

RATIONALE FOR A PUBLICLY ACCESSIBLE, PAN-CANADIAN COMPANY REGISTRY OF BENEFICIAL OWNERS TO ADDRESS THE PROCEEDS OF CRIME THROUGH ANONYMOUS COMPANIES

SCOPE OF THE PROBLEM

In 2016, the Financial Action Task Force (FATF) rated Canada partially compliant and non-compliant respectively with the beneficial ownership transparency of legal persons and legal arrangements. It also evaluated Canada as having a low level of effectiveness in dealing with the misuse of legal persons and arrangements, and in the availability of beneficial ownership information.

An expert panel has conservatively estimated that 46 billion dollars is laundered in Canada each year, and that money laundering in the province of British Columbia has led to a 5% increase in the price of housing within the province alone.¹ Furthermore, it is estimated from 2008 to 2018, more than \$25 billion in residential mortgages in the Greater Toronto Area were provided by unregulated lenders with no AML reporting obligations. And, nearly 50% of those unregulated mortgages were issued to corporate buyers, despite corporate purchases accounting for less than 4% of total transactions.² The expert panel concluded increasingly complex corporate and legal structures used to hide proceeds of crime, and recommended that, **“enhanced beneficial ownership disclosure is the single most important regulatory improvement opportunity available,”³ and that any beneficial ownership registry in Canada should be “transparent, public and easily accessible, consistent with best practices.”⁴**

SURVEY FINDINGS FROM TAX AUTHORITIES AND BUSINESS ASSOCIATIONS

Almost two thirds (61%) of Canada Revenue Agency 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.⁵ Furthermore, according to Ernst and Young’s 2016 Fraud Survey, 91% of senior executives believe it is important to know the ultimate owner of the entities with which you do business.⁶

More than 31,000 Canadian financial institutions, designated businesses and professions are required by the Canadian anti-money laundering and terrorist financing laws and regulations to conduct due diligence on their clients. A publicly accessible registry would reduce the administrative burden for entities with obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), as well as for businesses and government procurement offices carrying out due diligence procedures across multiple sectors. A scorecard assessed by Deloitte and survey on behalf of The Business Council of Canada found that 41% of its members identified that a reduction of regulatory burden would be “one thing to improve Canada’s business environment.”⁷

BENEFITS OF A PUBLIC REGISTRY

A publicly accessible registry can readily assist tax authorities and law enforcement agencies fulfill their respective roles in carrying out investigations. While the House of Commons Finance Committee recommended a pan-Canadian registry with restricted access in its November 2018 report, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, we note that a publicly accessible registry will be significantly less expensive to implement and is the simplest means of providing

1 https://news.gov.bc.ca/files/Combating_Money_Laundering_Report.pdf (pg.1)

2 <https://endsnowwashing.ca/opacity-1>

3 https://news.gov.bc.ca/files/Combating_Money_Laundering_Report.pdf (pg.3)

4 *Ibid.* (pg.83)

5 <https://www.pipsc.ca/news-issues/shell-game>

6 [https://www.ey.com/Publication/vwLUAssets/ey-global-fraud-survey-2016/\\$FILE/ey-global-fraud-survey-final.pdf](https://www.ey.com/Publication/vwLUAssets/ey-global-fraud-survey-2016/$FILE/ey-global-fraud-survey-final.pdf) (pg. 4)

7 <https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/finance/finance-bcc-deloitte-scorecard-interactive-aoda.en.pdf> (slide 38)

access to all PCMLTFA reporting entities. Furthermore, a publicly accessible registry offers much greater scrutiny of its contents in comparison to a registry with restricted access and enables independent observers to conduct analyses and alert the registrar to any noteworthy inaccuracies or omissions – this was the experience with the Persons of Significant Control (PSC) register in the U.K.⁸

ATTRIBUTES FOR AN EFFECTIVE PUBLIC REGISTRY AND GLOBAL CONTEXT

To set up an effective publicly accessible registry, Canada should follow the below recommendations noted in Publish What You Pay Canada's (PWYP) policy note, *Building a Transparent, Effective Beneficial Ownership Registry: Lessons Learned and Emerging Best Practices from Other Jurisdictions*:

1. The registry needs to focus 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.
2. The registry needs to provide access for all users including those with statutory due diligence obligations.
3. Information submitted by companies – including identification—should be verified by a registrar to ensure its integrity.
4. The registry should require prompt updates once company information changes.
5. The database should have searchable fields with drop-down menus and unique identifiers for each submission in order to root out inconsistencies with data entry, and to facilitate searching and recalling records.

45 countries including all EU members, have now implemented or are in the process of rolling out beneficial ownership registries, a majority of which are public.⁹ A recent analysis by Global Witness notes the U.K. PSC register led to a deterrence effect to extent that, "incorporation levels of Scottish Limited Partnerships – a vehicle previously implicated in countless money laundering scandals – has plummeted by 80% in the last quarter of 2017 from their peak at the end of 2015."¹⁰

POLICY RECOMMENDATION

In building upon the commitment in Budget 2019 for further amendments to the *Canadian Business Corporations Act* (CBCA) to make the beneficial ownership information maintained by federally incorporated corporations more readily available to tax authorities and law enforcement, **we recommend that Canada's federal government advocates for a publicly accessible pan-Canadian company registry of beneficial owners in ongoing conversations with provinces and territories.**

8 <https://www.globalwitness.org/en-gb/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/>

9 https://www.taxjustice.net/wp-content/uploads/2019/01/Beneficial-ownership-verification_Tax-Justice-Network_Jan-2019.pdf (pg.11)

10 <https://www.globalwitness.org/en-gb/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/> (full report pg.3)