

COMPARISON OF INFORMATION FIELDS AMONGST BENEFICIAL OWNERSHIP REGISTRIES IN INTERNATIONAL JURISDICTIONS

OVERVIEW

An analysis of fields utilized in ultimate beneficial ownership (UBO) registers in other jurisdictions offers important lessons for Canada in the creation of its own UBO register. The European Union has clarified and built on its requirements for UBOs in the Fifth Anti-Money Laundering Directive (5AMLD),¹ such that member nations must monitor and register the identities of ultimate beneficial owners of a variety of legal vehicles, including trusts.² As of the Fourth Anti-Money Laundering Directive (4AMLD),³ member nations have developed registers of beneficial owners with varying degrees of public availability,⁴ although UBO registers must make public specific information under 5AMLD by January 10, 2020.⁵

There is considerable variation in the kinds of information beneficial owners are required to disclose across jurisdictions. In the EU, where the 4AMLD⁶ and 5AMLD inform the creation and administration of UBO registers, a core group of critical fields exists, yet the fields themselves range widely. Similarly, member nations of the Extractive Industry Transparency Initiative (EITI) have agreed to implement beneficial owner reporting requirements for companies bidding on licenses or investing in extractions within their jurisdictions.⁷

WHAT FIELDS DO EU REGISTERS CONTAIN?

Under 4AMLD Article 30, EU Member States are required to “obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held”⁸ and to provide information about the UBO to “obliged entities,”⁹ more specifically:

- The name of the UBO
- The UBO’s month and year of birth
- The nationality of the UBO and country of residence
- Information on the nature and extent of the beneficial interest held by the UBO.¹⁰

Beyond this information, there is no specific requirement to collect information, and EU Member States can collect other information that is relevant to the interests of their jurisdiction. The actual implementation of the register—including the depth of information collected and its availability to the public—varies significantly, and some jurisdictions require more information than others. For example, the United Kingdom’s Person of Significant Control (PSC) Register requires that the legal entity (for example, a limited company) itself disclose other registers in which it appears,¹¹ and this is not a uniform requirement in other nations. This information will be made available to the public under 5AMLD and permits Member States to disclose additional information in accordance with their legal frameworks, so long as individual data privacy rights are respected.¹²

1 Directive (EU) 2018/843, referred to herein as 5AMLD.

2 Ibid.

3 Directive (EU) 2015/849, referred to herein as 4AMLD.

4 ‘Public register’ refer to those registers not restricted to access by law enforcement or other authorities.

5 *Supra*, note 1.

6 *Supra*, note 3

7 Extractive Industries Transparencies Initiative, Beneficial Ownership Fact Sheet, May 2017. https://eiti.org/sites/default/files/documents/eiti_bo_factsheet_en_final.pdf

8 *Supra*, note 3, Article 30(1).

9 *Supra*, note 3, Article 30(2).

10 *Supra*, note 3, Article 30(4).

11 REF PSC brief

12 *Supra*, note 1.

THRESHOLDS OF REGISTERS STUDIED IN THE EU

While the threshold with respect to the nature and extent of the UBO's interest is the same for EU registers, how UBOs are identified is subject to some variation. The most common way UBO thresholds are identified is to designate a specific percentage held by the UBO. Generally, this is set at a 25% interest in the company, be that interest directly in that company or through interests held in other companies.

For example, In Poland,¹³ Portugal,¹⁴ and the United Kingdom,¹⁵ the UBO is identified upon reaching the threshold of 25%. In Sweden, however, UBOs are identified with respect to the specific extent of control, to wit, the exact percentage of that natural person's beneficial ownership as of the 25% threshold.¹⁶ This means that once a UBO in Sweden reaches 25%, their specific interest must be identified: 26%, 27%, 28%, etc. In the United Kingdom, the PSC Register requires disclosure for PSCs within three categories: 25-50%, 51-75%, and over 75%.¹⁷

NATURE OF BENEFICIAL OWNERSHIP AND REQUIREMENT TO DISCLOSE

While the UBO is most easily identified through a stake of 25% or more in a company, in some jurisdictions, a UBO must be identified regardless of the UBO reaching a designated threshold. UBOs may be identified in the absence of a stake of 25% or more: for example, in Belgium¹⁸ and Portugal,¹⁹ if a UBO with a direct or indirect interest of 25% cannot be identified, then natural persons who hold veto rights, or who can appoint members to the shareholders board, can be identified as UBOs. In Sweden, the UBO register requires that in the absence of registration on the basis of percent ownership and the absence of senior management needing to be registered as a UBO, a specific disclosure must be filed to stipulate to the lack of a UBO.²⁰ Belgium requires UBOs to also disclose whether they own or control the company with family members or through other companies,²¹ and in Finland, regardless of percentage of shares held, any person who de facto exercises control in the company is considered a beneficial owner.

EITI REGISTERS OF BENEFICIAL OWNERSHIP

The EITI requires all of its members to disclose the real names of the owners of companies in extractive industries (oil, gas, mining) "that apply for or hold a participating interest in an exploration or production of oil, gas, or mining license or contract."²² The EITI does not explicitly require a register, but instead at minimum that its member nations publicly disclose the identity of the owner (e.g. the name, nationality, and country of residence) as well as other relevant identifying details (e.g. national identity number, residential address, date of birth). At a minimum, to comply with EITI standards, national reports must publish this beneficial ownership information; however, the EITI strongly recommends the creation of national registers to host such information. EITI fields for information disclosure are largely in line with those of registries already introduced in EU nations. The EITI, however, goes one step further and requires the identification of all politically exposed persons (PEPs) in public disclosures

13 KPMG. Belgium, Germany, Finland (partly), Gibraltar, Malta, Austria, Portugal, Spain and Sweden. August, 2019. <https://assets.kpmg/content/dam/kpmg/pl/pdf/2019/08/pl-en-tax-alert-kpmg-2019-08-22-central-register-of-beneficial-owners-to-be-launched-on-13-th-october-2019.pdf>

14 Secretaria-Geral do Ministério da Justiça. Registro de Beneficiário Efetivo. July 18, 2019. <https://justica.gov.pt/servicos/Registo-de-Beneficiario-Efetivo>

15 Mor, Federico. "Registers of Beneficial Ownership". Briefing Paper Number 8259. 7 August 2019. United Kingdom House of Commons Library. <http://researchbriefings.files.parliament.uk/documents/CBP-8259/CBP-8259.pdf>.

16 Bokagsverket. "How to register beneficial ownership information." February 5, 2019. <https://bolagsverket.se/en/us/about/beneficial-ownership-register/how-to-register-beneficial-ownership-information-1.15230>

17 Companies House. "People with significant control (PSC): who controls your company?" February 20, 2018. <https://www.gov.uk/government/news/people-with-significant-control-psc-who-controls-your-company>

18 Federal Public Service – Finance. "UBO Register." (n.d.) <https://finance.belgium.be/en/E-services/register-beneficial-owners>

19 *Supra*, note 16.

20 *Supra*, note 18.

21 *Ibid*.

22 Extractive Industries Transparencies Initiative. "Beneficial Ownership: Revealing who stands behind the companies". (n.d) <https://eiti.org/beneficial-ownership>

required of beneficial owners.²³ National public registers of beneficial ownership do not have this as a requirement, and it may be a useful field for such registers to consider reporting.

CANADA BUSINESS CORPORATIONS ACT AND THE INDIVIDUALS WITH SIGNIFICANT CONTROL REGISTER

The Individuals with Significant Control Register (ISC) is a common set of internal reporting standards aimed to improve transparency of business ownership, and to assist law enforcement in proceeds of crime investigations.²⁴ It came into effect June 2019, and the intention is for Canadian provinces to require provincially incorporated entities to follow suit and keep an internal record of ISCs. The register is to be kept by federally incorporated businesses and must be produced on demand for inspection by shareholders and creditors (subject to restrictions), by investigative bodies, and by Corporations Canada. As federally incorporated businesses keep custody of their own ISC record, it is not a publicly available register.

An ISC is understood to be anyone who “owns, controls, or directs a **significant number of shares**; has significant influence over the corporation without owning any shares; or has a combination of any of these factors.”²⁵ Information in the ISC Registry about ISCs includes the name, date of birth, residential or service address, country or countries where the ISC is considered a resident for tax purposes, the date a person gained significant control and when significant control ended, if applicable, and a description of how the ISC has significant control (for example, owning 20% of shares and directing a further share of 10% for minor children would constitute significant control).

RECOMMENDATIONS FOR A PAN-CANADIAN PUBLICLY ACCESSIBLE REGISTRY

NATIONAL VARIATIONS IN ACCESS TO REGISTERS

Arguments in favour of restrictions to access to registers of beneficial ownership are made in the interests of privacy. In the interest of transparency, and with few exceptions, UBO registers should be publicly available, free to access, and regulated by national governments to ensure compliance by businesses with reporting laws on beneficial ownership transparency.

While EU-Member States and EITI countries have either implemented or moved toward creating company registers of beneficial owners, not all registers are currently public. Under 5AMLD, EU Member States will be required to make public the UBO’s name, month and year of birth, the UBO’s nationality and country of residence, and the UBO’s interest in the business.²⁶ Currently, there is variation between registers in terms of UBO information transparency. Some registers²⁷ make all collected data available without registration for access (e.g., Sweden, Finland, Poland) whereas others restrict access to personally identifying information, such as tax registration numbers and civic addresses (Luxembourg). Still others are functionally private and require interested parties to demonstrate a legitimate interest in access to the national register on the basis of combatting

23 Extractive Industries Transparencies Initiative. Guidance note on MSG oversight of beneficial ownership reporting. September 2017. <https://eiti.org/document/guidance-note-28-on-msg-oversight-of-beneficial-ownership-reporting>

24 Innovation, Science, and Economic Development Canada. “Individuals with Significant Control”. September 9, 2019. <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs08216.html>

25 Ibid, emphasis original.

26 *Supra*, note 1.

27 This report discusses both active and proposed registers of beneficial ownership, where those registers have not yet been implemented but where the components of the register have been set and where access to those registers has been determined as a matter of public policy.

money laundering and terrorist financing (e.g., Cyprus,²⁸ Finland,²⁹ Germany,³⁰ Ireland,³¹ Malta³²) or in the public interest (Finland,³³ Ireland³⁴). Access to national UBO registers may be complicated by a requirement for interested parties to register or create an account with the UBO registry (Germany) or to pay a fee to access (Belgium).

PRIVACY

Under 5AMLD, as of January 2020, underage UBOs can request their identities remain private;³⁵ some EU Member States currently stipulate it as a matter of policy (Germany,³⁶ Luxembourg,³⁷ Norway³⁸). Countries with public company registries of beneficial owners allow registrants, regardless of age, to make arguments in cases where the UBO faces a disproportionate risk of victimization as a result of information disclosure via registry. These cases are by application only and exemptions are to be made in rare circumstances, on a case-by-case basis. Where personally identifying information or tax information is available, jurisdictions keep that information private and available only to law enforcement or, if applicable, other such interested parties.

RECOMMENDATIONS FOR CRITICAL FIELDS OF INFORMATION

Excluding some private information that could be collected and made available only for law enforcement and tax authorities, a pan-Canadian, publicly accessible register of beneficial ownership should contain the following publicly available information:

- The full name of the beneficial owner.
- Commonly known names of the beneficial owner.
- The partial date of birth of the beneficial owner.
- Country of residence.
- The percentage of shares held (regardless of the 25% threshold) for any person who qualifies as a beneficial owner, and a disclosure of how that individual exercises significant control (for example, control or direction of other shares, agreements with other shareholders to vote in concert, the existence of personal relationships with other owners that result in significant control, veto rights).
- A unique identifier number that shows ties to other business entities over which the individual has significant control.
- The service address of the beneficial owner.
- The individual's status as a politically exposed person, foreign or Canadian.

28 PriceWaterhouseCooper, "The UBO Register: An Update." December 2018. <https://www.pwc.nl/nl/assets/documents/ubo-register-update-december-2018.pdf>

29 Patent and Trade Registration Office. "Information services and information on the registries". August 14, 2019. https://www.prh.fi/fi/kaupparekisteri/edunsaajatiedot_heinakuusta_2019_alkaen/tiedot_edunsaajista.html

30 *Supra*, note 30. Note that in Germany, much of the information collected in the UBO register is collected and available in the trade register.

31 *Ibid*.

32 *Supra*, note 31.

33 *Supra*, note 32.

34 *Supra*, note 31.

35 *Supra*, note 1.

36 *Supra*, note 31.

37 *Supra*, note 31.

38 *Supra*, note 31.