

AIMS AND OBJECTIVES FOR A PUBLICLY ACCESSIBLE, PAN-CANADIAN COMPANY REGISTRY OF BENEFICIAL OWNERS

MONEY LAUNDERING IN CANADA AND ABROAD

The total amount of money laundered worldwide is estimated to be between 2% and 5% of global GDP annually (US\$800 billion-\$2 trillion).¹ Moreover, the estimated global expenditure on anti-money laundering controls by the private sector is US\$8.2 billion,² bringing the total cost of money laundering up to a minimum of US\$808 billion annually. Money laundering has a corrosive effect on business, people, and society. It fuels the activities and livelihoods of drug dealers, human traffickers, illegal arms dealers, terrorists, and corrupt public officials – all of whom use the financial system to bank the profits of illegal activity.

Newspaper headlines across Canada have drawn attention to the country's pervasive money laundering problem, which is estimated to be from CA\$46.7 billion³ to CA\$100 billion⁴ annually. Billions of dollars in Greater Toronto Area (GTA) housing have been acquired by anonymous owners using funds of unknown origin, which has consequently inflated property prices and led to a housing affordability crisis in the GTA.⁵ Additionally, money laundering has facilitated trafficking of fentanyl which has led to a spike in overdoses and caught the attention of the Canadian public. In recent years, news articles about the Panama Papers, investigations of the Charbonneau Commission in Quebec, and the 'Vancouver Model' in British Columbia have illustrated the consequences of financial crime, triggering widespread alarm across the country. Increased public awareness of these issues has caused citizens to question whether more can be done to take illicit proceeds out of the hands of criminals in order to safeguard our communities.

OPAQUE OWNERSHIP PROBLEM

Despite Canada's traditionally positive reputation on the international stage, the country has become globally recognized for its ability to 'snow wash' – cleaning dirty money "like the pure white snow."⁶ To this day, Canada allows the true owners of private companies and trusts to remain anonymous, giving criminals access to bank accounts and the means to use their illegally obtained wealth in the legal economy. The lack of transparency of company ownership and control makes it easy for criminals to hide and launder money in Canada, and makes it difficult for banks, tax authorities and law enforcement to fight crime and enforce existing anti-money laundering (AML) and anti-terrorist financing (ATF) laws.

OBJECTIVE OF A PUBLIC REGISTRY

The Financial Action Task Force (FATF) recommends that competent authorities should have access to adequate, accurate, and timely information on the beneficial ownership and control of legal entities.⁷ Despite this recommendation, the FATF has identified beneficial ownership as one of the two problem areas within Canada's regulatory framework (along with the legal profession's exclusion from the reporting regime).⁸ In 2016, the FATF published an evaluation of Canada that was highly critical of the secrecy it affords to legal entities and arrangements, and called on the government to make beneficial ownership information accessible "as a matter of priority."⁹

Making accurate and timely beneficial ownership information public is essential to prevent the misuse of corporate entities

1 United Nations Office on Drugs and Crime (UNODC), "Money-Laundering and Globalization," 2019.

2 Wealth Insight, "2020 Foresight: The Impact of Anti-Money Laundering Regulations on Wealth Management," July 2018.

3 Charlie Smith, "B.C. government advisory panel estimates money laundering boosted home prices by five percent in 2018," May 2019.

4 Kevin Comeau, "Why We Fail to Catch Money Launderers 99.9 percent of the Time," May 2019.

5 Transparency International Canada, "OPACITY: Why Criminals Love Canadian Real Estate (And How to Fix It)," 2019.

6 Toronto Star, "The Canada Papers," January 2017.

7 Financial Action Task Force (FATF), "FATF Guidance: Transparency and Beneficial Ownership," 2014.

8 House of Commons Canada, "Confronting Money Laundering and Terrorist Financing: Moving Canada Forward," November 2018.

9 Financial Action Task Force (FATF), "Anti-Money Laundering and Counter-Terrorist Financing Measures: Canada Mutual Evaluation Report," September 2016.

to facilitate the proceeds of crime. Amidst global efforts to increase corporate transparency, several of the world's leading economies have created, or have plans to create publicly accessible company registers listing beneficial ownership information. For instance, European Union (EU) member states are required to launch publicly accessible registers of beneficial owners by January 2020, and the United Kingdom (UK) government seeks to make public registers the global norm by the end of 2023.¹⁰ The Government of Canada, along with provincial governments and territories made an agreement to strengthen beneficial ownership transparency in December 2017,¹¹ and the British Columbia government introduced new legislation in 2018 to create a public registry of property owners in the province.¹² Moving forward, a centralized, publicly accessible, pan-Canadian company registry of beneficial owners can help to increase corporate transparency and prevent the misuse of corporate entities and arrangements for criminal purposes.

THE IMPORTANCE OF A PUBLICLY ACCESSIBLE REGISTRY

There are a number of benefits to a publicly accessible beneficial ownership registry including the large number of stakeholders that this information would benefit, the deterrence effect of public access, and the fact that publicly accessible registries are an emerging tool that is being adopted by jurisdictions around the world.

A publicly accessible registry would help financial institutions and other reporting entities under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) to more easily meet their due diligence obligations. This type of registry also allows journalists, whistleblowers, civil society organizations, tax authorities, and law enforcement in Canada and internationally to access information relevant to corruption and capital flight. Public access would also ensure that the information is the continually fact-checked, which would in turn create a deterrence effect.

RELEVANT STAKEHOLDERS WHO BENEFIT FROM A PUBLICLY ACCESSIBLE REGISTRY

Accurate beneficial ownership information helps stakeholders including businesses with AML obligations; journalists, whistleblowers, and civil society organizations; international and domestic tax authorities; and law enforcement.

- **Businesses with AML Obligations**

In a 2016 survey by consultancy Ernst & Young (EY), 91% of senior executives reported it is important to know the ultimate beneficial ownership of the companies they conduct business with.¹³ Making beneficial ownership information public is essential as it enables businesses to access information about the customers and companies they work with, thereby reducing the risk of violating laws due to a lack of information. In addition, improvements in corporate transparency are necessary to help businesses fulfill their AML obligations and, specifically, customer due diligence (CDD) measures. However, many businesses with AML obligations have reported being unable to independently verify beneficial ownership information given the current absence of publicly available data on ownership and control. A publicly accessible registry would enhance Canada's AML / ATF regime and enable reporting entities (including DNFBPs with limited resources) to better comply with their legal obligations.

In the UK, an analysis examining its recently launched public registry of beneficial owners shows that, "The majority (64%) of businesses found the information available on the [People of Significant Control (PSC)] register to be useful, with close to a third (29%) considering it to be very useful."¹⁴ Moreover, research exploring the benefits and value of the UK's register of companies suggests that most intermediaries in that sample were micro or very small businesses.¹⁵ While there is a low cost for the implementation and compliance associated with a register, there would be a number of benefits in terms of compliance and conducting business provided to companies and in particular small companies with limited resources.

10 Federico More, "Registers of Beneficial Ownership," August 2019.

11 Department of Finance, "Agreement to Strengthen Beneficial Ownership Transparency," December 2017.

12 Ministry of Finance, "Government cracking down on hidden ownership of real estate," June 2018.

13 Ernst & Young, "Global Fraud Survey," 2016.

14 Department of Business, Energy & Industrial Strategy, "People of Significant Control (PSC) Register: Review of Implementation," August 2019.

15 Companies House and Department of Business, Energy & Industrial Strategy, "Companies House Data: Valuing the User Benefits," September 2019.

● **Journalists, Whistleblowers and Civil Society Organizations**

Journalists, whistleblowers, and civil society organizations have been at the forefront of the global effort to highlight the problems of anonymous corporate ownership and in advocating to policymakers to act. By introducing a publicly accessible registry that lists ultimate beneficial owners, whistleblowers can uncover trends and help rectify omissions and errors.

In Europe, journalists have sought access to beneficial ownership registries pursuant to the “legitimate interest” provision in the EU Fourth Anti-Money Laundering Directive (EU AMD4).¹⁶ For example, journalists may investigate bid-rigging of government contracts or other alleged incidents of corruption. In Canada, journalists have investigated money laundering linked to real estate and casinos.¹⁷ In these cases, journalists may require discrete access to beneficial ownership information for their investigations. Consequently, a public registry could help reduce corruption and improve the functioning of high-risk sectors such as public procurement and lobbying.

● **International Tax Authorities**

According to conservative estimates, tax evasion costs the world’s governments about US\$190 billion each year, and the figures for aggressive tax avoidance – arrangements that are technically legal but contrary to the spirit of the law – are much higher. A public beneficial ownership registry would help international tax authorities obtain accurate information necessary for their investigations and in order to enforce the consequences for tax evasion. For instance, access to a Canadian public registry would enable international tax authorities to track down corrupt foreign officials who may be laundering money in Canadian real estate. In turn, this information could be helpful in countries where tax authorities struggle with a lack of enforcement capacity, as beneficial ownership information could enhance the ability of low-income countries to increase tax collection.¹⁸ Fighting tax evasion and corruption is especially important given that developing regions lose more than 10 times the money they receive in foreign aid to illicit financial schemes.¹⁹

● **Domestic Tax Authorities**

The lack of available information on private companies and trusts, and who owns them, is a huge obstacle for domestic tax authorities as well. For instance, from April 1, 2017, to March 31, 2018, only 27 taxpayers were convicted of tax evasion in Canada. In February 2018, the Professional Institute of the Public Service of Canada (PIPSC) conducted a survey of the entire population of professional staff at the CRA, and found that almost two thirds (61%) of CRA professionals surveyed believe Canada is too secretive about beneficial ownership information and over 7 out of 10 (75%) believe that federal and provincial governments should require corporations to publicly identify “beneficial ownership” relationships.²⁰ A publicly accessible registry with beneficial ownership information would enable domestic tax authorities to examine ownership structures of companies during their investigations in order to better enforce consequences for tax evasion and tax fraud. Access to this information will make tax authorities better equipped to identify whether complex ownership and control structures are being used to obscure beneficial ownership, conceal wealth and avoid taxation obligations.

● **Law Enforcement**

Most of the financial crime occurring in Canada and around the world goes undetected, as much of it is laundered through anonymous companies and trusts. The United Nations Office on Drugs and Crime (UNODC) estimates that fewer than 1% of criminal funds flowing through the international financial system annually are believed to be frozen and confiscated by law enforcement.²¹ Within Canada, the RCMP success rate in convicting money laundering is a fraction of what it is for other crimes – a suspect cannot be identified in more than 80% of cases, and only a third of the cases that go to trial result in a

16 Mora Johnson, “Beneficial Ownership Transparency: Implications of the Fed-Prov Finance Ministers’ Announcement of December 11, 2017,” December 2017.

17 Mora Johnson, “Who Wants Beneficial Ownership Information?” November 2018.

18 Wilson Prichard, “Linking Beneficial Ownership Transparency to Improved Tax Revenue Collection in Developing Countries,” May 2018.

19 Frederik Obermaier and Bastian Obermayer. “Oligarchs Hide Billion in Shell Companies. Here’s How We Stop Them,” April 2018.

20 The Professional Institute of the Public Service of Canada, “Shell Game,” December 2018.

21 United Nations Office on Drugs and Crime (UNODC), “Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes,” October 2011.

conviction.²² Investigators are frequently frustrated by the inability to identify the true owner of a company being used to hide or conceal criminal activity. Moreover, if ownership information is only available on demand, or with a court order, law enforcement risks tipping off criminals who are under investigation. In order to help law enforcement carry out investigations, it is crucial that the RCMP and other law enforcement bodies have access to accurate and free access to information pertaining to beneficial ownership and control of legal entities. On this note, a publicly accessible registry is the best way to meet these needs.

In his recent report, “Dirty Money – Part 2”, former RCMP deputy commissioner Dr. Peter German commented on the opaque ownership problem in Canada²³ and noted, “taking legislative steps to make [companies] more transparent would make them less vulnerable to money laundering and other criminal activity.”²⁴ Other RCMP officers have also called for greater transparency: during the 2018 statutory review of the PCMTFLA, Assistant Commissioner Joanna Crampton noted that despite a great deal of success investigating criminal activity linked to organized crime, the RCMP has also been hindered by challenges stemming from Canada’s AML/ATF regime. Among the challenges cited, she noted “a lack of transparency around beneficial ownership information” and “a lack of specialized resources and training for investigators to undertake money laundering cases, which are often very complex in nature.”²⁵

CONCLUSION

Canada’s lack of beneficial ownership transparency makes our entire country an attractive destination for money laundering or ‘snow washing’. A publicly accessible beneficial ownership registry in an open, searchable format serves as a deterrent to criminals, enables compliance with Canadian laws, and assists law enforcement and tax authorities with investigations.

22 Transparency International Canada, “No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts,” 2016.

23 Peter German, “Dirty Money – Part 2,” March 2019.

24 Ibid.

25 Standing Committee on Finance, “Statutory Review Of The Proceeds Of Crime And Terrorist Financing Act (Pcmltfa),” November 2018.