

April 30th 2020

Attn: Beneficial Ownership Transparency Consultation
Innovation, Science and Economic Development Canada
C.D. Howe Building
235 Queen Street, Room 1043A
Ottawa, Ontario K1A 0H

Re: Federal 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 this 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 evaluating the merits of a public beneficial ownership registry as a progressive step to improve the integrity of Canada's anti-money laundering and anti-terrorist financing (AML/ATF) regime.

Publicly disclosing information concerning beneficial owners and ensuring that this data is high-quality and in line with open data principles—free, searchable, validated, and with verification measures—will serve as a powerful tool for our country 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 Canada:

- Allow Canada to become one of the leading jurisdictions to adhere to G20 principles to implement a strong beneficial ownership reporting system for corporations;
- Align Canada with the province of Quebec which is making company beneficial ownership information publicly accessible, searchable, and free of cost;
- Align Canada with international jurisdictions, such as the United Kingdom and the European Union, that have already taken measures to publicly disclose ultimate beneficiaries;
- Deter money launderers from funneling proceeds of crime and terrorist financing through Canadian corporations;
- Prevent foreign and domestic buyers from using real estate to launder money through shell companies;
- Reduce artificial price inflation in Canadian real estate and improve housing availability;

- Deter and safeguard against dirty money entering Canada's economy, thus making the country more attractive to legitimate investors;
- Reduce financial and reputational risks of Canadian financial institutions and other sectors by supporting them to meet due diligence obligations and detect money launderers;
- Provide individuals, investors, and businesses—particularly small and medium-sized enterprises (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 Canada to fight money laundering, terrorist financing, and tax evasion through anonymous companies and properties; and
- Increase international tax authorities' and Canada Revenue Agency's (CRA) 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:

- Recommend that Canada establishes a publicly accessible, pan-Canadian registry for corporations.
- Recommend the general public has full searchability of the majority of fields in a publicly accessible beneficial ownership registry without paywall restrictions.
- Recommend introducing guidance document(s) that include clear instructions for corporations on how to report and submit high quality information into a central register along with a submission process that is easy to navigate.
- Publicly disclose the following information about beneficial owners with full searchability to the public:
 - Percentage of shares held by any beneficial owner to understand the extent of ownership, control, and direction of shares;
 - The date shareholders became or ceased to be a beneficial owner;
 - Unique identifiers for each beneficial owner;
 - Individual status for politically exposed persons;
 - Full name of beneficial owner;
 - Commonly known names of the beneficial owner;
 - Partial date of birth;
 - Service Address;
 - Country of usual residence with a recommendation for including current and past countries of residence.
- Recommend citizenship(s), full date of birth, and tax information to be available only to law enforcement and competent authorities.
- Recommend exemptions for individuals under extraordinary circumstances to not be listed in the registry; these individuals could include those at risk of being victims of fraud, abuse, victimization, blackmail, and other types of targeting.

- Include the following as features to ensure a registry is effective: a registrar with regulatory authority that can issue penalties and sanctions, validation and verification of data, and a tip-line for use by whistleblowers.
- Recommend that directors be held liable for non-compliance as it should be the responsibility of directors to provide accurate beneficial ownership information to corporations.
- Recommend that beneficial ownership information is available in a registry that is free of cost and searchable to the public. In our view, this registry should be part of a service on behalf of the Government of Canada.
- Recommend that corporations may be permitted to defer publicly disclosing beneficial ownership information only for a limited period of time and legitimate economic competitiveness rationales.
- Recommend further conversations with the UK Government, the European Union, and the Quebec Government to understand best practices and progress with respect to public registers.
- Recommend conversations with the Governments of Denmark, Ukraine, and Slovakia to understand roll-out of public registers. This is in addition to conversations with international organizations such as Global Witness, Open Ownership, The Open Government Partnership (OGP), and Extractive Industries Transparency Initiative to understand international coordination efforts.

RESPONSES TO SPECIFIC QUESTIONS

1. Should Canada establish a public registry (or public registries) of beneficial ownership for corporations, and why?

The Coalition recommends that Canada establishes a publicly accessible, pan-Canadian registry for corporations.

A risk assessment conducted by Canada's Finance Department in 2015 noted that Canada faces very high threats of money laundering through fraud, bribery, piracy, counterfeiting, terrorist financing, and various types of smuggling and trafficking in which front or shell companies are used to facilitate the proceeds of crime.¹

Canadian shell companies have a reputation of being marketed abroad for tax evasion schemes as well as to launder billions of dollars into Canada's economy.² Criminals can remain anonymous for a variety of nefarious activities including committing fraud, embezzling company

¹ <https://www.canada.ca/en/department-finance/services/publications/assessment-inherent-risks-money-laundering-terrorist-financing.html>

² <https://business.financialpost.com/investing/global-investor/heres-how-the-shell-companies-exposed-in-the-panama-papers-work>

funds, paying bribes, and distorting market prices—posing serious risks to legitimate SMEs.³ Legitimate businesses and investments benefit from strong regulations to stop illicit financial flows and help identify the owners of companies that they are doing business with.

A 2016 evaluation by the Financial Action Task Force (FATF) scored Canada as partially compliant and non-compliant with respect to transparency of beneficial owners of legal persons and legal arrangements. The FATF provided a list of priority recommendations which includes ensuring that timely and accurate beneficial ownership information be made available to competent authorities and that financial institutions and designated non-financial business and professions (DNFBPs) verify beneficial ownership information.⁴ The FATF also specified Canada should consider additional measures to supplement its existing framework.⁵ Since then, the federal government has worked with provinces and territories to create an agreement to strengthen beneficial ownership transparency and has introduced measures through legislation to increase timeliness of access to this information for law enforcement and competent authorities.^{6,7}

In his recent report, *Dirty Money – Part 2*, former deputy RCMP commissioner Dr. Peter German comments on the opaque ownership problem in Canada and notes, “taking legislative steps to make [companies] more transparent would make them less vulnerable to money laundering and other criminal activity.”⁸ Other RCMP officers have also called for greater transparency. During the 2018 statutory review of the Proceeds of Crime, Money Laundering and Terrorist Financing Act (PCMLTFA), Assistant Commissioner Joanne Crampton noted that despite success investigating criminal activity linked to organized crime, the RCMP has been hindered by challenges stemming from Canada’s anti-money laundering 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.”⁹

Making accurate and timely beneficial ownership information public is essential to prevent the misuse of corporate entities to facilitate the proceeds of crime. And, there is international precedent for public registries. 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, EU member states are required to launch publicly accessible registers of beneficial owners under The Fifth Anti-Money

³ Refer to *The Impact of Criminal Misuse of Secret Companies on Canadian Small-Medium Enterprises and Rationale for a Publicly Accessible Company Register of Beneficial Owners*
<https://static1.squarespace.com/static/5c8938b492441bf93fdbc536/t/5d0d1b9b6e5e340001f12784/1561140123409/Misuse+of+Secret+Companies+Thought+Piece.pdf>

⁴ <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html>

⁵ <https://www.slideshare.net/fatf-gafi/mutual-evaluation-of-canada>

⁶ <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent#enH6425>

⁷ <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/royal-assent#ID0EEJAM>

⁸ Dr. Peter German, *Dirty Money – Part 2*, March 2019

⁹ Standing Committee on Finance, *“Statutory Review of the Proceeds of Crime and Terrorist Financing Act (PCMLTFA),”* November 2018.

Laundering Directive (AMLD5)¹⁰ and the UK seeks to make public registers the global norm by the end of 2023.¹¹ Additionally, the 52 members of the Extractive Industries Transparency Initiative (to which Canada is funder), are required to publish beneficial ownership information of all contracting and producing extractives companies in their countries, with national registries being encouraged.¹²

There is also precedent for a publicly accessible registry in Canada. In March 2020, the Quebec government announced it will make beneficial ownership information for private entities and commercial trusts publicly accessible and searchable by name in its provincial corporate registry.¹³ Furthermore, British Columbia has successfully passed legislation under *The Land Owner Transparency Act* requiring disclosure of beneficial owners of property.¹⁴

In our perspective, a pan-Canadian publicly accessible beneficial ownership registry is the strongest measure for Canada to address the deficiencies assessed by the FATF and to receive a compliant score. A publicly accessible beneficial ownership registry would not only reduce the burden for reporting entities with obligations under the PCMLTFA, but also all businesses, government procurement offices, and government offices that issue licenses and permits and are required to conduct proper due diligence to manage financial and reputational risks.

2. If not a public registry (or public registries), should Canada establish a central registry accessible only to competent authorities? What are the advantages and disadvantages of having a central registry over a public registry (or public registries)?

The Coalition recommends Canada establish a public registry that goes above and beyond access limited to competent authorities and law enforcement, and we outline a comparison below:

Table 1: Comparison between a publicly accessible registry versus a private registry

| Publicly accessible registry | Private registry |
|---|--|
| Provides businesses and investors with more reliable market information and helps them to know who they are doing business with. This is a critical requirement for a | Businesses, particularly SMEs, would either have to pay, or would not be able to access this information at all. |

¹⁰ https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_18_3429
¹¹ Refer to Federico More, “Registers of Beneficial Ownership,” August 2019.
¹² <https://eiti.org/beneficial-ownership>
¹³ Refer to Section B.7 “Strengthening corporate transparency”
http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf
¹⁴ <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/deee862a/british-columbia-land-owner-transparency-act-becomes-law>

| | |
|--|--|
| <p>trusted investment and business environment.</p> | |
| <p>Independent observers can help law enforcement and competent authorities to improve data quality by flagging potential issues and identifying suspicious activity.</p> | <p>The RCMP would be responsible for analyzing and interpreting significant volumes of data to ensure information is accurate and to analyze this data to identify suspicious activity. This requires significant investment in a team and systems to conduct robust analyses on and flag issues, adding pressure to already scarce resources.</p> |
| <p>Maximum deterrence against money launderers from funneling proceeds of crime and terrorist financing through Canadian companies and real estate.</p> | <p>While a private registry helps the RCMP with investigations, it does not deter the volume of illicit cash entering the Canadian economy because criminals bet that law enforcement will not be able to monitor all suspicious activities. Illicit cash disrupts markets and jeopardizes public safety.</p> |
| <p>Sets Canada up to align with UK and EU and maximizes chance of a positive assessment by FATF. Canada becomes an early adopter of a world-class, innovative model and improves its reputation.</p> | <p>Canada does not adopt the global standard of establishing a public registry like with UK and EU members states. In addition, if FATF regulations change in the future in favour of public registries, Canada will have to invest additional resources to catch-up.</p> |

If yes, what key features would make a Public Registry (or Public Registries) effective?

This section will summarize key features of a registry beginning with fields of information to be publicly disclosed, and we will briefly discuss registrar powers, data validation, a tip-line and penalties as additional features.

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. 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.

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.

Table 2 below displays a list of fields, which we recommend should be publicly disclosed and searchable based on our attached privacy analysis:

Table 2: 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 ¹⁵) |
|--|---|
| 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 personal relationships with other owners that result in significant control, and veto rights) | 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. |
| Date shareholder became or ceased to be a beneficial owner | Clarifies ownership record. |
| 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 PCMLTFA. |
| To support identification of the beneficial owner: | |
| 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 full name of the beneficial owner | Needed for identification. Not inherently sensitive. |

¹⁵ See pages 22-23 in *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*

| | |
|--|--|
| 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 of the 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 the federal government 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.”¹⁶</i></p> |
| Country of usual residence | <p>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. Canada 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.¹⁷</p> |

¹⁶ <https://soquij.qc.ca/>

¹⁷ 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>

We recommend that citizenship and country of tax residency should not be made publicly accessible due to risks of harassment and fraud. Additionally, these fields carry a higher expectation of privacy based on our analysis and having this information available in the public realm might be used to target certain individuals.

Instead, tax information and citizenship information should be made available only to competent authorities and law enforcement and we go into more detail in Question 11.

Below, are other major features which are important to a public registry:

Data validation

It is imperative that Canada 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 one 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”.

Adjustments to the disclosure form, including drop down menus to select nationality, could limit spelling errors but the above highlights 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 implementation of the Extractive Sector Transparency Measures Act (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.¹⁸

Registrar with regulatory authority

The Coalition believes that the federal 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.¹⁹ As such, the registry contains unverified and flawed information, rendering it less effective than it could be.

¹⁸ Reporting template, validation checklist, and guidance document for ESMTA can be found here <https://www.nrcan.gc.ca/our-natural-resources/minerals-mining/mining-resources/extractive-sector-transparency-m/tools-extractive-businesses/18192>

¹⁹ Ibid.

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.

Penalties

Registers require compliance from business entities who must disclose information about their ultimate beneficial owners (UBOs). 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 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 (Netherlands), or one-year maximum imprisonment (Norway).²⁰ Failure to comply can result in financial penalties in both the Netherlands and in Norway. 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 European Union (EU) and other government funds.²¹ Sweden also punishes noncompliance via fine.²² 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.²³

Canada assesses where it should apply criminal and administrative monetary penalties against businesses for non-compliance with Financial Transactions and Reports Analysis Centre of

²⁰ *Supra*, note 5.

²¹ *Ibid*.

²² 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>

²³ *Supra*, note 5.

Canada (FINTRAC) reporting requirements. Issuing administrative monetary penalties is FINTRAC standard practice. With respect to failing to meet record-keeping requirements or failure 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.^{24,25} 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.²⁶

We recommend meaningful sanctions for 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)²⁷ 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). Meaningful sanctions provide law enforcement agencies with the leverage they need to follow the money to the true beneficial owner.²⁸

3. What additional compliance costs might corporations face if required to transmit their beneficial ownership information to a national registry, and how might these costs be reduced?

The Coalition does not foresee any additional costs for corporations to disclose information of beneficial owners to a national registry. Under recent changes to the Canada Business Corporations Act (CBCA), companies are already collecting BO information—they would simply be required to upload this information. The Government should ensure that this process to upload and submit information is clear and straightforward to make it easy and simple for companies while maintaining the quality of the data that is submitted. For example, the ESTMA program requires companies to submit all reports through NRCan's eServices portal. UK businesses were asked if collecting and submitting information had affected how their business operates. The majority (95%) said it had no impact at all.

²⁴ 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>

²⁵ Penalty scheme under the Extractives Sector Transparency Act (ESTMA) can be considered as well <https://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-3.html#docCont>

²⁶ *Supra*, note 5.

²⁷ 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.

²⁸ 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>

4. Should directors of a corporation be liable for non-compliance with the corporation's beneficial ownership registry obligations?

We recommend that directors be held liable for non-compliance as it should be the responsibility of directors to provide accurate beneficial ownership information to corporations. In the absence of repercussions for directors, Canadian corporations run the risk of bad actors misrepresenting their extent of ownership and control. We recommend a range of penalties from administrative monetary penalties up to indictable offences including the application of recklessness in this circumstance.²⁹

5. Should the public be charged fees to access all or parts of beneficial ownership and other company information, to help cover the costs of implementation, verification and enforcement?

We recommend that accessing the registry should be free of cost and part of a service on behalf of the Government of Canada. In our view, making the registry free creates the strongest possible deterrence against illicit cash and assists all entities with AML obligations and due diligence needs. It also allows for independent observers to easily access this information and flag errors and inconsistencies to the registrar itself.

As corporate entities have been required to collect and maintain beneficial ownership records at the firm-level as per recent CBCA amendments, we believe that it is only fair to grant businesses free access to a beneficial ownership registry as opposed to adding additional costs upon businesses. More detail about the benefits to businesses in accessing information free-of-cost is detailed in Question 13.

6. What processes (if any) should be put in place for verifying the beneficial ownership information provided (e.g., proof of identification for directors, beneficial owners and/or officers/agents of a corporation)?

We recommend the federal 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 include possessing accurate beneficial ownership information.³⁰

Digital ID verification measures can be considered in the near future and the Canadian Government may use the recent draft guidance on Digital IDs from the Financial Action Task Force (FATF) as a means to develop knowledge in deploying Digital ID Technology.³¹ We also recommend the federal government work with the Digital ID & Authentication Council of Canada (DIACC) as they are developing a Pan-Canadian Trust Framework that provides guidance on

²⁹ <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-462.31.html>

³⁰ See slide 18 <https://www.slideshare.net/fatf-gafi/mutual-evaluation-of-canada>

³¹ <https://www.mccarthy.ca/en/insights/blogs/techlex/fatf-releases-draft-guidance-digital-identity>

how a digital identity ecosystem can be deployed across Canada.³² Such technology can be used in the future and offers the potential to ease verification for beneficial owners. An online digital ID system would still allow beneficial owners to submit ID information in person at government service offices, or through notarized copies through representatives.

7. What means could be used to verify identities (e.g., a driver's license, passport, or bio-identifiers)?

Relevant identity documents could include passports, driver's licenses, or provincially issued identification cards with photo. Canada can consult FINTRAC guidance in determining the types of ID and procedures to verify the identities of beneficial owners.³³

It is worth noting that Ukraine has committed to verifying beneficial ownership information using its public register.³⁴

8. How frequently should corporations be required to update the information provided to the Registry?

Out of date information hampers law enforcement activity, due diligence procedures undertaken by businesses and reporting entities to manage risks, and the work of journalists and other members of civil society who benefit from an open, searchable registry. Businesses should report changes to beneficial ownership status (for example, acquisition of beneficial ownership status or the sale of shares and termination of beneficial ownership status) within 30 days of the change in beneficial ownership taking place. Failure to disclose this change should be subject to a publicly disclosed administrative monetary penalty. Such a penalty is in keeping with Canada's approach to accountability with respect to money laundering.³⁵

9. Under what circumstances, if any, should corporations be exempted from providing beneficial ownership information to a public registry? Should there be limitations on information disclosed through a Public Registry (or Public Registries)?

We recommend that corporations may be permitted to defer publicly disclosing beneficial ownership information for legitimate economic competitiveness rationales for a limited period. This is because we recognize that anonymous companies are used to keep certain activities, holdings, and investments confidential across a variety of Canadian sectors.³⁶ The exemption should be time-bound where the registrar reviews and grants requests from corporations to defer public disclosure of beneficial ownership information for a prescribed period in order to realize economic benefits.

³² <https://diacc.ca/wp-content/uploads/2016/08/PCTF-Overview-FINAL.pdf>

³³ <https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng>

³⁴ <https://www.opengovpartnership.org/members/ukraine/commitments/UA0076/>

³⁵ Refer to Coalition Briefing Note: *Necessary Components and Considerations of a Publicly Accessible Beneficial Ownership Registry*.

³⁶ Refer to *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*. pg.25

In addition to this deferral, we recommend individual beneficial owners may opt-out of disclosing personal information on the grounds of safety and we specify this in more detail in Question 12.

10. What are the potential risks to beneficial owners of making their information accessible through a public registry (or public registries) (e.g., identify theft, access by hostile foreign governments)?

To understand whether potential risks exist when making beneficial ownership information publicly available, we have contacted civil society organizations in the UK and EU to learn if there have been attempts to misuse this information for nefarious purposes, and none could refer to reportable incidents.

In evaluating the potential risks of publicly disclosing beneficial ownership information, we recommend that they be weighed against the comprehensive benefits of publicly disclosing such information in the public sphere. The Coalition report, *A Public Beneficial Ownership Registry And The Canadian Privacy Regime: A Legal Analysis* features evidence regarding the public interest such as criminal law detection and enforcement; tax enforcement; transparency related to government procurement; consumer protection; transparency in political financing; transparency in business activities; and finally, a strengthened anti money laundering, anti-fraud, and anti-terrorist financing regime.³⁷

In summary, it is our opinion that publicly disclosing fields in Table 2 provides benefits in the public interest for Canadians and Canada's economy which outweigh potential risks of fraud, misuse, and potential targeting.

11. Should certain beneficial ownership information provided to the registry be accessible only to law enforcement, tax and other authorities? Should a tiered access model be adopted based on the entity seeking the information? What information should be withheld and under what conditions?

We recommend a two-tiered access model for a pan-Canadian registry where certain additional fields of information that are useful for investigators can be accessed only by competent authorities and law enforcement (e.g., RCMP, FINTRAC, CBSA, CRA etc).

A similar tiered access model is employed by the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (RBO) on behalf of the Government of Ireland and was launched in the summer of 2019.³⁸ With regards to what types of beneficial ownership information should be made available to law enforcement and competent authorities,

³⁷ Refer to *A Public Beneficial Ownership Registry And The Canadian Privacy Regime: A Legal Analysis*. pg. 11

³⁸ Refer to menu item 10.1 "Who has access to data in the RBO" <https://rbo.gov.ie/faqs/using-the-rbo-register-portal.html>

we recommend that full dates of birth, citizenship(s), tax information and personal addresses should be available to these stakeholders. This will help make investigations more efficient.

12. Should individual beneficial owners be able to seek exemptions from having some or all of their information made public, on grounds of safety, protecting the privacy of legitimate investment decisions, or similar reasons? Under what basis should such requests be granted?

We recommend that individual beneficial owners should be able to seek exemptions on the grounds of safety, harassment, targeting as we agree with the concern outlined in the consultation document. We recommend referring to the Government of British Columbia's recommendations for exemptions as per *The Land Owner Transparency Act (LOTA)*.³⁹

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.⁴⁰

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.

We recommend the registrar to review all requests for exemptions and for requests regarding investment decisions. For the latter, we recommend a time-bound deferral process as outlined in our response to Question 9.

13. Which other organizations (e.g., FINTRAC, private sector entities with anti-money laundering obligations) should have access to the withheld information and under what conditions? What other factors should we take into consideration when assessing the Public Registry (or Public Registries) approach?

There are many sectors that will benefit from a public register approach that is free-of-cost and searchable. This is why we recommend that a publicly accessible registry with the fields outlined in Table 2 should be available free-of-cost to the general public and all businesses, including all private sector entities with anti-money laundering (AML) obligations and businesses without AML obligations.

A publicly accessible register of beneficial owners can help reduce the compliance burden on sectors covered under the PCMLTFA who are required to collect and maintain records of beneficial ownership information. Such a registry will also assist DNFBPs (e.g., casinos;

³⁹ See section 40(1) under "Application to omit information" <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/first-reading/gov23-1>

⁴⁰ <https://www.pwc.nl/nl/assets/documents/ubo-register-update-december-2018.pdf>

accountants and accounting firms; dealers in precious metals and stones; British Columbia notaries; real estate brokers, developers, and sales representatives, etc.) which were recommended to identify beneficial ownership information from customers according to a 2018 report from the House of Commons Finance Committee.⁴¹ A recent federal regulatory amendment proposal would require DNFBPs to collect and verify beneficial ownership information.⁴²

A publicly accessible register also reduces the due diligence burden for Canadian SMEs 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 information available on the internet. Below, we specify factors that should be considered amongst key actors in Canada.

Financial institutions

According to the 2015 Department of Finance risk assessment, the financial sector bears the majority of anti-money laundering risk and spends millions to comply with obligations under the PCMLTFA to collect beneficial ownership information. The required investments could be a burden to new financial players starting operations in Canada. A publicly accessible registry will reduce compliance burden for all financial institutions, level the playing field for startups, and serve as a tool that is in line with future open banking initiatives.⁴³

Designated Non-Financial Businesses and Professions (DNFBPs)

The limited availability of beneficial ownership information for DNFBPs under Canada's current regime places these businesses and professionals at risk of not fulfilling know-your-customer due diligence (KYC).

One of the sectors at high risk of money laundering threats is Canada's real estate sector. In 2019, The Coalition produced the report *OPACITY: Why criminals love Canadian real estate (and what to do about it)*. In this report, the Coalition assessed 1.4 million residential property transactions in the Greater Toronto Area (GTA) between 2008 and 2018. In this time, the Coalition found the following risks facing GTA real estate⁴⁴:

- Corporate entities have acquired \$28.4 billion in GTA housing since 2008. The vast majority of those companies are privately owned, with no information on their beneficial owners.

⁴¹ Refer to FINA Committee Recommendation 8 <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/report-24/page-18>

⁴² <http://gazette.gc.ca/rp-pr/p1/2020/2020-02-15/html/reg1-eng.html>

⁴³ <https://www.pwc.com/ca/en/industries/banking-capital-markets/canadian-banks-2019.html>

⁴⁴ Refer to *OPACITY: Why Criminals Love Canadian Real Estate and How To Fix It* <https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5c92f6ec104c7b75c315b507/1553135372459/BOT-GTA-Report-English.pdf>

- \$9.8 billion in GTA housing was acquired by companies through cash purchases during that period, much of it bypassing statutory AML checks on source of funds and beneficial owners.
- From 2008 to 2018 more than \$25 billion in residential mortgages in the GTA were provided by unregulated lenders with no anti-money laundering reporting obligations. Nearly 50% of those unregulated mortgages were issued to corporate buyers, despite corporate purchases accounting for less than 4% of total transactions.
- Opaque ownership is most prevalent in the luxury segment of the market, with more than half of homes above \$7 million owned through companies.

These figures highlight the prevalence of anonymous businesses camouflaging illicit funds and compromising the integrity of the Canadian economy. The real estate sector understands these risks and the importance of knowing the real owners in properties. In a 2019 Toronto *Sun* op-ed, Tim Hudak, CEO of the Ontario Real Estate Association (OREA) endorsed a public beneficial ownership registry through Ontario's land title registry system.^{45,46}

These examples demonstrate the need for DNFBPs to access a publicly accessible beneficial ownership registry to improve financial and reputational risk management practices.

Canadian small and medium-sized enterprises

Businesses routinely complete new due diligence forms when seeking support from financial institutions. This is time consuming for businesses as the process is often redundant. A publicly accessible registry would significantly reduce the administrative burden faced by thousands of businesses across the country because their ownership information would be available on a centralized registry, which banks and other financial institutions can access. As a result, the due diligence process can be made much easier for banks and in turn, small businesses would spend less time completing forms.

Additionally, in today's complex business and financial environment, it is increasingly important for businesses to conduct thorough due diligence before making critical decisions in their supply chains. Knowing exactly who they are doing business with enables companies to make informed decisions about transactions and business relationships. There is currently no means for a business (particularly small businesses) to conduct beneficial ownership due diligence on a privately-held corporation with which it is considering doing business. Small businesses would benefit from finding out if the beneficial owner of a potential business partner is a convicted criminal, a person with a poor reputation, or a longstanding competitor with dishonest intent.

In short, when considering sector-specific factors as an assessment for a public register, we recommend ensuring that all businesses possess the means to collect and verify beneficial ownership information with ease. In our view, a public, searchable register that is free-of-cost fulfills this objective.

⁴⁵ <https://torontosun.com/opinion/columnists/hudak-time-to-get-dirty-money-out-of-canadian-housing-market>

⁴⁶ <https://www.orea.com/News-and-Events/News-and-Press-Releases/Press-Releases/November-06-2019>

14. In other jurisdictions, have public registries demonstrated effectiveness in ensuring accurate information, supporting investigations by law enforcement, tax, and other competent authorities?

There is documented evidence from the UK showing that independent observers were able to flag inconsistencies within the UK PSC register and recommend ways in which the registry can avoid data errors moving forward. These inconsistencies were discovered only because the registry was publicly accessible.

The PSC Register noted errors and suspicious entries raised by the general public and searchability increased once paywalls were removed.

The PSC Register noted there were 58,352 reports from the public regarding likely mistakes and discrepancies in the company register between July 2017 and March 2018.⁴⁷ Additionally, once paywalls were removed from the PSC Register in 2015, the number of searches increased from six million to two billion. This demonstrates that there is a high demand for beneficial ownership information.⁴⁸

As a second example, those who submitted information to the PSC 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). Analysis by independent observers 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.⁴⁹

Law enforcement has noted that a public registry has resulted in efficiencies.

Law enforcement in the UK has provided insight noting the PSC register has had a positive effect on their work and made locating PSC information more efficient.⁵⁰ "It was generally felt that the introduction of the register has not influenced the availability of information about beneficial owners of companies; however, it has made it quicker and easier to obtain such information. Therefore, the process of identifying and developing an understanding of individuals that control corporate entities and the corporate networks of which they form part has been made more efficient."⁵¹

⁴⁷ Global Witness, Getting the UK's House in Order, May 2019 pg. 3

⁴⁸ <https://www.globalwitness.org/en/blog/three-ways-uks-register-real-owners-companies-already-proving-its-worth/>

⁴⁹ Refer to full report by Open Ownership and Global Witness <https://www.openownership.org/uploads/learning-the-lessons.pdf>

⁵⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/revi-ew-implementation-psc-register.pdf pg. 34

⁵¹ Ibid.

Law enforcement has also noted that while some information in the PSC register was inaccurate, it was useful to note because those falsified entries helped with evidence for fraud. One law enforcement stakeholder mentions the following,

“There's value for us if someone has put in a false declaration. That serves us just as well as someone who has put in a true one.”⁵²

Our Coalition has also heard from an RCMP officer on record that a publicly accessible registry would make casework more efficient and this sentiment was conveyed during a roundtable with federal, provincial bureaucrats on May 29th 2019. This corroborates with insight from UK law enforcement expressed above, and demonstrates that a publicly accessible registry will have value for criminal investigations.⁵³

15. In other jurisdictions, have public registries reduced the misuse of corporations for criminal or other illicit activities?

The UK Department for Business, Energy, and Industrial Strategy (BEIS) has noted that Scottish Limited Partnerships (SLPs) have been used to launder 80bn from Russia over 4 years.⁵⁴ SLPs had been linked to international criminal networks in Eastern Europe and had allegedly been used in arms deals.⁵⁵ U.K. NGO Global Witness notes that SLPs were corporate vehicles that could be set up anonymously without declaring beneficial owners.⁵⁶ After SLPs were required to disclose beneficial owners through the PSC Register, there was an 80% reduction in the number registered in 2018.⁵⁷

Public registries in other jurisdictions have noted use by civil society organizations, law enforcement, and competent authorities. For instance, Slovakia's public registry revealed the Prime Minister may have been in conflict with EU funding policies.⁵⁸ In Ukraine, data from the Ukrainian public registry led to an arrest of high-profile official who faked his death in 2018⁵⁹, and officials are using the registry to trace \$5.5 billion USD in assets that were stolen from its largest bank.⁶⁰

⁵² Ibid. pg. 35

⁵³ This was a meeting organized by The Coalition to understand provincial perspectives regarding a pan-Canadian public registry. This was a side event as part of the Open Government Partnership Summit on May 29th-31st 2019 in Ottawa.

⁵⁴ <https://www.bbc.com/news/uk-scotland-scotland-business-43935839>

⁵⁵ Ibid.

⁵⁶ <https://www.globalwitness.org/en/blog/three-ways-uks-register-real-owners-companies-already-proving-its-worth/>

⁵⁷ <https://www.bbc.com/news/uk-scotland-scotland-business-43935839>

⁵⁸ <https://www.theguardian.com/world/2018/sep/20/brussels-urged-to-investigate-czech-pm-over-business-empire>

⁵⁹ <https://time.com/5426008/ukraine-man-fake-death-rolls-royce/>

⁶⁰ <https://www.intellinews.com/ukraine-s-prosecutor-general-identifies-5-5bn-of-assets-bought-with-looted-privatbank-funds-151418>

16. Have public registries had an effect on investment levels?

Survey findings from the PSC Register refer to testimonies from UK investment associations and business organizations attesting that the register had a negligible impact on their members.⁶¹ In the same survey, UK financial institutions suggested that the PSC register may likely increase investment in the country itself,

“If you're operating in a jurisdiction where you see structures and processes in place that improve transparency around ownership that has to be attractive if you are a legitimate company or organisation... it can only be a benefit would be my view in attracting people in much the same way as a stable body of law. When you're looking at places to invest, a low corruption score is a great benefit.”⁶²

It is important to note that business organizations, investment associations, and financial institutions expressed a desire for verified information in the PSC register because it would boost the quality of information and utility of the registry itself would increase.⁶³ This is an important consideration for Canada in the creation of any registry. In our view, public registries serve as a means for independent observers to flag inconsistencies while verification mechanisms are being developed.

With respect to investment levels, we would like to highlight a comparison between Ireland and Canada. Both jurisdictions possess similar ease of doing business scores where Canada ranks 23rd and Ireland ranks 24th.⁶⁴ It is important to note that in spite of possessing similar ease of doing business scores, Ireland has a two-tiered, publicly accessible beneficial ownership registry that is paywalled for a nominal fee.⁶⁵

It is unclear as to whether inward FDI for Ireland will be affected as 2019 flows will be published later this year. However, we can point to insight on behalf of research economists who noted evidence demonstrating that greater corporate transparency leads to greater foreign investment.⁶⁶

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/revi-ew-implementation-psc-register.pdf pg. 37

⁶² Ibid. pg. 38

⁶³ Ibid. pg. 37-39

⁶⁴ <http://documents.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf> pg. 4

⁶⁵ <https://rbo.gov.ie/about.html>

⁶⁶ R. Gaston Gelos and Shang-Jin Wei find that, at least when it comes to attracting much needed foreign capital, a lack of transparency may affect economic performance by repelling international investors. "There is relatively clear evidence," they state, "that low transparency...tends to depress the level of international investment." Davis, Matthew, Transparency Encourages Foreign Investment, in The National Bureau of Economic research, on-line at <https://www.nber.org/papers/w9260.pdf>

It is worth noting that Denmark and the UK have ease of doing business rankings of 4th and 8th respectively while operating publicly accessible beneficial ownership registries.⁶⁷

17. Are there international best practices and experiences that Canada can learn from were it to adopt a public registry (or public registries)?

The Coalition recommends continuing conversations with the UK Government⁶⁸ and to initiate conversations with the Governments of Denmark, Ukraine, and Slovakia to understand how their own registries were rolled-out. We also recommend that Canada initiate conversation with the European Union to understand country progress under AMLD5. Finally, we recommend conversations with international organizations such as Global Witness, Open Ownership, The Open Government Partnership (OGP), and Extractive Industries Transparency Initiative to understand international coordination efforts.

In Canada, we recommend the federal government to review corporate transparency measures announced in the province of Quebec.

We recommend reviewing Coalition reports attached to this submission (see Annex) along with the following insight reports by international civil society organizations:

Global Witness—Getting The UK’s House In Order (2019):

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

Global Witness and Open Ownership—Lessons from UK PSC Register (2017):

<https://www.openownership.org/uploads/learning-the-lessons.pdf>

Open Government Partnership—Beneficial Ownership Global Report, Democracy Beyond The Ballot Box (First Ed.): https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf

Open Ownership, The B-Team, and The Engine Room—Data Protection and Privacy in Beneficial Ownership Disclosure (2019):

<https://www.openownership.org/uploads/oo-data-protection-and-privacy-188205.pdf>

Conclusion

We believe that Canada can join its international peers in implementing meaningful anti-corruption reforms. A pan-Canadian public registry of beneficial owners would safeguard

⁶⁷ <https://www.doingbusiness.org/en/rankings>

⁶⁸ Recommend conversations with BEIS, Companies House, and the Joint Action Anti-Corruption Unit (JACU).

citizens and Canada's economy from the threat of dirty money and restore our reputation as a world-class jurisdiction 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 projects.

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. Report: Building a Transparent, Effective, Beneficial Ownership Registry.
4. Report: OPACITY—Why Criminals Love Canadian Real Estate and How To Fix It.
5. Brief: Necessary Components and Considerations of a Publicly Accessible 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)⁶⁹

“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

⁶⁹<https://www.gov.uk/government/publications/restricting-the-disclosure-of-your-psc-information/restricting-the-disclosure-of-your-information>

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."