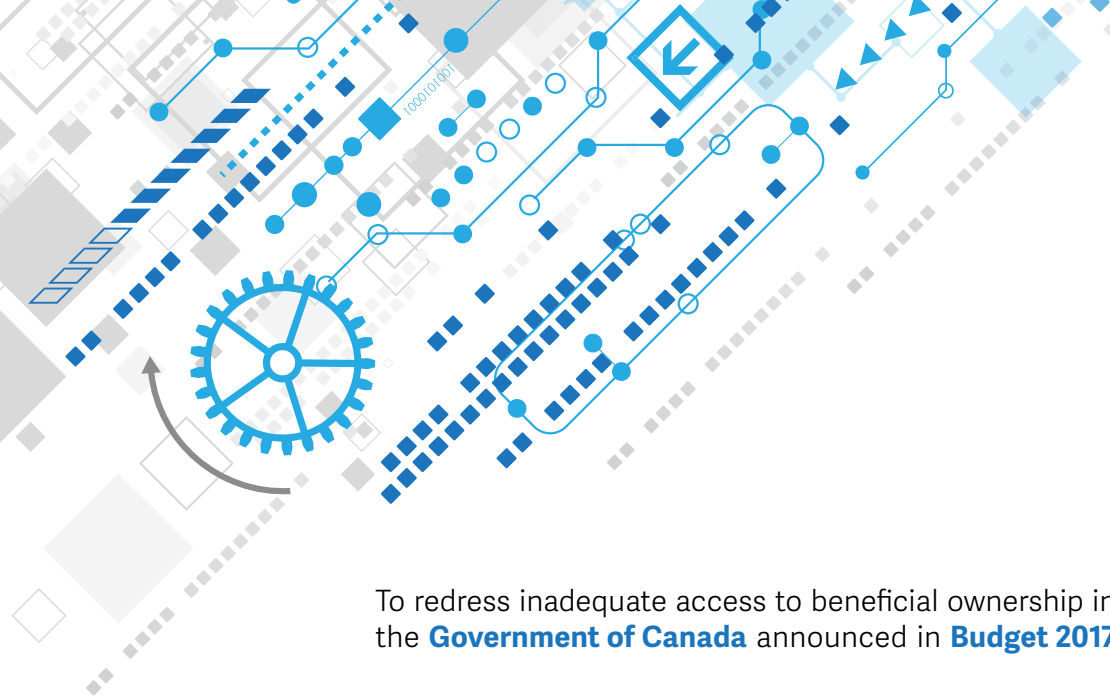


Building a Transparent, Effective Beneficial Ownership Registry

Lessons Learned
and Emerging Best
Practices from
Other Jurisdictions

Mora Johnson
December 2017





To redress inadequate access to beneficial ownership information¹, the **Government of Canada** announced in **Budget 2017** that it will

*...collaborate with provinces and territories to put in place a national strategy to strengthen the transparency of legal persons and legal arrangements and improve the availability of beneficial ownership information. The Government is also examining ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information. These actions will ensure that law enforcement and other authorities have timely access to the information needed to crack down on money laundering, terrorist financing and tax evasion and to combat tax avoidance.*²

An effective beneficial ownership information collection regime requires the creation of a beneficial ownership registry. In taking this step, it would be useful to consider emerging best practices and lessons learned from other jurisdictions, particularly experiences of Member States of the European Union (See **Textbox: EU Fourth Anti-Money Laundering Directive**³).

There are a number of best practices that have emerged in the development of central registries of beneficial ownership, which are detailed in this policy note. These best practices should guide the Government of Canada's efforts to create an accurate and effective central registry.

1 See FATF Mutual Evaluation Report of Canada.

2 Federal Budget, Tabled in the House of Commons on March 22, 2017, page 213.

3 Key elements of the 4th EU Anti-money Laundering Directive, 09 2015.

As detailed in this policy note, a strong effective beneficial ownership registry needs to include:

- 1 A wide range of legal entities
- 2 Centralized, “one-stop shop” for information
- 3 Mechanisms for verification
- 4 A skilled registrar, empowered to apply dissuasive penalties
- 5 Timely updates
- 6 Adequate data
- 7 A well-designed database
- 8 Public accessibility

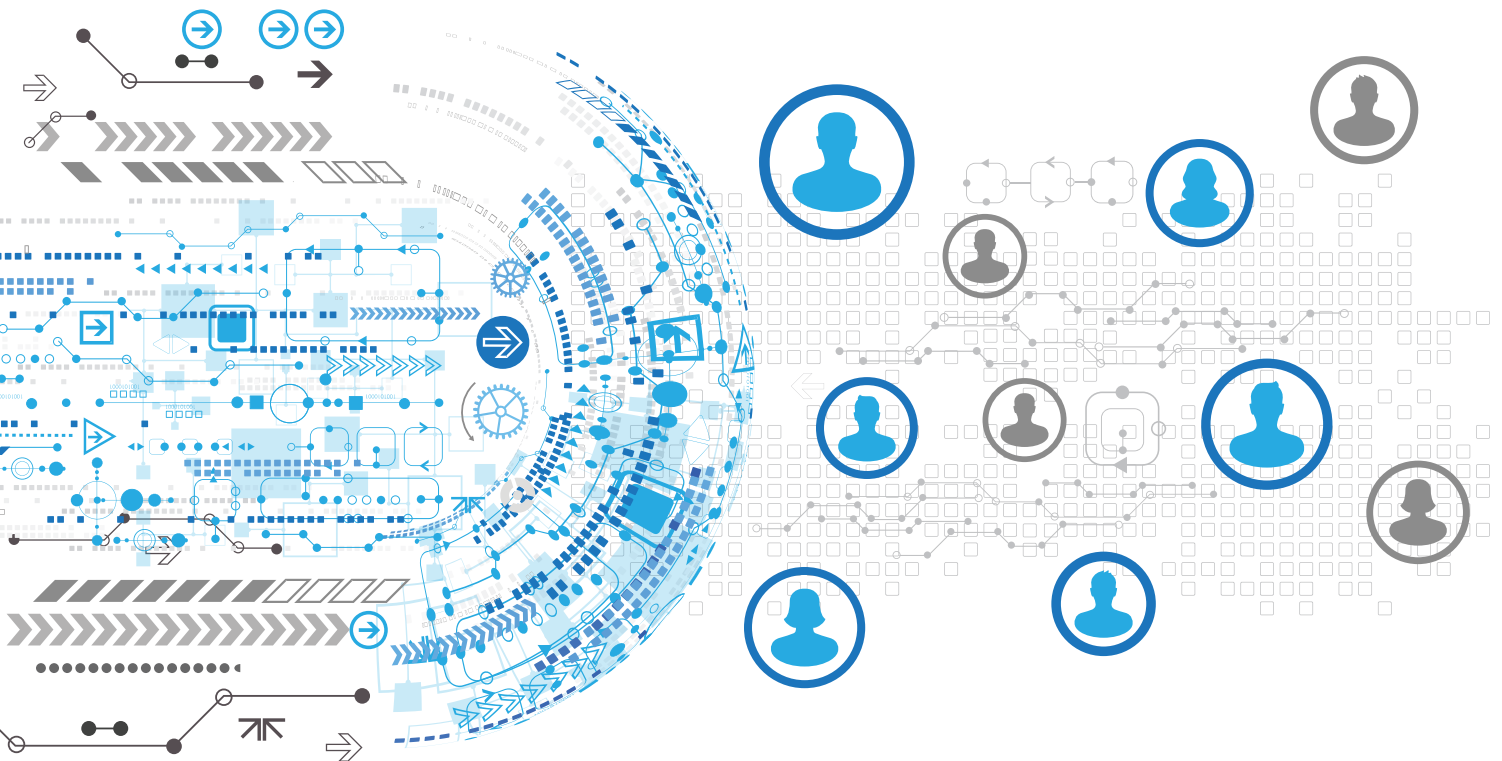
EU Fourth Anti-Money Laundering Directive

EU countries have been implementing the EU Fourth Anti-Money-Laundering Directive (EU AMD4), which requires all member states to create beneficial ownership registries for all legal persons and entities, including trusts. Under the EU AMD4, companies, legal entities and others, such as trustees of express trusts, will be required to collect and disclose to their governments **adequate, accurate, and current beneficial ownership information**, as required by the Directive. Each EU Member State is required to create a central registry of beneficial ownership information that is accessible, at a minimum, to competent authorities and financial intelligence units (FIUs) and “obliged entities” when carrying out customer due diligence measures, as well as those who can demonstrate a “legitimate interest” in the information.

1

Scope: Information for a Range of Legal Entities, Including Corporations

The current availability of beneficial ownership information in Canada is very uneven.⁴ For “distributing corporations” and “other reporting issuers” (i.e. entities that are publicly traded on provincial securities exchanges) information is made publicly available for holders of over 10% of securities (see: www.sedi.ca). There is also information available on provincial databases for sole proprietorships and general and limited liability partnerships when partners are individuals; however, there are frequent barriers to access either because they are behind a paywall or are not online. But for most non-distributing corporations and other legal arrangements, beneficial ownership information may be difficult or impossible to verify independently. This includes trusts, non-distributing corporations, partnerships where partners are corporations, and limited partners of partnerships which are not reporting issuers on provincial exchanges. When creating a beneficial ownership registry, the government should focus first on entities and arrangements that are the most opaque, i.e. non-distributing (or privately held) corporations, partnerships and other legal entities not subject to securities regulation.



⁴ Mora Johnson, *Secret Entities: A legal analysis of the transparency of beneficial ownership in Canada*, Publish What You Pay Canada, 2017

2

Centralization: One Registry for 14 Jurisdictions

Canadian businesses must register in each province or territory in which they operate where they are subject to all applicable local and provincial laws and regulations. Companies can choose to incorporate in any one Canadian jurisdiction at the provincial, territorial, or federal levels where they will also be included in its corporate registry. As a result, Canada has 14 corporate registries, all of which collect and disclose varying amounts of information. An effective centralized registry of corporate information in Canada is dependent upon the implementation of an effective beneficial ownership collection and disclosure regime through the cooperation and support of all Canadian jurisdictions.

The Government of Canada has committed, through Canada's Open Government Partnership Action Plan 2016-2018, to "provide streamlined access to corporate information through online search" with five provinces: Ontario, Quebec, Nova Scotia, Manitoba and British Columbia. This pilot should be extended to all provinces and territories and should be widened to include beneficial ownership information when it becomes available. A central database will provide one-stop, efficient access for all users, including those with statutory due diligence obligations.

3

Public Access to a Beneficial Ownership Registry

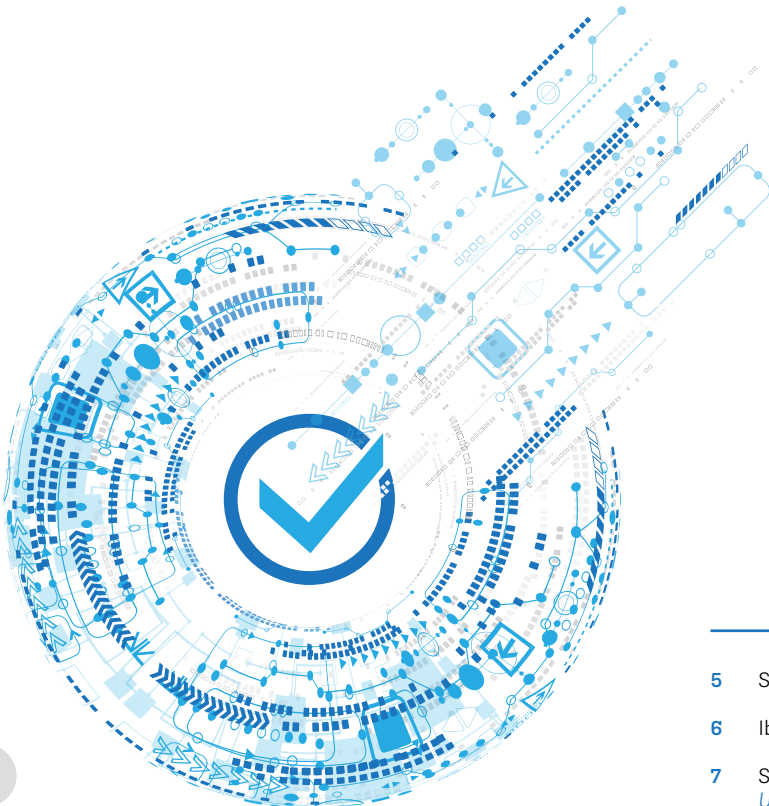
Beneficial ownership registries should be free and open to all. Public beneficial ownership registries reduce the barriers for law enforcement and tax officials in other jurisdictions to access the information, make the data available to FIs and other FATF non-financial designated professions, as well as allowing journalists and civil society to discreetly access the information for investigations. Public scrutiny of information is also likely to improve data quality and help rectify omissions and errors. Open registries also allow easier access by businesses undertaking due diligence checks on new potential customers, creditors, and business partners. The United Kingdom, Denmark, France, the Netherlands and Germany have all announced or have already implemented publicly available registries.

4

Verification: Information Submitted to Registries Must Be Verified

Because legal entities are themselves the providers of the information that go into beneficial ownership registries, central registries administered by governments cannot be considered reliable sources of beneficial ownership information unless the information is verified and identification is checked.⁵ If the information cannot be relied upon for due diligence purposes, it cannot be expected to achieve Anti-Money Laundering/Terrorist Financing objectives, such as providing financial institutions with information required for due diligence. From the perspective of the financial services sector, “the situation has the unfortunate effect of checking a client’s word as provided to the financial institution, against the client’s word as provided to the company registry.”⁶

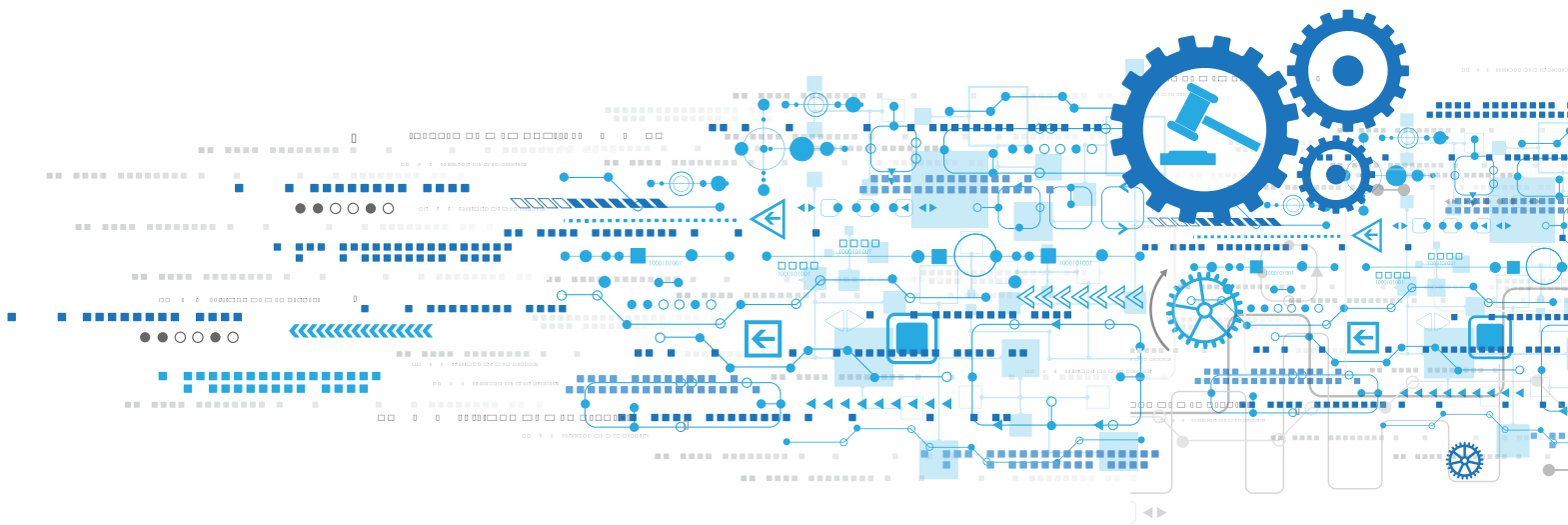
Transparency International confirmed that in Canada, registrars did not verify company data.⁷ Few if any central registrars around the world verify information provided by entities. However, this may be changing. The most recent EU draft bill on money-laundering includes a requirement that member states verify company data provided to registries. Verification of the information provided through reliable, independent source documents or data, as well as identification checks at the time of incorporation, and after changes, would greatly increase the reliability and utility of a central registry.



⁵ StAR Initiative, *Puppet Masters*, at page 99.

⁶ *Ibid.*

⁷ See Transparency International Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*.



5

Skilled Registrars with Adequate Regulatory Powers

Registrars with expertise in corporate law help provide a strong risk-analysis approach to verification. A highly skilled registrar would be able to discern when there is a higher risk of money laundering, and where it might be necessary to go beyond the minimal threshold for beneficial ownership and go back with more questions. However, costs of verifying information are not insignificant. This will be considered in a section below.

If the traditional central registry is to be repurposed for anti-money laundering functions, the registrar should have AML reporting obligations and access to sensitive risk assessment information about misuse of entities. Ensuring that effective, proportionate and dissuasive sanctions are available and used against entities that file misleading information is also recommended by the FATF as a means to increase the reliability of the information provided. The range of sanctions should be flexible enough to be reasonable for those who carelessly make mistakes but severe enough to be dissuasive for those with criminal intent.

Some innovative regulations from the UK territories might also improve registry quality, such as the Guernsey legislative requirement that every corporate entity must name a resident person, be it an agent, resident director or other resident corporate officer, who is responsible for collecting and maintaining beneficial ownership on any entity incorporated under its laws. That person, who is subject to sanctions for submitting incorrect information, would have a stronger incentive to ensure that the rules are complied with.

6

Registries Must Require Prompt Information Updates

Typically, most registered entities submit statutory annual returns; however, many jurisdictions also require notice of updates within a certain time period, for example, within 14 days of changes. Unless there is a clear requirement that the registrar be notified of any changes within a certain time period, there is a high risk that information in the registry will quickly become out of date. The UK was subject to criticism for its annual update only policy but has made changes requiring more prompt reporting of changes by entities.

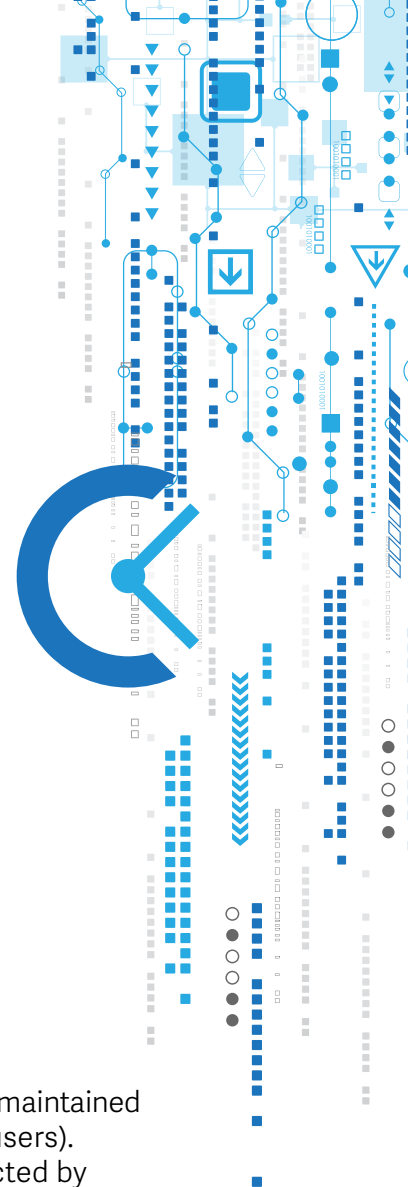
7

Registries Must Collect Adequate Data Sets

Governments need to determine what pieces of information should be maintained and collected by Registrars (even if it is not all made available to all users). The FATF recommends that the following basic information be collected by governments at minimum: the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (for example, memorandum and articles of association) list of directors. On beneficial ownership, the following data sets are important: beneficial owner name, address, date of birth, nationality and country of residence; names of directors and senior officers, and the ownership and control interest of the beneficial owner.

Given the risks presented by the legality of nominees, the FATF recommends that **nominee shareholders and directors are legally required to disclose the identity of their nominator and that this information should be included in the registry.** Otherwise, nominees will be mistakenly perceived as the beneficial owners, defeating the purpose of a beneficial ownership registry and allowing criminals to act anonymously.

It is useful for due diligence purposes for registries to maintain and disclose historical data on companies, including inactive, dissolved, merged, struck off companies, as well as dates of changes in addresses, managers, officers, or beneficial owners.



8

Database Design Considerations

Ease of use and efficiency is greatly enhanced for all users if information in the registry is recorded digitally and if there is maximum flexibility in searching. Searchable fields should include, at a minimum, the names of beneficial owners, directors, agents, business address, company name, birth date, and company unique identifier.

Certain examples illustrate the usefulness of maximum flexibility in searching. A nominee or agent who has not disclosed his/her status might be discovered if beneficial owner and director fields are searchable, creating a large number of hits. A business address might raise suspicion if it is used multiple times for unrelated businesses.

Providing the information in open format is critical to data usability. The UK beneficial ownership registry provides the information in open data format, allowing for data analysis against other data sets and easy integration into other databases, including those of commercial due diligence service providers. The NGO Global Witness performed data analysis on the UK registry and came out with, among others, the following observations:

Almost 3,000 companies listed their beneficial owner as a company with a tax haven address – something that is not allowed under the rules. There are problems with how the data has been inputted. For example, you can write anything in the nationality field and we found over 500 ways of putting “British”, including ten people who wrote “Cornish”... However, an easy way to avoid this would be for Companies House to use drop down menus for fields such as nationality or title, with a potential “other box”. [Another observation was] that 76 beneficial owners share the same name and birthday as someone on the U.S. sanctions list.⁸

To improve data accuracy, a **unique identifier** can be assigned to each entity. Unique identifiers reduce false negatives and provide another search field to pull up cases where such entities are partners or potentially shareholders.⁹ Open Contracting Partnership argues for the importance of unique identifiers for each entity:

A unique company ID is the key to publicly linking contracts and companies, and to their beneficial owners. ...In practice, company names are sometimes used as identifiers in contracting records. But frequent inconsistencies in how these names are documented – for example, ABC Consulting; A.B.C. Consulting; ABC Consulting Ltd. – leads to mismatching in records and making it impossible to gain a full understanding of government business with that company. A corporate ID, on the other hand, acts like a universal barcode for all an entity’s transactions with the government – and other governments. The contracting record should include the corporate ID of the company involved, and the same corporate ID should link the company to its beneficial owners in a corporate register, enabling [better opportunities to detect] corruption, cronyism or conflicts of interest.¹⁰

⁸ Robert Palmer and Sam Leon blog, *What does the UK beneficial ownership data show us?* Global Witness.

⁹ StAR Initiative, *Puppet Masters*, at page 83.

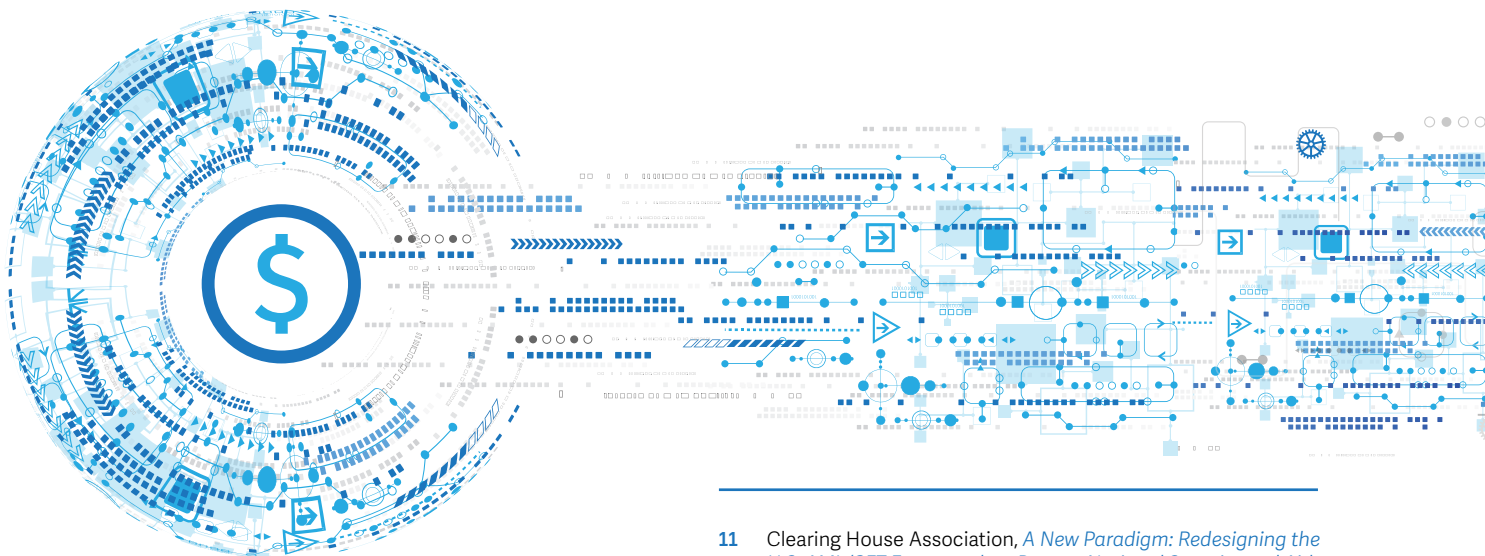
¹⁰ See Chris Taggart and Gavin Hayman blog, *Open Contracting Partnership*.

Another Consideration: Cost

Repurposing a self-reporting central database into an anti-money laundering-oriented, verified beneficial ownership database will require investment by government. However, closed central registers are even more expensive than open ones to operate since they require systems to ensure confidentiality of the information while allowing access by competent authorities, creating layers of complicated bureaucracy.

It should be noted that these costs are currently being borne by **other parties in the financial system in a highly inefficient manner**. The Clearing House Association, a US banking association, notes that FIs devote vast resources to activities that could easily be performed centrally by government or some other party. One example is the lack of an established reporting requirement for beneficial owners of corporations, forcing multiple firms to conduct due diligence and research such information on the same companies, when it should be readily available upon incorporation.¹¹ Banks interviewed by the StAR Initiative noted that much of their time and effort performing due diligence is spent on customer accounts that are clearly beyond all possible risk of money laundering, yet require due diligence to ensure “the paperwork is in order.”¹²

A centralized, verified beneficial ownership registry would likely bring about significant aggregate efficiencies across the economy, even if it costs more for the government to implement. It would also reduce costs and increase efficiencies within other parts of government, such as law enforcement and tax assessment. It could be useful to explore the extent to which increased costs of a verified registry could be recovered without compromising free and open access, for example, through increased corporate registration fees, or by charging an annual levy for frequent users for due diligence purposes, such as banks and trust companies.



¹¹ Clearing House Association, *A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement*, February 2017, pages 5 and 8.

¹² StAR Initiative, *Puppet Masters*, page 98.

Conclusion and Next Steps

Around the world, certain best practices are emerging through lessons learned in implementing central beneficial ownership registries. Such registries are critical policy tools in international efforts to improve beneficial ownership transparency. In doing so they fight terrorist financing and money laundering more effectively.

Registrars should be empowered and resourced to verify information and identities provided and capable of applying dissuasive sanctions for non-compliance. While verification will increase costs to government, overall efficiencies will occur in the economy and within other branches of government. Certain options for cost-recovery could be considered, so long as they do not compromise free and open access. Registries that are public allow for broad public use, including by professionals with designated anti-money laundering obligations, journalists, researchers and non-governmental organizations. Another critical component is database design, to ensure data is available in open data format and includes the requisite information. As jurisdictions continue to implement beneficial ownership transparency measures, it will be important to follow developments and be open to evolving best practices.

The Government of Canada should move expediently to act upon its commitment to strengthen beneficial ownership transparency made in the 2017 Budget.¹³ By adopting a purposeful approach, learning from emerging best practice and paying due attention to key concerns, Canada can emerge as a world leader in beneficial ownership transparency.





Publish 
What You Pay
CANADA

Publish What You Pay Canada is the Canadian coalition of the global PWYP network. Since its foundation in 2007, PWYP-Canada has been at the forefront of the national movement for transparency and accountability in the Canadian extractive sector, championing and driving forward the passage of legislation that requires that Canadian extractive companies disclose their payments to governments in Canada and across the globe. In addition, the coalition has worked to actively encourage and support the use of Canadian company information in global advocacy efforts. As part of its transparency promotion, PWYP Canada is calling for a publicly available centralized registry of the beneficial owners of all companies registered, listed, and operating in Canada, both provincially and federally.

Mora Johnson is a lawyer and consultant with a special interest in transparency and anti-corruption.

Copyright © 2017 IMPACT Transforming natural resource management (host organization of PWYP-Canada). All rights reserved.

Reproduction in whole or in parts is permitted, provided that full credit is given to IMPACT and provided that any such reproduction, in whole or in parts, is not sold or incorporated in works that are sold. Written permission must be obtained from IMPACT if any such reproduction would adapt or modify the original content.