowners can access or confirm their own information via a QR code on the physical hard title. Real estate agents or individuals must first request a copy of the title from the landowner, and then go in person to the cadastral office to confirm ownership. Independent titles searches are not possible and to verify or assess any debts or claims over a piece of land with the Ministry of Land Management, Urban Planning and Construction requires a copy of the hard title or the seller's permission. Where the seller or landowner is a legal entity, the buyer will request additional information including: a copy of the ID of the shareholder; a certificate copy of the certificate of incorporation of seller's company, as issued by the MOC; a power of attorney, specifically stating that the seller has the power to transfer land title to the buyer; and a resolution, signed by the board of directors, authorizing the representative of the seller to act.

Foreign ownership of land

Foreign legal entities and foreign individuals are prohibited from owning land and property in Cambodia, except for units in co-owned buildings from the first floor up. For a legal entity to own land, it must have the registered place of business and address in Cambodia, with 51% of voting shares held by Cambodian citizens.

Legal loopholes exist to by-pass these restrictions so that foreign individuals or entities may essentially own land and other property in Cambodia.

Landholding companies: the most widely used vehicle for foreigners to secure land and property in Cambodia. In this situation, a Cambodian (entity or natural person) and a foreigner incorporate a company. The Cambodian will hold at least 51% of the voting shares which qualifies as a Khmer legal entity under the law. This arrangement may be contractual and is

a service offered by some Cambodian law firms in return for an annual fee. Different structures may exist including a shareholder's agreement with different share classes, contractual arrangements that grant the foreigner special rights in the company (ie. permanent majority on the board); or a mortgage agreement that is registered with the relevant ministry which prevents land from being transferred without the consent of one party.

Nominee structures: is a "securitization agreement" between a buyer and a nominee. It can be in the form of a mortgage agreement registered at the local sangkat, loan agreement, long-term lease agreement, or security agreement which sets out the relationship between the parties. Nominee shareholders must be appointed through a contract that is filed with the MOC. Regardless, in each case, the structure ensures that the foreigner has some form of control over the land or there are restrictions in the Cambodian citizen being able to transfer ownership of the land. Despite its popularity, industry experts argue that these structures circumvent or violate the law.

Obtaining Cambodian citizenship: It is possible to simply buy Cambodian citizenship and therefore acquire the right to own land. Investments above 1.25 billion Riel (approximately USD 312,500) or a direct donation to the State of one billion Riel (USD 250,000) is a path to obtaining Cambodian citizenship. Although it is reported that this can be much lower (USD 50,000-70,000). Between 2015-2018, it is estimated that over 1,000 foreigners obtained Cambodia's citizenship through investment (predominantly South Korean and Chinese nationals).

IV. Law on Anti-Corruption

Cambodia's Anti-Corruption Law (2010) and amended in 2011, establishes the anti-corruption institutions: the National Council against Corruption (**NCAC**); and the Anti-Corruption Unit (**ACU**). It also requires public officials to declare their assets and liabilities when they take and leave office. It must be updated every two years while the person is in office. It covers

(i) members of Senate, members of National Assembly, and members of the Royal Government of Cambodia;

(ii) appointed public officials with a specific mandate; (iii) members of the NCAC, chairperson, vice chairpersons and all officials of the ACU;

iv) civil servants, police, military personnel and other public servants appointed by royal decrees or sub-decrees;

(v) other officials appointed by prakas decided by the ACU's list of declaration on assets and liabilities, after consultation with the NCAC;

(vi) trial judges, prosecutors, notary public, court clerks and bailiffs;vii) leaders of civil society. The declarations not public. In 2021, the ACU indicated that public officials' compliance rate in submitting their asset declaration forms is close to 100%.

Declarations do not extend to assets to which they are the ultimate beneficial owners, assets of family members and so on. Sanction for conflicts of interest are not regulated allowing for individuals and/or their family members have dual roles.

Gaps in Beneficial Ownership Transparency in Cambodia's Land and Property Sector

Recent legal reforms and the establishment of an online company database have improved the availability of basic information available on legal entities, and land and property ownership. This is critical for Cambodia's ongoing economic success and efforts to combat money laundering, terrorist financing, and corruption. There are however still gaps in relation to beneficial ownership transparency in the real estate sector that may be addressed.

A. Lack of awareness of beneficial owners

Approximately 30% of property transactions in Phnom Penh are done through real estate agents. Of these, it is estimated that 60% are done in cash. Investigations conclude that the identification of beneficial owners of landholding companies (or other legal entities), trusts, and other legal arrangements, like nominee structures, is not standard practice. The problem is compounded by a low level of awareness of the obligations under the AMP Law and an over-reliance on the know your customer due diligence carried out by financial institutions. Stakeholders interviewed had not heard of the term beneficial owner and the vice president of the Cambodian Valuers and Estate Agents Association, has been put on record stating that his association did not make a habit of looking deeply into the source of investors' money. This opens up opportunities for corruption and money laundering.

There is also limited opportunity for non-financial sectors (ie land and property professionals) to learn about beneficial ownership best practices. The FIU has focused on assisting financial institutions in understanding the AML Law, however there has been little outreach to or interaction with non-financial business or professionals.

Common Scenario: Ultimate Beneficial Owners

Company A is looking to buy and develop land. It is owned 100% by an incorporated company ABC. From the company's website it is a private company, and its share distribution is not publicly available. There are three listed Directors. **Director A** is the daughter of politician P. **Director B** is the son of a **politician P**. **Director C** is also the CEO and the wife of **politician P**. **Politician P** may be considered the ultimate beneficial owner of the company looking to buy land because of his influence and possible control over the decision of the daughter, son and wife.

B. Beneficial ownership information is not easily accessible in Cambodia

Cambodia does not have a beneficial ownership register. This makes know-your-client and due diligence difficult for real estate agents. In the February 2022 FUR report, Cambodia was reported as having issued several CDD Directives related to beneficial ownership however, implementing regulations for the Law on Commercial Enterprises had not been issued at the time of the report. There is no requirement for persons or entities to record beneficial ownership information with the Ministry of Land or MEF. The Land Registry is not publicly available or readily accessible to real estate professionals. Moreover, businesses are not required to submit beneficial ownership information to the MOC upon registration (e.g., through the new Single Portal), and shareholder information is not publicly available through the MOC's online, searchable database. Cambodian authorities (eg, FIU, ACU, and the judicial police,) have better access to information relevant to beneficial ownership. Judicial police may obtain information with approval from prosecutors and investigating judges. This information may include: tax records, company records, real estate, and movable property records. However for additional information, like beneficial owners, they must request access from the MOC which requires an understanding of beneficial ownership information. Stakeholder interviews report that authorities are not well coordinated and do not thoroughly investigate financial intelligence.

Common Scenario: Know-Your-Client Due Diligence

Mr C is a property developer who pays US\$500,000 in cash instalments to develop land near one of Cambodia's beaches. The real estate agent completes the transaction and, on the instructions of **Mr C**, registers the land in the name of C Enterprises. C Enterprises is a company with three shareholders – **Mr C**, **Mrs C** and C Holdings. C Holdings has a 70% voting right in C Enterprises. The information of the shares for C Holdings is not publicly available.

The real estate agent is dealing with **Mr C**. Little due diligence is done and no financial institutions are involved in the transaction. The real estate agent is not aware of the true beneficial owner of the land.

C. Lack of awareness around anti-corruption obligations as a reporting entity

STRs filed by reporting entities are not publicly available. It is therefore impossible to determine if real estate agents have filed a STR. In an interview, a industry expert says that the lack of awareness on anti-money laundering processes means that the filing of a report is unlikely. The National Bank of Cambodia issued Guidelines on submitting Suspicious Transaction Reports for all Reporting Entities under Anti-Money Laundering and Combating the Financing of Terrorism (2018) to provide reporting entities with more information on how to submit higher quality STRs to the FIU. However, these guidelines do not provide sufficient information on identifying beneficial owners.

Common Scenario: Buying Citizenship

A foreign national, Z, is a known drug lord in Country X. He has acquired a national citizen of Cambodia. As a Cambodian citizen, Z opened six different corporate structures across different sectors, including real estate. These six corporate structures are run by the three children of Z. The company registers have them all listed as national citizens of Cambodia.

Of interest is corporate structure Q, a property development company. It is a fully owned subsidiary of a foreign owned company. The foreign owned company has four shareholders, including the three children of Z. The corporate structure Q, buys and develops land with cash.

A real estate agent facilitates the buying and selling of property for Mr Z and is unaware and never files a STR.

However, if the real estate agency was knowledgeable about the anti-money laundering obligations, the payment of cash and the awareness of Mr Z's business in other countries means the real estate agent should reasonably suspect that the money is obtained illegally, and is under an obligation to file a suspicious transaction report.

D.Limited oversight of foreign individuals or foreign legal entities

Landholding companies and nominee structures are the primary mechanisms that foreigners use to own or control land and property in Cambodia. Foreign owned companies may not own more than 49% of the shareholders and are not allowed to own land. There is no specific oversight review mechanism for foreign investment in Cambodia and foreign investors do not require specific approvals to invest. This means there is little attention paid to these structures that may be used to facilitate money laundering, terrorist financing, and corruption.

Common Scenario: Foreign National

A local company was granted a license to mine a large area of forest. The local company has two shareholders: a foreign individual (49%); a Cambodian national (51%).

The foreign individual's shares have a special condition attached that give them the right to prevent any transfer of the property without shareholder approval.

The control over the land is likely to be the foreign individual, making them the beneficial owner.

E.Lack of enforcement and sanctions against real estate professionals and businesses

The Royal Government of Cambodia and law enforcement have recently increased their efforts to combat money laundering and corruption. In July 2020, the Phnom Penh Municipal Court sentenced five Chinese nationals, including one in absentia, to two years each in two separate cases for bringing an undeclared sum of USD 1.75 million into Cambodia through the Phnom Penh airport. In October 2020, the Ministry of Information reported that Cambodia had investigated 140 money laundering cases as of June 2020 (22 cases were investigated, with five going to trial).

Since March 2022, the Minister of Interior, who is also the head of the National Committee to Combat Money Laundering and the Financing of Terrorism and Proliferation of Weapons of Mass Destruction, issued a four-page set of instructions to all units acting as judicial authorities ordering them to establish standard operating procedures and cooperate with relevant institutions in money laundering investigations. The National Police Second Lieutenant from the Anti-Money Laundering Unit also stated that his unit had investigated six cases of money laundering in 2021 and that all six of these cases had been sent to trial. Another prominent conviction for money laundering in 2021 was against the former Cambodian Consul-General to Kunming, Yunnan province in China. He was sentenced to three years in jail and fined USD 25,000.

In February 2022, the United Nations Office on Drugs and Crime, the Australian Embassy in Phnom Penh (the Australia Federal Police), and the Central Security Department, 25 law enforcement officials from the Ministry of Interior and Ministry of Justice held a five-day money laundry investigation workshop. The outcome support Cambodia in its removal from the FATF's "grey list." Cambodia was removed from the grey list in early 2023.

However there are no known sanctions against financial institutions, and very little is known about investigations and prosecutions of real estate agents, lawyers, accountants, notaries, and other real estate professionals for facilitating money laundering.

Common Scenario: Offshore Company

A local company wants to purchase land for a development project. They agree with real estate agent (Mr W), to purchase the land for US\$300,000 in cash. The local company has three shareholders, a local Khmer law firm, and two incorporated companies in an offshore jurisdiction. This offshore jurisdiction that does not have public records of corporate ownership. It is difficult to determine the ultimate shareholder.

The law firm is renowned for providing services to circumvent foreigner entities purchasing property and is known to Mr W. Mr W hears rumours about one of the incorporated companies being involved in illegal activities and previous criminal activity.

Mr W is unsure what to do but knows he will get a large finders fee for the property. Mr W decides to do nothing and proceeds with the sale of the land.

There is limited risk of sanction for Mr W's decision to facilitate the transaction.

Recommendations

RECOMMENDATIONS

The following recommendations are aimed at improving the knowledge of anti-money laundering obligations for reporting entities in relation to the land and property sector. The recommendations have been formulated to provide practical steps for decision-makers to improve beneficial ownership transparency and support the land and property sector (including real estate agents) to comply with anti-corruption measures.

Building capacity of real estate agents:

- Increase opportunities for real estate agents and those involved in land and property transactions to learn about their obligations under the laws. This includes targeted dissemination of changes to the legal framework to stay informed of updates, including to bodies such as the Cambodian Valuers and Estate Agents Association.

- Increase collaboration between the FIU, Ministry of Land, MEF and those involved in land and property transactions to facilitate compliance and identifying challenges in relation to the application of the law.

- Develop a set of guidelines for the land and property sector on anti-money laundering and the obligations to file STRs.

- Consider continuous learning obligations for members of key associations, including the Cambodia Real Estate Association, to ensure members stay up-to-date and informed of changes to the sector.

Strengthening legal framework

- Amend the laws to provide a clear definition of legal entity.

- Bring the definition of 'beneficial owner' in line with FATF standards.

- Conducting a money laundering risk assessment specifically associated with legal persons and legal arrangements in the land and property sector.

- Amend the Anti-Corruption Law to require public officials to annually declare all assets, including those that would fall under their effective control or in which they are the ultimate beneficial owner.

- Consider reporting of conflict of interests for public officials, including those that involve the family members of public officials and assets in their names.

- Require verification of asset declarations as set out the process to be used by the ACU.

- Consider implementing freedom of information requests on the asset declaration of public officials.

- Strengthen sanctions so that they are proportionate and dissuasive.

Improving transparency of information framework

- Create a Land Registry that is searchable database for land ownership that is publicly available to facilitate independent title searches.

- All businesses registering through the new Single Portal should provide accurate, up-to-date information on beneficial owners that is properly verified by competent authorities.

- Establish a central beneficial ownership registry with sufficient, searchable, and structured data on the ultimate beneficiaries and owners of all legal entities in Cambodia. The registry should be easily accessible by authorities and available to the public.

- Make shareholder information available to the public.

- Publish statistics of the ACU including the number of investigations and outcomes of those investigations

Strengthening the capacity for enforcement

- Improve the AML oversight of the real estate industry.
- Impose adequate sanctions for non-compliance and late filings of personal information.
- Strengthen the capacity and independence of judicial police, lawyers and judges to investigate and prosecute crimes in relation to money laundering and corruption.
- Improve cooperation between the FIU and law enforcement to provide guidance for investigations involving the land and property sector, enhance financial intelligence investigations, and improving practical skills.

Annex 1**COMPARISON OF BENEFICIAL OWNERSHIP REQUIREMENTS IN VARIOUS COUNTRIES**

Country	Beneficial ownership registry	Legal persons / arrangements included in registry	Update and verification mechanisms	Sanctions for late or non-compliance	Public access	"Fit and proper" test
Argentina	Yes ¹	Yes, ² also trusts ³	No ⁴	Yes ⁵	No ⁶	Yes ⁷
Cambodia	No	n/a	n/a	n/a	n/a	Yes
France	Yes ⁸	Yes, also trusts ⁹	No ¹⁰	Yes ¹¹	Partially ¹²	Yes ¹³
Ghana	Yes ¹⁴	Yes, but no trusts ¹⁵	No ¹⁶	No ¹⁷	Not yet ¹⁸	Yes ¹⁹
Indonesia	Yes ²⁰	Yes, but no trusts ²¹	No ²²	Not yet ²³	Upon request ²⁴	Yes ²⁵
Kenya	Yes ²⁶	Yes, ²⁷ but no trusts ²⁸	No ²⁹	Yes ³⁰	Yes, but only upon consent of beneficial owner ³¹	Yes ³²
Macedonia	Yes ³³	Yes, ³⁴ also trusts ³⁵	No, but strong obligation on entities to verify identity of beneficial owner. ³⁶	Yes ³⁷	No ³⁸	Yes ³⁹
Malaysia	Yes ⁴⁰	Yes, but no trusts ⁴¹	No, self-regulated approach ⁴²	Yes ⁴³	No ⁴⁴	Yes ⁴⁵
Myanmar	Yes ⁴⁶	Yes, also trusts ⁴⁷	No ⁴⁸	Yes, but needs clarification ⁴⁹	No ⁵⁰	Yes ⁵¹
Singapore	Yes ⁵²	Yes, ⁵³ also trusts ⁵⁴	No ⁵⁵	Yes, but not adequate ⁵⁶	No ⁵⁷	Yes ⁵⁸
The Netherlands	Yes ⁵⁹	Yes, ⁶⁰ also trusts ⁶¹	No ⁶²	Yes ⁶³	Partially ⁶⁴	Yes ⁶⁵
United States	Yes, in process ⁶⁶	Yes, but only business trusts ⁶⁷	No ⁶⁸	Yes ⁶⁹	No ⁷⁰	Yes ⁷¹
United Kingdom	Yes, in process ⁷²	Yes, also trusts ⁷³	No ⁷⁴	Yes ⁷⁵	Yes ⁷⁶	Yes ⁷⁷
Vietnam	No ⁷⁸	n/a	n/a	n/a	n/a	Yes, but not comprehensive ⁷⁹

Annex 2

COMPARISON OF BENEFICIAL OWNERSHIP LEGAL FRAMEWORKS IN SOUTHEAST ASIA

	UNCAC	APG	G20 ACWG	EITI	OGP
Brunei Darussalam	✓	✓			
Cambodia	✓	✓			
Indonesia	✓	✓	✓	✓	✓
Lao PDR	✓	✓			
Malaysia	✓	✓			
Myanmar	✓	✓		<i>(suspended)</i>	
Philippines	✓	✓		✓	✓
Singapore	✓	✓	<i>(permanent guest)</i>		✓
Thailand	✓	✓			
Vietnam	✓	✓			

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APG/MER 2017, para. 256

Ibid.

APG/MER 2017, para. 263.

APG/MER 2017, para. 264, Law on Taxation, Art. 101.

Ibid.

Patrick John Smith & Tok Tavsothaly, “Cambodian trust law” BNG Legal, December 2019, accessed 1 December 2021, <https://bnlegal.com/index.php/cambodian-trust-law-december-2019/>; Matthew N Rendall, “Implementation of the Trust Law in Cambodia” Chambers & Partners, 6 December 2021, accessed 12 December 2021, <https://chambers.com/articles/implementation-of-the-trust-law-in-cambodia>.

Ibid.

Supra 81.

Ibid.

Ibid.

Constitution of the Kingdom of Cambodia 2008, Art. 44.

The New Investment Law replaces the existing framework, which included the Law on Investment 1994 and the Law on the Amendment to the Law on Investment 2003.

Other relevant laws include those relating to economic land concessions: Sub-Decree on Economic Land Concession, Dec. 2005, No. 146 ANK/BK; Sub-Decree on the Mortgage and Transfer of the Rights Over a Long-Term Lease or Economic Land Concession, Aug. 2007, No. 114 ANK/BK; Circular on the Management of Residences and Lands Leased to International Organizations, Foreign Companies or Foreigners, Council of Ministers, Jan. 1990, CIR 01 SR.

“Understanding property titles in Cambodia”, realestate.com.kh website, 7 June 2020, accessed 12 January 2022, <https://www.realestate.com.kh/guides/understanding-property-titles-in-Cambodia/>.

Land Law 2001, Arts. 1-2; Law on Co-Owned Buildings, Arts. 4-6.

Land Law 2001, Art. 65, 66.

Land Law 2001, Art. 238.

Ibid.

Land Law 2001, Art. 240; Interview of Industry Expert, dated 28 November 2021; Interview of Industry Expert, dated 7 December 2021; Interview of Industry Expert, dated 28 December 2021.

Interview of Environmental Assessment Expert, January 2022; Chhing Chhut, “MLMUPC launches online land title information checking service” Cambodia Property website, 21 February 2020, accessed 12 January 2022, <https://www.cambodiaproperty.info/mlmupc-launches-online-land-title-information-checking-service/>.

Interview of Industry Expert, dated 7 December 2021; Interview of Industry Expert, dated 28 December 2021; Interview of Environmental Assessment Expert, 7 January 2022.

Ibid.

Constitution of the Kingdom of Cambodia, Art. 44; Land Law 2001, Arts. 8, 9; New Law on Investment 2021, Art. 15, 21; Law on Co-Owned Buildings, Arts. 4-6.

Law on Commercial Enterprises 2005, Art. 101; Land Law 2001, Art. 9.

Sylvia Nam, "Fiction, fraud, and formality: the legal infrastructure of property speculation in Cambodia", *Critical Accesses Asian Studies*, v52, issue 3 (2020), p364–377.

Ibid. See also: Interview of Industry Expert, dated 28 December 2021; Interview of Industry Expert, dated 7 December 2021; Interview of Industry Expert, dated 28 November 2021.

Law on Commercial Enterprise 2005, Art. 101; New Law on Investment 2021, Art. 15, 21.

Supra n100. See also: IPS Cambodia, "Foreign property ownership in Cambodia – which is best for you" IPS website, 6 March 2018, accessed 15 January 2022, <https://ips-cambodia.com/cambodia-foreign-property-ownership/>.

Ibid.

A long-term lease agreement may not exceed 50 years. See Civil Code 2007, Art. 247.

APG/MER 2022, para 127.

Bobby Peoples, "Buying through a nominee structure", Phnom Penh Real Estate website, 2021, accessed 12 January 2022, <https://www.phnompenhrealstate.net/buying-through-a-nominee-structure/>; Dr. Sok Siphana, "Anti-money laundering forum: Cambodia", accessed 15 January 2022, <https://www.anti-moneylaundering.org/asiapacific/cambodia.aspx>.

Supra n100. See also: Interview of Industry Expert, dated 28 December 2021; Interview of Industry Expert, dated 28 November 2021.

Interview of Industry Expert, dated 7 December 2021.

Nationality Law 1996, Arts. 10-12; Piyush Grcg, "Cambodia citizenship by investment: quick guide" *Golden Capitalist* 2021, accessed 12 January 2022, <https://www.goldencapitalist.com/cambodia-citizenship-investment-quick-guide/>.

Supra n100.

Supra n110..

Ibid., Arts. 6-13, 17.

Chapter 4 - Anti-Corruption Law (2010).

Ibid., Arts. 17-18.

Supra n28.

Ibid.

Ibid.

Ibid.

For example, the updates to the AML Law, creation of the Single Portal of the MEF; and the MOC's electronic searchable database of company information.

Ibid.

Ibid.

Interview of Environmental Assessment Expert, 7 January 2022; Interview of Industry Expert, dated 28 December 2021; Interview of Industry Expert, dated 28 November 2021; Interview with Representatives of MOC, dated 1 November 2021.

Interview of Industry Expert, dated 7 December 2021; APG/MER 2017, para 27, 226.

Interview of Industry Expert, dated 28 December 2021; Interview of Industry Expert, dated 7 December 2021; Interview of Industry Expert, dated 28 November 2021. See also *Voices of Democracy*, "Official admits suspected money laundering fueling property buys" VOD website, Jul. 2019, accessed 1 September 2021, <https://vodenglish.news/official-admits-suspected-money-laundering-fueling-property-buys/>.

APG/MER 2017, paras. 27, 226, 245, 255, 284, 297, 297.

APG/MER 2017, paras. 297-300.

APG/MER 2022, para 105.

APG/MER 2017, para. 275. Reporting entities must report STRs to FIU, which has broad powers to access information. It is an offence under the AML Law for any person to intentionally fail to provide information to FIU and the supervisory authorities on the basis of banking or professional secrecy (Article 29 New-2).

Ibid. The ACU also has broad powers to access information and documents under Article 27 of the Law on Anti-Corruption, but only in cases where corruption is suspected.

Ibid. Judicial police may conduct searches and confiscate evidence (Code of Criminal Procedure 2007 Art. 91-92), but they do not have specific powers to compel the production of records in order to obtain timely access to beneficial ownership information held by parties, except in drug or terrorism cases (Law on Drug Control 2005 Art 85 and Law on Counter Terrorism 2007 Art 88).

Ibid.

Ibid.

Interview with Representatives of MOC, dated 1 November 2021.

Ibid.

Interview of Industry Expert, dated 7 December 2021; Interview of Industry Expert, dated 28 November 2021.

National Bank of Cambodia, "Guidelines on submitting suspicious transaction reports (STRs) for all reporting entities under anti-money laundering and combating the financing of terrorism" (unofficial translation 30 April 2018) accessed 15 January 2021, https://www.nbc.org.kh/cafiu/download/Guidance_on_Submitting_Better_STRs/Guidance_on_Submitting_Better_STRs_CAFIU_30_April_2018_ENG.pdf.

Tilleke & Gibbins, "Snapshot : foreign investment law and policy in Cambodia" February 2022, accessed 5 July 2023, <https://www.lexology.com/library/detail.aspx?g=59fb4f30-689c-41a3-8a0f-0cf274f21435>.

Post Staff, "Cambodia and Morocco removed from FATF 'Money Laundering Grey List'", The Phnom Penh Post, 24 February 2023, accessed 6 July 2023. See also: Vonn Dara, "Kingdom's efforts to prevent money laundering stepped up for 'grey list' exit", The Phnom Penh Post, 15 March 2022, accessed 26 April 2022, <https://www.phnompenhpost.com/national/kingdoms-efforts-prevent-money-laundering-stepped-grey-list-exit>.

Neim Chheng, "Kingdom lauded for stand against money laundering" The Phnom Penh Post, 11 August 2020, accessed 18 January 2022, <https://www.phnompenhpost.com/national/kingdom-lauded-stand-against-money-laundering>.

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Supra n140.

Ibid.

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Ibid.

Yin Soeum, "Law enforcers vow to remove Cambodia from money laundering 'Grey List'", Khmer Times, 4 February 2022, accessed 27 April 2022, <https://www.khmertimeskh.com/501018829/law-enforcers-vow-to-remove-cambodia-from-money-laundering-grey-list/>.

Article 1(e), AFIP's General Resolution No. 4697/2020.

Tax Justice Network, Apr. 2020, Article 2, Resolution 4697/2020: <https://taxjustice.net/2020/04/20/argentina-finally-has-a-beneficial-ownership-register-now-it-should-make-it-public/>, accessed 26.04.2022. This resolution applies to entities incorporated in Argentina and to foreign entities that have Argentine shareholders, directors, or people with a power of attorney over the foreign entity.

Article 1, AFIP's General Resolution No. 4912/2021. The final beneficiary will be considered to be the human person who owns participation or who, by any means, exercises direct or indirect control of the trust. Trustors, trustees, trustees, beneficiaries, protectors and the like who act in trusts in the country and abroad, when they are human persons, will also be considered final beneficiaries.

No information in Resolution 4697/2020. Verification of beneficial ownership information is also listed as a potential improvement. Tax Justice Network, Apr. 2020, Argentina finally has a beneficial ownership register. Now, it should make it public: <https://taxjustice.net/2020/04/20/argentina-finally-has-a-beneficial-ownership-register-now-it-should-make-it-public/>, accessed 26.04.2022.

Article 13, Resolution 4697/2020. Failure to comply will result in the application of the sanctions provided for in Law No. 11,683, text ordered in 1998 and its modifications.

No information in Resolution 4697/2020, which suggests that information will be confidential and only accessible to tax authorities. No public access is also listed as a negative aspect. Tax Justice Network, Apr. 2020, Argentina finally has a beneficial ownership register. Now, it should make it public: <https://taxjustice.net/2020/04/20/argentina-finally-has-a-beneficial-ownership-register-now-it-should-make-it-public/>, accessed 26.04.2022.

Already in 2014, Argentina had improved fit and proper tests for banking and other financial entities. For directors, trustees, general managers or similar positions, the fit and proper regime is on par with that of the EU. FATF, Jun. 2014, Mutual Evaluation Report of Argentina: https://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR%20Argentina_reduced.pdf, accessed 26.04.2022; European Banking Authority, Annex – Assessment of Argentina: <https://service.betterregulation.com/sites/default/files/upload/2019-05/Annex%20to%20EBA%20Opinion%20on%20third%20country%20equivalence%20-%20Argentina.pdf>, accessed 26.04.2022.

Article 8, Ordinance No. 2020-115.

Ibid. Also includes collective investments, associations, foundations, endowment funds, perennial funds, collective investment groups and trustees.

No information in Ordinance No. 2020-115, except for the requirement in Article 8 to obtain and keep accurate and up-to-date information on beneficial owners. However, no information on any mechanisms.

Article 8, Ordinance No. 2020-115. Where this time limit is not respected, or where the information provided by the beneficial owner is incomplete or erroneous, the company or entity may refer the matter to the president of the court ruling in summary proceedings in order to obtain an order for the transmission of this information, where necessary under penalty. See also sanctions in Article L. 574-5 Monetary and Financial Code (six months imprisonment and a fine of EUR 7,500).

Article 8, Ordinance No. 2020-115. Only information relating to the name, name used, pseudonym, first names, month, year of birth, country of residence and nationality of the beneficial owners and the nature and extent of their beneficial interest in the company or entity shall be publicly accessible.

Article L. 312-30, AMF General Regulation (Before issuing the professional license, the AMF shall verify: 1. that the relevant natural person is fit and proper, that he is familiar with the professional requirements and capable of performing the functions of a compliance officer for investment services.); Article 47(2) Directive (EU) 2015/849 (Member States shall require competent authorities to ensure that the persons who hold a management function in the entities referred to in paragraph 1, or are the beneficial owners of such entities, are fit and proper persons.).

Article 373(1), Companies Act, 2019 (Act 992): <https://rgd.gov.gh/docs/Act%20992.pdf>, accessed 26.04.2022.

Ibid. It applies to a company limited by shares, limited by guarantee, an unlimited company, or an external company. It does not apply to sole proprietors and partnerships.

Article 373(8), Companies Act, 2019 (Act 992) (The Minister may, by legislative instrument, make Regulations to prescribe the (b) procedure for companies to maintain up to date and accurate records of beneficial ownership; (c) procedure for collection, authentication, verification or rectification of information entered in the Central Register.).

Ibid. (The Minister may, by legislative instrument, make Regulations to prescribe the (d) penalty for default in complying with reporting requirements in respect of the Central Register.).

Article 373(3), Companies Act, 2019 (Act 992) (The Registrar shall (c) in line with open data best practices, make an electronic format of the Central Register available to members of the public for inspection.). However, it is not yet public. EITI, Oct. 2021, Ghana and Liberia take steps to disclose owners of extractive companies: <https://eiti.org/news/ghana-liberia-take-steps-to-disclose-owners-of-extractive-companies>, accessed 26.04.2022.

Fit and Proper Persons Directive, 2019 (shareholders, directors or persons holding key management positions within a bank, savings and loan company, finance house or a financial holding company).

Article 14, Presidential Regulation No. 13/2018 (provide information about the corporation and beneficial owner of the corporation on request of authorized agencies and law enforcement agencies). EITI, 2018, Indonesia Presidential Regulation No.13/2018 – Beneficial Ownership: <https://eiti.esdm.go.id/en/perpres-13-2018/>, accessed 26.04.2022.

Article 2, Presidential Regulation No. 13/2018 (a. limited company; b. foundation; c. association; d. cooperative; e. limited partnership; f. partnership firm and g. other forms of corporations).

Although Article 21 Presidential Regulation No. 13/2018 states that corporations are required to update the information every year, the government does not have a system for discovering that beneficial ownership data has been withheld or concealed. Global Business Guide, Mar. 2018, Legal Updates: Mandatory Disclosure of Beneficial Owners in Indonesia: http://www.gbgindonesia.com/en/main/legal_updates/mandatory_disclosure_of_beneficial_owners_in_indonesia.php, accessed 26.04.2022.

Although Article 24 Presidential Regulation No. 13/2018 states that corporations that fail to implement the provisions as referred to in Article 14 can be subject to sanctions provided in other laws and regulations, the Regulation does not specify which sanctions. Global Business Guide, Mar. 2018, Legal Updates: Mandatory Disclosure of Beneficial Owners in Indonesia: http://www.gbgindonesia.com/en/main/legal_updates/mandatory_disclosure_of_beneficial_owners_in_indonesia.php, accessed 26.04.2022.

Article 29(1), Presidential Regulation No. 13/2018 (Everyone can request information on the beneficial owner from the authorized agencies.).

OJK Regulation 34/2018 for controlling shareholders, directors, commissioners, executive officers, sharia supervisory board members, internal auditors, pension fund managers and actuaries (as relevant) of banks, investment managers, security houses, insurance companies, pension funds, multi-finance companies and fiduciary companies, including those that have ceased to hold office at the time the reassessment is conducted. Global Business Guide, Mar. 2018, Legal Updates: OJK Issues a Regulation on Fit and Proper Test Reassessment: http://www.gbgindonesia.com/en/main/legal_updates/ojk_issues_a_regulation_on_fit_and_proper_test_reassessment.php, accessed 26.04.2022.

Article 93A. (1), The Companies Act, No. 17 of 2015, Rev. 2021: <http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/C/Companies%20Act%20-%20No.%2017%20of%202015/docs/CompaniesAct17of2015.pdf>, accessed 26.04.2022.

Article 93A. (1), The Companies Act, No. 17 of 2015, Rev. 2021 (Every company shall keep a register.).

Article 104, The Companies Act, No. 17 of 2015, Rev. 2021 (A company shall not accept, and shall not enter in its register of members, notice of any trust, expressed, implied or constructive.).

No information in the Companies Act, No. 17 of 2015, Rev. 2021. Only Article 103 The Companies Act, No. 17 of 2015, Rev. 2021 (If the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or the cessation of membership of a person who has ceased to be a member of the company has not been entered in that register, the person affected, or the company or any member of the company, may apply to the Court for rectification of the register. Going forward all companies should also ensure that they introduce a system to keep track of any changes in the information of beneficial owners.); see also Bowmans, Oct. 2020, Important Developments Regarding Disclosure of the Beneficial Ownership of Companies in Kenya: <https://www.bowmanslaw.com/insights/corporate-services/important-developments-regarding-disclosure-of-the-beneficial-ownership-of-companies-in-kenya/>, accessed 26.04.2022.

Article 93A. (5), The Companies Act, No. 17 of 2015, Rev. 2021 (If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.).

Article 96(1) and 97, The Companies Act, No. 17 of 2015, Rev. 2021. The company should not disclose the information of the beneficial owner to the public, unless the beneficial owner has consented to the disclosure. <https://www.oraro.co.ke/2020/11/02/disclosure-of-beneficial-ownership-of-companies-in-kenya/>

Central Bank of Kenya (Declaration of Currency) Regulations, 1998 requires a duly completed “fit and proper” form for proposed significant shareholders, directors, chief executive officer and other senior officers. See form: <https://www.centralbank.go.ke/images/docs/forms/Directors%20%20Senior%20Officers%20Fit%20%20Proper%20Form%202011.pdf>

Article 18, Official Gazette of the Republic of North Macedonia no. 275/2019. <https://ufr.gov.mk/wp-content/uploads/2020/05/LAW-ON-THE-PREVENTION-OF-MONEY-LAUNDERING-AND-FINANCING-OF-TERRORISM-eng.pdf>

Article 25, Official Gazette of the Republic of North Macedonia no. 275/2019: “entities” in Article 18 refers to the entities that are kept in the Central Register of the Republic of Macedonia.

Articles 21, 25(4), Official Gazette of the Republic of North Macedonia no. 275/2019.

Article 18(2), Official Gazette of the Republic of North Macedonia no. 275/2019: The entities shall be obliged to verify the identity of the beneficial owner on the basis of data and information from reliable and independent sources, to the extent which is adequate to the conducted risk assessment, so as to be assured which the beneficial owner is. However, no information on any mechanisms.

Article 167, Official Gazette of the Republic of North Macedonia no. 275/2019. Failure to comply with the obligation to register UBO or to report accurate data about the UBO may result in fine of up to EUR 10,000 for the legal entity and up to EUR 3,000 for the representative of the legal entity. <https://www.papazoski-mishev.mk/en/publications/the-new-macedonian-ultimate-beneficial-owner-register.html>

Article 29, Official Gazette of the Republic of North Macedonia no. 275/2019: The data that are entered in the register shall be available to the Office, the competent state prosecution bodies, the courts, the bodies that conduct supervision referred to in Article 146 of this Law, and the entities referred to in Article 5 of this Law directly and on the basis of an electronic access.

Yes, but fit & proper criteria for financial institutions do not cover all the aspects required by EC 23.3.1, that is in terms of all criminal records and in relation to persons that are “associates” to criminals. <https://rm.coe.int/north-macedonia-fifth-expedited-follow-up-report-exit-4th-evaluation-r/168094629f>

Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons: Background 4. This guideline is aimed at providing guidance to companies incorporated and registered under the CA 2016 and limited liability partnerships registered under the LLPA 2012, on the operation of the BO reporting framework. This guideline must be read together with the relevant statutory provisions under the CA 2016 and LLPA 2012. [http://www.ssm.com.my/Pages/Legal_Framework/Document/Guideline%20for%20BO%20Reporting%20Framework%20\(27022020\).pdf?fbclid=IwAR0uGn4W26aAiXB872cLt3BT1-iepX6pG1RJz0_xXrrkwaX8g8rtk1ztoUw](http://www.ssm.com.my/Pages/Legal_Framework/Document/Guideline%20for%20BO%20Reporting%20Framework%20(27022020).pdf?fbclid=IwAR0uGn4W26aAiXB872cLt3BT1-iepX6pG1RJz0_xXrrkwaX8g8rtk1ztoUw)

Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons: Introduction 11. For the purposes of this guideline, legal persons mean all types of businesses entity as defined in the CCMA 2001.

Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons: Introduction 5. In promoting transparency of beneficial ownership, business entities must adopt a self-regulated approach in effecting the requirements provided in this guideline. The business entities must themselves verify and keep accurate and up to date the information in the register.

It is an offence under Section 591 of the CA 2016 to make or authorize the making of a statement that a person knows is false or misleading. That person may be liable, upon conviction, to imprisonment for a term not exceeding ten (10) years or to a fine not exceeding RM3 million or both. <https://www.pwc.com/my/en/perspective/corporate-services/201120-meeting-the-requirements-of-beneficial-ownership-reporting-in-malaysia.html>

Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons: Background 7. Under the BO reporting framework, a company or a limited liability partnership is required to – (f) give access to competent authorities, law enforcement agencies, the BO whose name has been entered in the register of BO and any other person authorized by the BO.

Already in 2015, Malaysia had well implemented market entry fit and proper controls across FIs, though some gaps exist with market entry for certain DNFBPs, including casino management. <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Malaysia-2015.pdf>

Under Section 5 of the DICA Directive No. 17/2019 on Disclosure of Beneficial Ownership Information, all legal persons are required to obtain and hold up-to-date beneficial ownership information and submit it in a timely manner to DICA and the Internal Revenue Department. <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-2nd-Follow-Up-Report-Myanmar-2020.pdf>

Section 5 DICA Directive No. 17/2019: all legal persons and legal arrangements. Section 3(c): legal arrangements refer to express trusts or other similar legal arrangements. https://www.dica.gov.mm/sites/default/files/document-files/directive_engfinal_0.pdf

No information in DICA Directive No. 17/2019, except for the requirement in Section 5 to obtain and hold up-to-date information on their beneficial ownership. However, no information on any mechanisms.

Section 10 DICA Directive No. 17/2019 states that any legal person that fails to provide accurate and up-to-date information and fails to comply with the Directive, successor regulations and directive shall be punishable in line with Chapter (XI) of the AML Law. However, there are currently no corresponding provisions in the AML Law, and any penalties for failing to comply with the Directive would need to be clarified. <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-2nd-Follow-Up-Report-Myanmar-2020.pdf>

Section 9 of the DICA Directive No. 17/2019 on Disclosure of Beneficial Ownership Information states that basic information will be available publicly, and beneficial ownership information will only be available to competent authorities.

CBM's directive No. 8/2019 sets out fit and proper criteria for banks (limitation that it only applies to banks). <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-Follow-Up-Report-Myanmar-2021.pdf> Article 2(a) CBM's directive No. 8/2019 states that fit and proper requirements extend to beneficial owners or those with a controlling interest in an FI. Article 2(e) extends fit and proper tests for banks apply to state-owned banks. <https://www.wintpartnership.com/images/directiveno.8-2019-cbm-eng.pdf>

Article 386AF (1) Companies (Amendment) Act 2017: A company incorporated on or after the appointed day must keep a register of its registrable controllers not later than 30 days after the date of the company's incorporation. [https://www.acra.gov.sg/docs/default-source/default-document-library/legislation/legislation-under-acra-purview/Companies\(Amendment\)Act2017gazette.pdf](https://www.acra.gov.sg/docs/default-source/default-document-library/legislation/legislation-under-acra-purview/Companies(Amendment)Act2017gazette.pdf)

All companies incorporated in Singapore, foreign companies and all limited liability partnerships registered in Singapore (unless exempted) are required to maintain registers of registrable controllers. <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/register-of-registrable-controllers>

Article 386AC (c)(vii) Companies (Amendment) Act 2017: A trustee of an express trust to which Part VII of the Trustees Act applies.

Article 386AF (7)(b), 9(a), (10) Companies (Amendment) Act 2017: Besides the obligation placed on companies, a controller will also be required to provide and update information to the companies. https://www.nas.gov.sg/archivesonline/data/pdfdoc/20170310004/Factsheet%20on%20CA%20and%20LLP%20Act%20amendments_media.pdf However, there is no provision which requires the update of the information contained in the register of shareholders of foreign companies on a timely basis. <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Singapore-2019.pdf>

Article 386AF (12)-(13) Companies (Amendment) Act 2017: The maximum penalty for non-compliance is \$5,000. <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/faqs---register-of-registrable-controllers> However, the sanctions for breaches of the requirements for reporting and updating the shareholders' registrar and beneficial ownership information are still not adequately dissuasive. <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Singapore-2019.pdf>

Article 386AF (11) Companies (Amendment) Act 2017: Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, a register or any particulars contained in the register to any member of the public. The information therein can only be used by public agencies for the purpose of administering or enforcing the laws under their purview (e.g., investigation of money laundering offences). <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/register-of-registrable-controllers>

Guidelines on Fit and Proper Criteria set out the fit and proper criteria applicable to all relevant persons in relation to the carrying out of any activity regulated by the Monetary Authority of Singapore under any written law. https://www.mas.gov.sg/-/media/MAS/resource/legislation_guidelines/insurance/guidelines/FSG-G01-Guidelines-on-Fit-and-Proper-Criteria.pdf

Article 35b The Implementation Decree on registration of ultimate beneficial owners of companies and other legal entities (The Netherlands). <https://zoek.officielebekendmakingen.nl/stb-2020-339.html>

Article 3 Wwft Implementation Decree 2018: non-listed private companies (bv) and public companies (nv), foundations, associations with full legal capacity, associations with limited legal capacity but incorporated, mutual insurance companies, cooperatives, partnerships: general partnerships, general commercial partnerships (vof) and limited partnerships (cv), shipping companies, European Public Limited Companies (SE), European Cooperative Societies (SCE), European Economic Interest Groupings (EEIG) which, according to their statutes, have their registered office in the Netherlands. <https://wetten.overheid.nl/BWBR0041193/2020-09-27>

Article 3 Implementation Act on Registration of Ultimate Beneficial Owners of Trusts and Similar Legal Arrangements (the 'Implementation Act') https://www.eerstekamer.nl/behandeling/20211216/publicatie_wet/document3/f=/vlorhinmo3th.pdf

No information in the Implementation Decree on registration of ultimate beneficial owners of companies and other legal entities or the Wwft Implementation Decree.

Failure to provide (correct) data for the UBO register may result in criminal or administrative sanctions being imposed on the legal entity and/or UBO. <https://www.kvk.nl/service-en-contact/ubo-register/>

Public UBO data: first and last name, month and year of birth, nationality, country of residence, the importance and extent of the interest which a UBO has in an organisation. <https://www.kvk.nl/inschrijven-en-wijzigen/ubo-opgave/zijn-de-gegevens-van-ubos-in-het-ubo-register-openbaar/>

Art. 47(2) Directive (EU) 2015/849: Member States shall require competent authorities to ensure that the persons who hold a management function in the entities referred to in paragraph 1, or are the beneficial owners of such entities, are fit and proper persons.

SEC. 6403. National Defense Authorization Act for Fiscal Year 2021: §5336. Beneficial Ownership Information Reporting Requirements, (b) Beneficial Ownership Information Reporting (1) Reporting – (A) In General – In accordance with regulations prescribed by the Secretary of the Treasury, each reporting company shall submit to FinCEN a report that contains the information described in paragraph (2) <https://www.govinfo.gov/content/pkg/BILLS-116hr6395enr/pdf/BILLS-116hr6395enr.pdf>

SEC. 6403. National Defense Authorization Act for Fiscal Year 2021: §5336. Beneficial Ownership Information Reporting Requirements, (11) Reporting Company – The term 'reporting company' – (A) means a corporation, limited liability company, or other similar entity that is – (...) (B) does not include (...) (III) trust described in paragraph (1) or (2) of section 4947(a) of such Code. SEC 885: (B) Corporation – The term 'corporation' means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity. Whilst it is encouraging that such a high percentage (87%) of companies will be disclosing their beneficial owners, there are many important types of businesses that are not required to. <https://www.openownership.org/news/usa-adopts-a-central-beneficial-ownership-register/>

No information in the National Defense Authorization Act for Fiscal Year 2021, except for requirement under §5336. Beneficial Ownership Information Reporting Requirements, (b) Beneficial Ownership Information Reporting (1) Reporting – (D) Updated Reporting for Changes in Beneficial Ownership – that a reporting company shall, in a timely manner, and not later than 1 year after the date on which there is a change with respect to any information described in paragraph (2), submit to FinCEN a report that updates the information relating to the change. However, no information on any mechanisms.

National Defense Authorization Act for Fiscal Year 2021: SEC. 6403. Beneficial Ownership Information Reporting Requirements, (4) Violation of Protocols – Any employee or officer of a requesting agency under paragraph (2)(B) that violates the protocols described in paragraph (3), including unauthorized disclosure or use, shall be subject to criminal and civil penalties under subsection (h)(3)(B).

National Defense Authorization Act for Fiscal Year 2021: SEC. 6403. Beneficial Ownership Information Reporting Requirements, (2) Disclosure – (A) Prohibition – Except as authorized by this sub-section and the protocols promulgated under this sub-section, beneficial ownership information reported under this section shall be confidential and may not be disclosed. Most companies, about 87% in the US, will soon have to disclose their beneficial owners to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN), although this will not be made public. <https://www.openownership.org/news/usa-adopts-a-central-beneficial-ownership-register/>

Bank Secrecy Act (BSA): §5304. Regulations – Upon notice provided to the Secretary, 2 or more financial institutions and any association of financial institutions may share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities. <https://www.govinfo.gov/content/pkg/USCODE-2012-title31/pdf/USCODE-2012-title31-subtitleIV-chap53-subchapII-sec5311.pdf>

The UK promotes the use of public registers of beneficial ownership (BO) in a variety of fora and has led by example in establishing a public registry of BO information and a register of trusts with tax consequences in the UK. <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>

The UK has or intends to have registers of beneficial ownership for three different types of assets: companies, properties and land, and trusts. The Government has since 2016 said it plans to launch a public beneficial ownership register for UK property. An Economic Crime Bill is expected during the 2022-23 parliamentary session. This could include provisions establishing such a register. <https://researchbriefings.files.parliament.uk/documents/CBP-8259/CBP-8259.pdf>

The Government must give Companies House the powers and resources to carry out comprehensive verification of all the information it receives and holds on companies, amending UK legislation accordingly. Companies House is a registrar, not a regulator. By and large, it does not verify the accuracy of what it receives. <https://researchbriefings.files.parliament.uk/documents/CBP-8259/CBP-8259.pdf>

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Part 9: <https://www.legislation.gov.uk/uksi/2017/692/part/9/made> The Government must start enforcing its rules and apply sanctions for those that maliciously break the rules – including fines and prison sentences. <https://researchbriefings.files.parliament.uk/documents/CBP-8259/CBP-8259.pdf>

Information on the beneficial ownership of companies has been publicly available since 2016, although concerns have been raised about its accuracy. The register for trusts that was introduced in 2017 was not public, but as a result of the Fifth Anti-Money Laundering Directive members of the public will be able to access trust data if they can demonstrate a legitimate interest, such as a journalist investigating corruption or money laundering. <https://researchbriefings.files.parliament.uk/documents/CBP-8259/CBP-8259.pdf>

Section 58 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017: The registering authority must refuse to register an application for registration in a register maintained under regulation 54 as a money service business or as a trust or company service provider, if it is satisfied that – is not a fit and proper person to carry on that business. <https://www.legislation.gov.uk/uksi/2017/692/regulation/58/made>

While shareholders and members must be identified in the registers, there is no obligation to identify the ultimate beneficial owner. Also, the stock exchange and business registration agencies are obliged by law to collect BO information for listed companies and companies not yet listed, respectively. However, there are no mechanisms specified in law or otherwise for companies to provide this information to the competent authorities and it was not demonstrated that these authorities collect BO information in practice. <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/APG-Mutual-Evalutaion-Report-Vietnam-2022.pdf>

However, implementation of fit and proper controls is not comprehensive. Criminal background checks of directors and on certain shareholders are undertaken for core principle FIs and casinos, however, the source of funds, fit and proper requirements of beneficial owners and connection to criminal associates is not considered. For remaining FIs and DNFBPs, fit and proper checks rely on basic registration procedures. Supervisors have not refused market entry due to a criminal background or association. <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/APG-Mutual-Evalutaion-Report-Vietnam-2022.pdf>

