

March 13th 2020

Attn: Policy and Legislation Division
BCA Beneficial Ownership
Ministry of Finance
PO Box 9418 Stn
Prov Govt Victoria B.C.
V8W 9V1

Re: British Columbia Consultation on a Public Beneficial Ownership Registry

Dear Sir or Madam,

On behalf of Publish What You Pay Canada, Transparency International Canada, and Canadians For Tax Fairness, we are pleased to submit feedback as part of the Corporate Transparency consultation. We make this submission together as a coalition (The Coalition) and more information about each organization is included at the end of this discussion document.

As civil society organizations with mandates for anti-corruption, transparency, and combating tax avoidance and evasion, we view this consultation on corporate transparency as a crucial step of progressive leadership that complements effective legislation such as the British Columbia Land Owner Transparency Act (LOTA). By adopting strong transparency measures, British Columbia can become the leading jurisdiction globally in deterring the proceeds of crime.

Public disclosure of information concerning beneficial owners and ensuring that this data is high-quality and open—free, machine readable, validated, and with verification measures—will serve as a powerful tool for the province to deter, detect, investigate and prosecute money laundering, terrorist financing, and tax evasion.

We believe this level of disclosure will have the following benefits for the province:

- Allow B.C. to become one of the leading jurisdictions to adhere to G20 principles to implement a strong beneficial ownership reporting system for both property and corporations;
- Align B.C. with international jurisdictions that have already taken measures to publicly disclose ultimate beneficiaries, such as the United Kingdom and the European Union;
- Deter money launderers from funneling proceeds of crime and terrorist financing through B.C. companies;
- Prevent foreign and domestic buyers from using real estate to launder money;
- Reduce artificial price inflation in B.C. real estate and improve housing availability;
- Deter and safeguard against dirty money entering the B.C. economy, thus making the province more attractive to legitimate investors;

- Reduce financial and reputational risks of provincial financial institutions and other sectors by supporting them to meet due diligence obligations and detect money launderers;
- Provide individuals, investors, and businesses (particularly SMEs) with more reliable market information, and help them to know who they are actually doing business with—a critical requirement for a safe investment and business environment;
- Create a balance between individual privacy rights and corporate transparency in order for B.C. to fight money laundering, terrorist financing, and tax evasion through anonymous companies and properties; and
- Increase international tax authorities and Canada Revenue Agency (CRA)'s ability to detect, investigate, and prosecute tax evasion.

As part of our discussion document, we have included our responses to questions posed in the consultation paper on page two, and we have enumerated our recommendations below for ease of reading. Please refer to individual sections in the discussion document for more context:

1. Recommend that law enforcement and competent authorities have access to this information as a needed minimum to fulfill anti-money laundering objectives set forth by the province.
2. Recommend introducing guidance document(s) that feature clear instructions for corporations to report and submit information into a central register along with a submission process that is easy to navigate.
3. Recommend there should be no exemptions for all for-profit legal vehicles in British Columbia to disclose beneficial ownership information.
4. Recommend that B.C. lower the threshold of ownership to 10% instead of the 25% threshold that is used in the current Proceeds of Crime, Money Laundering and Terrorist Financing Act (PCMLTFA) regime.
5. Recommend linking B.C.'s registry with other jurisdictions in a pan-Canadian model so that information can be easily searched and used.
6. Publicly disclose the following information about beneficial owners with full searchability to the public:
 - a. Percentage of shares held by any beneficial owner to understand the extent of ownership, control, and direction of shares;
 - b. The date shareholders became or ceased to be a beneficial owner;
 - c. Unique identifiers;
 - d. Individual status for politically exposed persons;
 - e. Full name of beneficial owner;
 - f. Commonly known names of the beneficial owner;
 - g. Partial dates of birth;
 - h. Service Address;
 - i. Country of usual residence with a recommendation for including current and past countries of residence.
7. Recommend citizenship, full dates of birth, and tax information to be available only to law enforcement and competent authorities.
8. Recommend exemptions for individuals under extraordinary circumstances to opt-out from being listed in the registry; these individuals could include those that are at risk of fraud, abuse, victimization, blackmail, and other types of targeting.
9. Include the following as features to ensure the B.C. registry is effective: penalties and sanctions, a registrar with regulatory authority, validation and verification of data, and a tip-line for use by whistleblowers.

10. Recommend that beneficial ownership information is available in a registry that is free of cost and searchable to the public.
11. Recommend suspensions and dissolutions of companies as additional tools to deter non-compliance.
12. Recommend including public access to information concerning trusts in order to maximize deterrence and anti-money laundering objectives.
13. Recommend conversations with the Quebec Government and monitoring progress in the UK and EU to fully understand penalty schemes for trusts.
14. Recommend collecting beneficial ownership information for B.C. partnerships.

RESPONSES TO SPECIFIC QUESTIONS

Government-Maintained Transparency Registry

1. How would the requirement to provide the information in your transparency register to government impact your operations?

The Coalition does not foresee any additional costs for corporations to disclose information of beneficial owners (BO) to a centralized government registry. Under recent changes to the Canadian Business Corporations Act (CBCA), companies are already collecting BO information—they would simply be required to upload this information. Any costs could be offset by savings elsewhere, including making investigative work more efficient for law enforcement. In our perspective, the benefits for competent authorities to have access to this information is a minimum requirement to fulfill anti-money laundering objectives set forth by the province as articulated in the consultation brief.

2. Are there any steps that could be taken to streamline the process, including the uploading process?

We recommend introducing guidance documents that feature clear instructions for corporations to report and submit information into a central register along with an online portal that is easy to navigate. Furthermore, .csv templates can be made available for corporations to standardize information that is submitted, which will reduce the likelihood of data entry errors and allow the registrar to develop internal processes to verify the data and ensure compliance.

B.C. can refer to tools that Natural Resources Canada has developed, which provide direction for extractives businesses to fulfill data reporting obligations under the Extractive Sector Transparency Measures Act (ESTMA).¹ The program revises its guidance document and technical requirements periodically to improve company understanding of the reporting

¹ <https://www.nrcan.gc.ca/mining-materials/resources/extractive-sector-transparency-measures-act-estma/tools-extractive-businesses/18192>

obligations. The program also introduced a reporting template to improve consistency of reporting and created a central portal where companies can submit their reports to streamline the submission process.

3. Are there any types of B.C. private companies you think should be exempted from the requirement to upload information? If so, why?

No, we believe there should be no blanket exemptions for all for-profit legal vehicles in British Columbia to publicly disclose beneficial ownership information, including ultimate beneficiaries. This is because we recognize that all types of corporate vehicles are at risk of misuse. Please refer to *Secret Entities: A legal analysis of the transparency of beneficial ownership in Canada* that is attached as a supplementary resource to The Coalition discussion document on all for-profit legal entities that are subject to abuse.²

4. Should B.C. change the share ownership threshold from 25 per cent to 10 per cent for determining beneficial ownership?

It is our recommendation that B.C. should lower the threshold of ownership to 10% instead of the 25% threshold that is used in the current PCMLTFA regime. Additionally, the exact percentage of ownership or control should be captured because this gives a precise indication of the control of an enterprise, rather than using ownership bands (e.g. 25-50%, 50-75% etc.) as in the UK Persons of Significant Control (PSC) Register.³ The exact percentage is valuable for investigators to have a clear understanding of ownership and control.

Lowering the threshold to 10% aligns with existing best practice as insider trading requirements for publicly traded companies in Canada under the System for Electronic Disclosure by Insiders (SEDI) requires that beneficial owners who directly or indirectly own, or control 10% or more of shares, must disclose changes in their shareholdings.⁴ Moreover, the British Columbia Land Owner Transparency Act (LOTA) stipulates disclosure for corporate interest holders who directly or indirectly own or control 10% or more of shares.⁵

Individuals can own less than 25% of shares and still exert significant control over a corporation and experts have noted that this is a tactic employed by professional money launderers.⁶ International jurisdictions have also raised concerns with a 25% disclosure threshold. For instance, the Nigerian Ministry of Justice identified the 25% threshold as one of the key challenges in the UK PSC register, stating that “there is a strong argument for reduction of the

² Refer to Secret Entities Report

<https://static1.squarespace.com/static/5c8938b492441bf93fdbc536/t/5cc245b8f4e1fc84564e6de2/15562357074/09/Secret-Entities-Report.pdf>

³ Refer to “What information must go on the PSC Register” <https://www.stanleydavis.co.uk/News/PSCGuide>

⁴ Refer to SEDI website [https://www.sedi.ca/sedi/new_help/english/public/PDF_en/FAQs_Factsheet_-_SEDI_\(FINAL\).pdf](https://www.sedi.ca/sedi/new_help/english/public/PDF_en/FAQs_Factsheet_-_SEDI_(FINAL).pdf)

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<http://www.mondaq.com/canada/x/815344/real+estate/Understanding+The+Impact+Of+BCs+Proposed+Land+Owner+Transparency+Act>

⁶ <https://www.cdhowe.org/intelligence-memos/denis-meunier-%E2%80%93-canada-business-corporation-act-changes-beneficial-ownership-hal>

threshold as it is suspected that this [the threshold] is being exploited by some businesses to avoid full compliance with the reporting rules.”⁷

The threshold amounts in some Latin American and Caribbean countries are lower in comparison to Canada. For example, beneficial ownership thresholds are set at 20% in Argentina and Dominican Republic, 15% in Uruguay and Costa Rica, 10% in the Bahamas, Barbados, Belize and Chile, and 5% in Colombia.⁸

An analysis by Global Witness found one in 10 companies in the UK still claimed to have no beneficial owner under this higher 25% threshold.⁹ For instance, Kazakh banker Mukhtar Ablyazov hid his embezzlement crimes under the guise of eight companies by using several entities that held 9.5 to 9.96% interests to avoid passing the 10% disclosure threshold.¹⁰ It took authorities over two years to build enough evidence against him. A public registry with a lower threshold could have helped law enforcement or others link Ablyazov, his multiple companies, and the source of funds.¹¹

While some jurisdictions use a risk-based approach to set the threshold for disclosure such as the Financial Crimes Enforcement Network (FINCEN) in the United States¹², lowering the threshold for all companies would make it harder for nefarious actors to find out if they and their company are being investigated by authorities. Employing a disclosure threshold of 10% aligns B.C. with the most progressive direction being taken by the international community while maximizing anti-money laundering efforts. In our perspective, a 10% threshold will help deter the proceeds of crime from entering B.C. economy, and safeguard the province from dirty money.

5. Should a B.C. registry of beneficial ownership be linked with those in other Canadian jurisdictions?

We strongly recommend that a B.C. centralized registry should be linked with those in other Canadian jurisdictions in a pan-Canadian model because it provides ease of access for provincial tax authorities and other provincial regulators with investigations. Furthermore, having this information linked with the federal government will provide the same benefit to the Canada Revenue Agency (CRA) and FINTRAC for investigations and analysis. At minimum, it is our perspective that a B.C. centralized registry should be made accessible for all competent authorities across Canada to enhance the investigative capacity for Canadian authorities to detect the proceeds of crime.

⁷ Nigerian Federal Ministry of Justice, *Improving the Business Environment in Nigeria through Transparency in the Management of Beneficial Ownership: A Policy Brief*, February 2017; p12. Available at: <https://irp-cdn.multiscreensite.com/e0b6c17a/files/uploaded/Policy%20Brief%20on%20Beneficial%20Ownership%20FMOJ%20and%20IBLF%20Global%20Final.pdf>.

⁸ Knobel, A. “Regulation of Beneficial Ownership in Latin America and the Caribbean”. Institutions for Development Sector, Innovation in Citizen Services Division. Technical Note IDB-TN-134. November 2017. <https://publications.iadb.org/publications/english/document/Regulation-of-Beneficial-Ownership-in-Latin-America-and-the-Caribbean.pdf>

⁹ https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf

¹⁰ Ibid. pg. 2

¹¹ Ibid.

¹² <https://www.fincen.gov/sites/default/files/2019-07/Joint%20Statement%20on%20Risk-Focused%20Bank%20Secrecy%20Act-Anti-Money%20Laundering%20Supervision%20FINAL1.pdf>

Public Access to Government Maintained Transparency Registry

6. How will publicly available beneficial ownership information impact your operations?

In responding to the question, we can reference evidence from the UK PSC Register where businesses who publicly disclosed beneficial ownership information reported that there were no negative disruptions and minimal compliance costs.

Since the UK launched its public registry in 2016, a majority (64%) of businesses have found the publicly available information useful. Close to a third considered the information “very useful.”¹³

The minor cost to businesses to implement and maintain a registry would be eclipsed by greater compliance savings, especially among smaller companies with limited resources. For instance,

“The main source of financial cost was the initial submission of PSC information; the mean overall cost of this process was £259, while the median cost was £115. The mean cost of tasks related to the maintenance of information held on the PSC register since the initial submission of information was only £29 and the median cost was just £2. The low financial cost of maintaining information held on the PSC register is the consequence of only 10% of businesses experiencing a change to their PSCs since their initial submission of information.”¹⁴

Businesses were also asked whether collecting and submitting information had affected how their business operates. The majority (95%) said it had no impact at all. In fact, some said the registry’s increase in corporate transparency was economically advantageous as it would likely result in improved business confidence and lead to greater investment.¹⁵

When applying evidence from the UK, we do not foresee any significant compliance costs for B.C. businesses and we recommend contacting UK Companies House to further understand costs incurred by large enterprises.

A publicly accessible company register of ultimate beneficial owners can help reduce the compliance burden on B.C. financial entities covered under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* who are required to collect and maintain records of beneficial ownership information. Such a registry will also assist designated non-financial businesses and professions. DNFBNPs (e.g., casinos; accountants, and accounting firms; dealers in precious metals and stones; real estate brokers, developers, and sales

¹³ People of Significant Control (PSC) Register: Review of Implementation, Department of Business, Energy and Industrial Strategy, August 2019, p.5
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf

¹⁴ Ibid.

¹⁵ Ibid. p. 45

representatives) were recommended to identify beneficial ownership information from customers, according to a 2018 report from the House of Commons Finance Committee.¹⁶

Finally, such a register reduces the due diligence burden for B.C. small and medium-sized businesses, which do not necessarily have reporting obligations to FINTRAC, yet which are subject to due diligence checks by, and conduct due diligence on, their business partners and subcontractors using available information.

7. In your opinion, what degree of searching should the public have?

It is the view of the Coalition that the general public should have full searchability of the majority of fields in a publicly accessible beneficial ownership registry (see table 1). This is because the fields used to positively identify beneficial owners fulfill the anti-money laundering objectives of a registry. These include providing public disclosure of a beneficial owner’s unique identifier, full name, country of usual residence—these fields are already publicly available on the SEDI website of beneficial owners of publicly traded companies. As for additional precedent in Canada, the Quebec Government has announced that it shall make beneficial ownership information for private entities and trusts publicly accessible and searchable by name in its provincial corporate registry.¹⁷

Searching by full name and any common names is beneficial for whistleblowers, foreign tax authorities, civil society groups and journalists, as well as private sector entities with due diligence obligations. It is likely that citizenship, usual residential address and countries of tax residency have a higher expectation of privacy so further analysis is needed to determine if these fields should be public. For more insight, please refer to *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis* as a separate attachment.

The table below displays a list of fields, which we recommend should be publicly disclosed and searchable based on our privacy analysis:

Table 1: Fields of Information to be publicly disclosed and privacy rationale

Proposed fields of information to be collected and publicly disclosed	Explanation and Privacy Rationale (see analysis for full details ¹⁸)
To understand the extent of ownership and control status of individuals that are conducting business activities in an enterprise:	
The percentage of shares held for any person who qualifies as a beneficial owner, and a disclosure of how that individual exercises significant control (e.g., control or direction of other shares, agreements with other shareholders to vote in concert, the existence of	Clarifies to what extent a beneficial owner owns, controls, or directs a company. Possibly slightly higher expectation of privacy, yet this type of information is already publicly available under SEDI.

¹⁶ [Refer to Standing Committee on Finance -- Recommendation 8](#)

¹⁷ http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf

¹⁸ See pages 22-23 in *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*

personal relationships with other owners that result in significant control, and veto rights)	
Date shareholder became or ceased to be a beneficial owner	Clarifies ownership record.
A unique identifier number that shows ties to other business entities over which the individual has significant control	Avoids confusion between registered persons of the same name and from the same country. Low expectation of privacy and not sensitive information.
The individual's status as a politically exposed person, foreign or Canadian	No reasonable expectation of privacy. Useful for reporting entities as it helps meet obligations under the Proceeds of Crime, Money Laundering and Terrorism Financing Act (PCMLTFA).
To support identification of the beneficial owner:	
The full name of the beneficial owner	Needed for identification. Not inherently sensitive.
Commonly known names of the beneficial owner	Needed to identify persons who do not use their exact legal name. Lower expectation of privacy.
Partial date of birth	Improves positive identification to beneficial owner and would likely be rationally connected to the purpose of a beneficial ownership registry.
Address	<p>Improves positive identification. For instance, Quebec uses the following definitions below in which B.C. could consider:</p> <p><i>“For legal persons, it is the address of the head office.</i></p> <p><i>For natural persons operating a sole proprietorship, it is the person’s domicile address.</i></p> <p><i>For partnerships, limited partnerships, associations and groups of persons, it is the address of the principal establishment.”¹⁹</i></p>

¹⁹ <https://soquij.qc.ca/>

Country of usual residence	Country of usual residence improves positive identification and is included in existing registries in other jurisdictions. There is a lower expectation of privacy as similar information is found on SEDI. B.C. can go further in line with leading expert opinion highlighted in a recent C.D. Howe report, which suggests collecting information about countries of current and past residences in order to ensure effectiveness for whistleblowers in other jurisdictions. ²⁰
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Protection of Personal Information

8. Are there any reasons to limit/expand the availability of information on the registry beyond what is described above in Chart 2?

In reflecting upon the information in Chart 2 and contrasting it with Coalition recommendations in Table 1, we recommend that SIN numbers and tax numbers should not be made publicly accessible, nor searchable due to high risks of fraud. Additionally, citizenship information carries a higher expectation of privacy based on our analysis and having citizenship information available in the public realm might be used to target certain individuals.

In our perspective, we recommend tax information and citizenship information be made available only to competent authorities and law enforcement.

9. Are there other situations in which an individual’s information should be obscured other than the scenarios described above?

We agree with the B.C. Government recommendation for exemptions in line with LOTA based upon a need to protect minors and individuals who may be at risk of harm. Some national registers in the European Union give consideration for individuals with demonstrable risk of victimization from fraud, kidnapping, blackmail, or extortion. Other national registries give consideration for individuals under the age of majority, or who are legally disabled.²¹

In the UK for instance, individuals may apply to restrict the disclosure of their private information on the public registry. See Note 1 in the annex at the end of this discussion document for terms of exemption. The UK example, if not perfectly appropriate for Canada, provides an idea of a policy measure designed to address privacy concerns of a public registry.

²⁰ Refer to “Why we Fail to Catch Money Launderers 99.9% of the Time.” by Kevin Comeau; April 2019 C.D. Howe Institute. See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

²¹ Price Waterhouse Cooper, “The UBO Register: An Update.” December, 2018. <https://www.pwc.nl/nl/assets/documents/ubo-register-update-december-2018.pdf>

Verifying Beneficial Ownership Information

10. What role should the government play in making sure the beneficial ownership information is correctly reported?

Data validation

It is imperative that the B.C. Government invest in data verification and validation. Any register containing ultimate beneficiary information should be both validated at data-entry and verified with a registrar with regulatory authority. Data validation is part of the ongoing challenges currently experienced by the UK PSC Register and it creates a problem of unreliable data commonly known as “garbage in, garbage out”.

For example, people submitting information to the UK register were asked to type their nationality into the relevant field, which resulted in over 500 spellings of ‘British’ and 10 beneficial owners listing their nationality as Cornish (a county in South West England). Further analysis of the UK register found multiple examples of potential non-compliance, including listing companies based in tax havens as beneficial owners or reporting looped ownership where companies appear to own themselves.²²

Adjustments to the disclosure form, including drop down menus to select nationality, could limit spelling errors but the above examples highlight the importance of having a team responsible for implementation of a beneficial ownership registry and verifying reports. For example, data quality was an issue noted in ESTMA. Natural Resources Canada (NRCAN) has worked to address data quality by creating a template and providing a validation checklist, against which NRCAN checks each submitted report. These resources supplemented a revised guidance document and technical requirements document after year one of implementation to improve the quality and consistency of company reports.²³

Registrar with regulatory authority

The Coalition believes that the B.C. Government should have a registrar with sufficient regulatory authority and ability to review suspicious disclosures and cases from those who are seeking exemptions. Review of the UK PSC Register suggests that its effectiveness is limited by the role that Companies House plays in administering the registry. Companies House is a registrar, not a regulator: it does not verify the information provided by persons with significant control. A lack of regulatory oversight offers the opportunity for misspellings of business names or incomplete fields to be exploited by persons with significant control for their own benefit.²⁴ As

²² Refer to full report by Open Ownership <https://www.openownership.org/uploads/learning-the-lessons.pdf>

²³ Reporting template, validation checklist, and guidance document for ESMTA can be found here: <https://www.nrcan.gc.ca/mining-materials/resources/extractive-sector-transparency-measures-act-estma/tools-extractive-businesses/18192>

²⁴ Ibid.

such, the registry contains unverified and flawed information, rendering it less effective than it could be.

ID verification and usage of Digital ID technology

We recommend the B.C. government incorporate ID verification measures in order to improve the accuracy of beneficial ownership information. It is important to note that FATF priority actions for Canada to strengthen its AML/CFT regime includes possessing accurate beneficial ownership information.²⁵ Should the province adopt ID verification measures, it would be helping Canada in this regard. Relevant identity documents could include passports, driver's licenses, or provincially issued identification cards with photo. B.C. can consult FINTRAC guidance in determining the types of ID and procedures to verify the identities of beneficial owners.²⁶

Digital ID verification measures can be considered in the near future and the B.C. Government may use the recent draft guidance on digital IDs from the Financial Action Task Force (FATF) as a means to develop knowledge.²⁷ We also recommend the B.C. government reach out to the Digital ID Authentication Council of Canada as they are developing a Pan-Canadian Trust Framework which provides guidance as to how a digital identify ecosystem can be deployed across Canada.²⁸

Tip-line for whistleblower disclosure

It is important for the registry to have an option for whistleblowers to flag and disclose false or missing information from companies. In addition, a reporting portal or a tip-line can help whistleblowers tie corruption and bribery (or other financial crimes, including money laundering, tax evasion, or terrorist financing) to ultimate beneficial owners and the business(es) they control.

11. If there were a cost to search the database, would that change the way you interact with the beneficial ownership database?

A cost to search the database will influence how various actors engage with the beneficial owner database. If there is a cost, it will limit whistleblowers and journalists' ability to view the data, unless they have a specific person or company of interest. Further, small companies will be disadvantaged to use the database as a due diligence tool since they do not have as many resources compared to large companies.

Making beneficial ownership information free-of-cost and searchable to public can maximize the deterrence of the proceeds of crime:

The U.K. Department of Business, Energy, and Industrial Strategy (BEIS) has noted that Scottish Limited Partnerships (SLPs) have been used to launder 80bn from Russia over 4

²⁵ See slide 18 <https://www.slideshare.net/fatf-gafi/mutual-evaluation-of-canada>

²⁶ <https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng>

²⁷ <https://www.mccarthy.ca/en/insights/blogs/techlex/fatf-releases-draft-guidance-digital-identity>

²⁸ <https://diacc.ca/wp-content/uploads/2016/08/PCTF-Overview-FINAL.pdf>

years.²⁹ The scheme had been linked to international criminal networks in Eastern Europe and had allegedly been used in arms deals.³⁰ According to the BEIS, laws introduced last year requiring SLPs to report their beneficial owner and make their ownership structure more transparent led to an 80% reduction in the number registered.³¹

Unrestricted access can help competent authorities and improve data-quality

The PSC Registry noted there were 58,352 reports from the public regarding likely mistakes and discrepancies in the company register between July 2017 and March 2018.³² The additional public eyes on the information can help improve data quality and flag risks. International whistleblowers could also access the B.C. registry and flag corrupt individuals to the registrar via a tip-line. With a fee-based model, this would not be realized to the same extent.

Unrestricted access to beneficial ownership information can reduce due diligence costs for B.C. SMEs

SMEs do not have resources for adequate due diligence to know who they are doing business with. Unrestricted access to beneficial ownership information within a public registry can be easily used by SMEs to protect themselves from potential fraud by sub-contractors. If all businesses put in effort to comply with beneficial ownership requirements, they should also get the rewards of accessing that information.

Compliance and Enforcement

12. Do you support the use of administrative penalties to ensure compliance? If so, what range of penalties is appropriate in light of the anti-money laundering goals?

Regarding penalties, while reporting entities may make mistakes in good faith, others may willfully fail to disclose information or provide incorrect details to obscure the identities of their beneficial owners. Reporting entities who make mistakes in good faith should be given the opportunity to correct data entry errors and ensure that the information contained in the register is correct. However, failure to correct data that have already been identified by the registrar, regulator, or by law enforcement in a timely manner should be subject to an administrative monetary penalty.

The challenge then remains as to how to handle businesses and beneficial owners that deliberately disclose false information or fail to disclose information altogether. Businesses that are set up specifically for criminal purposes are unlikely to be compliant with disclosure requirements, and penalties set too low may be considered part of the 'cost of doing business.'

The appropriate penalties to levy against individuals for willful non-compliance should be carefully considered and treated separately from errors made in good faith. In jurisdictions with public registries such as the Netherlands and Norway, non-compliance with registration can result in criminal sanctions such as six months maximum imprisonment or community service

²⁹ <https://www.bbc.com/news/uk-scotland-scotland-business-43935839>

³⁰ Ibid.

³¹ Ibid.

³² Global Witness, Getting the UK's House in Order, May 2019, page 3

(Netherlands), or one-year maximum imprisonment (Norway).³³ Failure to comply can result in financial penalties in both the Netherlands and in Poland. Additionally, there are fines against the business in question, as well as operating restrictions that prevent the business from distributing profits, holding government contracts, and accessing EU and other government funds.³⁴ Sweden also punishes noncompliance via fine.³⁵ Fines for willful non-disclosure in EU jurisdictions run as high as €1,000,000 in Germany, and generally range from €50,000 to €200,000 for noncompliance, as well as terms of imprisonment in Gibraltar, Malta, the Netherlands, and Norway.³⁶

Canada assesses where it should apply criminal and administrative monetary penalties against businesses for non-compliance with Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) reporting requirements. Issuing administrative monetary penalties is FINTRAC standard practice. For failing to meet record-keeping requirements or failing to provide assistance or information during a compliance examination, the relevant penalties include fines up to \$500,000 and/or a term of imprisonment up to five years.³⁷ Restrictions may also be placed on business operations, following the model adopted by Portugal where profit disbursement is prevented until businesses comply with UBO register requirements.³⁸

We recommend meaningful sanctions to false or misleading declarations of beneficial ownership, including large fines (maximum \$5 million or, in the case of real estate, the value of the home) and prison sentences (e.g., maximum five years less a day). These sanctions are consistent with penalties for false or misleading statements made in a filing under the Securities Act (Québec)³⁹ which is a much less serious offense than money laundering crimes, particularly when we consider that money laundering is an extension of its underlying predicate crimes (e.g., drug trafficking, human trafficking, terror financing, and tax evasion). Equally important, meaningful sanctions provide law enforcement agencies with the leverage they need to obtain critical information needed to follow the money to the true beneficial owner.⁴⁰

13. Do you support the use of suspensions or dissolutions of the corporation by the Corporate Registrar to ensure accurate beneficial ownership information is provided? Why? Why not?

³³ *Supra*, note 5.

³⁴ *Ibid*.

³⁵ Swedish Companies Registration Office. “How to Register Beneficial Ownership Information”. February 5, 2018. <https://bolagsverket.se/en/us/about/beneficial-ownership-register/how-to-register-beneficial-ownership-information-1.15230>

³⁶ *Supra*, note 5.

³⁷ Financial Transactions and Analysis Reports Centre of Canada. Obligations: Penalties for non-compliance. August 28, 2018. <https://www.fintrac-canafe.gc.ca/pen/1-eng>

³⁸ *Supra*, note 5.

³⁹ See sections 204.1 and 208.1 of the Securities Act (Québec). The same penalties (maximum fines of \$5 million and imprisonment for 5 years less a day) are found in the securities legislation of other provinces such as section 122 of the Securities Act (Ontario). Also see Section 1001 of Title 18 of the US Code, which sets prison sentences at a maximum of 5 years for a materially false, fictitious, or fraudulent statement or representation.

⁴⁰ This critical point is explained more fully in “*The Money-Laundering Rabbit Hole*” on p. 4 of “*Why we Fail to Catch Money Launderers 99.9% of the Time.*” by Kevin Comeau; April 2019 C.D. Howe Institute. See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

Our Coalition recommends these powers may be tools in addition to sanctions by large fines and/or imprisonment levied by a court of law.

Transparency Register for Other Entities

14. How would a government-maintained registry of trusts impact your operations?

We would like to note that a registry for trust arrangements, which would include ultimate beneficiaries, could be considered in the future as trust arrangements have been misused to launder money and evade taxes. It is worth noting that in 2016, Canada was assessed as non-compliant in its FATF peer-review, with respect to beneficial ownership transparency of legal arrangements, and trusts fall under this category. A recent House of Commons Finance Committee Report has recommended a private registry of trust arrangements.⁴¹ Moreover, a registry of trusts, including the ultimate beneficiaries, has been recommended as part of AMLD5—mentioned in the consultation brief—with access available to competent authorities, financial intelligence units, obliged [reporting] entities, and those who can demonstrate legitimate interest.⁴² Furthermore, the UK has a private registry of trusts in place, which includes beneficial ownership information, and it is available to competent authorities and actors as part of AMLD4.⁴³

We do not foresee burden in disclosing beneficial ownership information about trusts. We also acknowledge that many trusts, such as family trusts, are benign legal vehicles used to act as wealth transfers for loved ones, and the registrar may have powers to exempt trusts where they think appropriate for Canadian trusts—Canadian settlors, Canadian trustees and a majority of Canadian beneficiaries—who do not actively carry on business, or hold real estate.

15. Should the public have access to a government-maintained registry of trusts? Why? Why not?

Trust arrangements are subject to widespread misuse to conceal the proceeds of crime⁴⁴ and the FATF has rated Canada as non-compliant with respect to transparency and beneficial ownership of legal arrangements.⁴⁵ Our Coalition recommends including public access to information concerning trusts in order to maximize deterrence and anti-money laundering objectives in line with FATF technical compliance. The province of Quebec has made information related to trust arrangements of commercial enterprises publicly accessible and searchable with exemptions for minors who are acting as beneficiaries.⁴⁶ We also suggest dialogue with UK and EU partners as there has yet to be clear international precedent for public access to a registry of trusts. It is our understanding the EU has mandated that actors must fulfill

⁴¹ <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/report-24/page-18>

⁴² <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/risk/lu-rna-amld5-has-entered-into-force-20072018.pdf>

⁴³ <https://www.irwinmitchell.com/personal/wills-trusts-estates/trusts/uk-trusts-registry#access>

⁴⁴ <https://www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf>

⁴⁵ <https://www.slideshare.net/fatf-gafi/mutual-evaluation-of-canada>

⁴⁶ http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf

a “legitimate interest test” and may request access to a register of trusts; however, EU Member States are currently defining conditions of legitimate interest.⁴⁷

16. If a registry of trusts is created, what would be an appropriate consequence for noncompliance?

Our Coalition would also recommend further conversations with the Quebec Government and monitoring international jurisdictions as in the UK, penalty regimes is being introduced⁴⁸. On this note, we would provide a general suggestion that penalties for noncompliance might be similar to the UBO registry with a range of sanctions up to a maximum fine in serious cases and/or imprisonment levied by a court of law.

Questions Regarding Partnership Registration

17. How would increasing the information collected about partnerships impact your operations?

While partnerships are a relatively new type of corporate structure in the province, we recommend collecting beneficial ownership information as limited partnership and limited liability partnership structures may become misused once greater transparency is realized amongst corporations and trusts. We suggest examining the feasibility of sworn declarations from all general partners to confirm the identities of beneficial owners and to consult with FINTRAC methods to verify identities^{49,50} Digital IDs may also be considered in the future.

18. If further information is required of partnerships, what would be an appropriate consequence for non-compliant partnerships?

As before, we recommend a general suggestion that penalties for noncompliance might be similar as for UBO registry with a range of sanctions up to a maximum fine in serious cases and/or imprisonment levied by a court of law.

Conclusion

Publicly disclosing information about beneficial owners of companies and ensuring that this information is validated, verified, searchable, and free of cost for public access will serve as a powerful tool to combat the proceeds of crime from entering the B.C. economy.

⁴⁷ https://www.applebyglobal.com/publications/ubo-register-of-trusts-the-eus-5th-anti-money-laundering-directive/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

⁴⁸ <https://www.withersworldwide.com/en-gb/insight/eu-money-laundering-directives-and-the-uk-trust-register-where-are-we>

⁴⁹ <https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng>

⁵⁰ Report: Secret Entities: A Legal Analysis of the Transparency of Beneficial Ownership in Canada. pg. 27

We believe that B.C. can become internationally applauded as a jurisdiction that has implemented meaningful anti-corruption reforms that safeguard its citizens and its economy from the threat of dirty money and renders the province a world-class environment for doing business with integrity.

Thank you for taking time to consider our feedback. If you have any questions, please do not hesitate to get in touch.

Yours sincerely,

Sasha Caldera, Campaign Manager, Beneficial Ownership Transparency—Publish What You Pay Canada

Emily Nickerson, Director—Publish What You Pay Canada

James Cohen, Executive Director—Transparency International Canada

Toby Sanger, Executive Director—Canadians For Tax Fairness

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About Transparency International Canada (TI-Canada):

TI-Canada is the Canadian chapter of Transparency International (TI). Founded in 1996, TI is the world's leading anti-corruption movement with over 100 chapters and contact points around the world and an international secretariat in Berlin. TI Canada was also founded in 1996 is the country's leading anti-corruption voice and thought leader with in house and volunteer experts from a range of sectors in Canada.

About Canadians For Tax Fairness:

Canadians for Tax Fairness is a non-profit organization whose aim is to raise public awareness of crucial issues of tax justice and to change the way Canadians talk about tax. We advocate for fair and progressive government policies aimed at building a strong and sustainable economy, reducing inequalities and funding quality public services. Canadians for Tax Fairness believes in the development and implementation of a tax system, based on ability to pay, to fund the comprehensive, high-quality network of public services and programs required to meet our social, economic and environmental needs in the 21st century.

About Publish What You Pay Canada (PWYP-Canada):

Publish What You Pay Canada is part of the global Publish What You Pay movement of civil society organizations working to make oil, gas and mineral governance open, accountable, sustainable, equitable and responsive to all people. As a movement, we envision a world where all people benefit from their natural resources, today and tomorrow. Launched in 2008, PWYP-Canada today numbers 15 members and realizes its work through advocacy, research and public outreach to promote and achieve enhanced disclosure of information about extractive industry operations, with an emphasis on revenues and contracts.

ANNEX:

List of attachments:

1. Report: A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis.
2. Report: Secret Entities: A Legal Analysis of the Transparency of Beneficial Ownership in Canada.
3. Brief: Necessary Components and Considerations of a Publicly Accessible Beneficial Ownership Registry.
4. Building a Transparent, Effective, Beneficial Ownership Registry.

Note 1: Exemptions from the UK PSC Register

Applying to restrict disclosure of private information from the UK Register of Persons of Significant Control (Beneficial Ownership Registry)⁵¹

“Certain characteristics or personal attributes of a Person of Significant Control (PSC) when associated with a company could put them, or someone who lives with them at serious risk of violence or intimidation. In these cases, an application can be made so that no information about them in relation to that company is available on the public register. If the application’s successful, the PSC’s registered information is protected. This would still be available to specified public authorities on application. In these cases, the public register will show there’s a PSC subject to protection.

...The activities of certain companies can place their directors and PSCs, or someone who lives with them, at serious risk of violence or intimidation. This could be due to their involvement in a particular sector of commerce or industry.

An application may be appropriate if:

you’re a director or PSC of a company whose business is licensed under the Animal (Scientific Procedures) Act 1986

you’re a director or PSC of a company active in the defence industry

you’re a director or PSC of a company that’s a readily traceable supplier to, or partner of an organisation in the above categories

a company you’re a director or PSC of, has been targeted by activists.”

⁵¹<https://www.gov.uk/government/publications/restricting-the-disclosure-of-your-psc-information/restricting-the-disclosure-of-your-information>