

**B.C. Consultation on a
Public Beneficial Ownership Registry**

January 2020



Ministry of
Finance

Foreword from the Honourable Carole James, Minister of Finance and Deputy Premier

The impact of money laundering in British Columbia can be seen in every corner of our province: driving up the cost of goods, affecting business competitiveness, eroding the trust in our economy and institutions, and facilitating criminal activities such as drug trafficking that is responsible for the many opioid-related deaths in this province¹.

Two Reports by Peter German found evidence that the proceeds of crime are being laundered in many sectors in B.C. including through casinos, the sales of luxury vehicles and real estate purchases.² The Expert Panel on Money Laundering in BC Real Estate estimated that \$7.4 billion was laundered in B.C. in 2018, enough to have inflated housing prices by almost 5%.³ As the very nature of money laundering is grounded in secrecy, these are conservative estimates and it is possible that the real numbers are much higher.

When the price of real estate grows because of the influx of dirty money, it pushes costs above what local incomes can support. From the young family struggling to purchase a home to the small businesses unable to attract talented employees, everyone is affected by money laundering.

Our work to stamp out money laundering is limited by a lack of data, including information on beneficial ownership in corporations and in real estate. That's why the Expert Panel has made several recommendations to improve data collection and data sharing — including Recommendation 5, which suggests consultation on a full corporate beneficial ownership registry consistent with best practices.⁴

In 2017, the provincial, territorial and federal Finance Ministers committed to improving transparency for the beneficial ownership of business corporations in Canada. To prevent misuse of corporations for criminal purposes such as money laundering, corruption, terrorist-financing and tax evasion, the Finance Ministers agreed to:

- 1) eliminate bearer shares, and
- 2) require corporations formed in Canada to maintain a list of beneficial owners within their corporate records office that is available to law enforcement, tax authorities and other regulators.⁵

In May 2019, the B.C. government delivered on this commitment by passing Bill 24, the *Business Corporations Amendment Act, 2019*, becoming one of three Canadian jurisdictions requiring corporations to keep records of beneficial owners in their corporate records office.

¹ Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 1.

² Peter M. German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia*, March 31, 2018, and *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019.

³ Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 48.

⁴ Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 76.

⁵ Agreement to Strengthen Beneficial Ownership Transparency, December 11, 2017, https://www.fin.gc.ca/n17/data/17-122_4-eng.asp

In addition to pressures in B.C., there has been an increased push for greater transparency of corporate entities across the globe. Many countries have moved forward with publicly accessible government registries of beneficial ownership of companies. In particular, the European Union is requiring 31 European Countries to implement publicly accessible government registries by January 10, 2020.

B.C. added to this global momentum last spring with the successful passing of the *Land Owner Transparency Act*, which establishes the world's first public registry of beneficial ownership in real estate. In June of this year, I committed to initiate consultations to increase beneficial ownership transparency of companies along with my provincial, territorial and federal counterparts.⁶

Our next step is to consider how transparency for the beneficial ownership of companies will look in the future, and I want to hear from you. The following paper sets out potential policy changes and discussion questions regarding a potential government-maintained registry of company beneficial ownership.

We want to know how this potential registry may impact you or your business, and your comments will help make this registry as effective as possible. As a result, the registry will help give tax auditors, law enforcement agencies and federal and provincial regulators the information they need to conduct their investigations. It will also help those government agencies to crack down on tax frauds and those engaged in money laundering.

I want to thank you in advance for engaging with us as we work to end tax evasion and hidden ownership in British Columbia. I look forward to hearing your thoughts and ideas on this potential registry of company beneficial ownership.

Sincerely,

A handwritten signature in black ink that reads "Carole James". The signature is written in a cursive, flowing style.

Carole James

Minister of Finance and Deputy Premier

⁶ Joint Statement – federal, provincial and territorial governments working together to combat money laundering and terrorist financing in Canada, June 14, 2019 – <https://www.fin.gc.ca/n19/19-065-eng.asp>.

How to Participate

This paper is provided for public discussion and comment.

Comments on the paper are open until the end of the day, March 27, 2020 and should be directed, in electronic form to BCABO@gov.bc.ca or mailed to:

Attn: Policy and Legislation Division
BCA Beneficial Ownership
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria B.C. V8W 9V1

Similarly, should you have any questions about the issues raised in this consultation, please send them to the above address and a member of the Financial Real Estate Data Analytics Branch team will contact you.

Public Nature of Consultation Process

The Ministry of Finance will share comments it receives with other branches of government, specifically the Corporate Registrar, who is responsible for the administration of the corporate registry and the Land Title and Survey Authority, who is responsible for the administration of the land owner transparency register.

Freedom of information legislation may require that responses be made available to members of the public who request access.

Contents

Foreword from the Honourable Carole James, Minister of Finance and Deputy Premier 1

How to Participate 3

 Public Nature of Consultation Process..... 3

Background 5

 What is Beneficial Ownership and Why is it Important for Anti-Money Laundering? 5

 The Current State of Company Beneficial Ownership in B.C. 8

 Canadian Context 9

 International Context..... 10

 Next Steps in B.C. 10

Consultation Topics..... 12

 Government-Maintained Transparency Registry 12

 Questions 12

 Public Access to Government Maintained Transparency Registry 13

 Questions 14

 Protection of Personal Information 14

 Questions 15

 Verifying Beneficial Ownership Information..... 15

 Questions 16

 Compliance and Enforcement..... 16

 Questions 17

 Transparency Register for Other Entities..... 17

 Questions Regarding a Register of Trusts 17

 Questions Regarding Partnership Registration..... 18

Concluding Remarks..... 19

Appendix 1 – Glossary of Terms 20

Appendix 2 – Information Required in the B.C. Private Company’s Transparency Register 21

Appendix 3 – Land Owner Transparency Act Penalties 21

 Penalties Related to the Filing of a Transparency Report with the Land Title and Survey Authority 21

 General Penalties 21

Background

What is Beneficial Ownership and Why is it Important for Anti-Money Laundering?

Transparency of beneficial ownership is concerned with identifying the true or ultimate owner or controller of a company. The Financial Action Task Force (FATF), an intergovernmental organization of which Canada is a founding member, defines the beneficial owner as follows:

Beneficial owner refers to the natural person(s) who ultimately owns or controls a legal entity and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.⁷

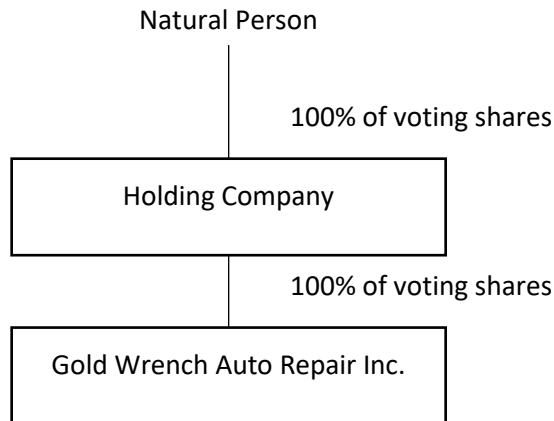
Companies are currently required to keep information of their legal owners, the shareholders, in the company’s central securities register. However, that information does not always provide enough information to determine the persons described by FATF’s definition above. For instance, the beneficial owner(s) may differ from the legal owner(s) due to:

- one shareholder having sufficient power (shares) to guide the decision making of the company more so than the others,
- the shareholder may be holding the shares on behalf or for the benefit of another through a trust, agency or nominee relationship, or
- the shareholders may themselves be companies who take direction from their shareholders.

The last-mentioned situation is a common situation referred to as a holding company arrangement often established as an added precaution to protect the owner’s personal assets and to allow tax, business and succession planning.

⁷ *FATF Guidance, Transparency and Beneficial Ownership*, Financial Action Task Force, at page 8 Box 1; see also the glossary in the *FATF Recommendations*. Definition has been amended with “legal entity” replacing “customer” for clarity in this context. FATF uses “customer” in that definition as many of the FATF recommendations are aimed at the requirements of financial institutions, including the recommendation that financial institutions identify the beneficial owners of their customers.

Visually, the structure would look as follows:



In this case, Holding Company is the legal owner of Gold Wrench while Natural Person, is the beneficial owner of Gold Wrench.

Such arrangements are legitimate and regularly created for normal business purposes. However, such a structure also largely obscures the ultimate owner and decision maker of Gold Wrench.⁸ Without beneficial ownership information to complete the picture, it is difficult to distinguish between legitimate business structures such as Gold Wrench’s and those designed to facilitate money laundering – money launderers are deliberately exploiting this fact.

As highlighted by the provincially appointed Expert Panel on Money Laundering in BC Real Estate, which was released on May 9, 2019, the ultimate goal of money laundering is to make the proceeds of crime appear to be from legitimate sources. Money laundering is comprised of three steps each dependent on anonymity to succeed:

Placement – The process of moving the criminal proceeds into the financial system.

Layering & Justification –

Layering: The process of moving criminal proceeds already placed in the financial system away from the underlying crime.

Justification: The process of creating evidence and providing a rationale for the existence of the money so that it appears legitimate.^{9, 10}

⁸ An investigator could reach this conclusion by inspecting Gold Wrench’s central securities register, then inspect Holding Company’s central securities register and make the connection. However, this can be an onerous, multi-step process and for that reason it is often not done.

⁹ For example, entering into business transactions and generating invoices between controlled companies giving the appearance of money being exchanged for the services or goods.

¹⁰ The justification stage is a new phase suggested by T.J. van Koningsveld that takes place between the layering and integration stages. T.J. van Koningsveld, “Money Laundering – ‘You don’t see it, until you understand it’: Rethinking the stages of the money laundering process to make enforcement more effective” in B. Unger and D. van der Linde (Eds.), *Research Handbook on Money Laundering* (Edward Elgar, 2013).

Integration/Extraction – Using the laundered proceeds without raising suspicions.

During placement, anonymity helps put the money into the financial system as the criminal avoids being identified as the true owner of the funds. During layering, the proceeds can be moved from account to account and from entity to entity while hiding the fact that the accounts and entities are ultimately controlled by the same person. This also helps justify the source of the funds and makes them appear to come from legitimate business transactions. At the final phase, integration/extraction, the cleaned funds are used to purchase goods or services from businesses. To the business, this customer is indistinguishable from ordinary customers.

In addition to allowing money laundering to flourish, anonymity undermines law enforcement's ability to investigate the predicate crime and the money laundering itself. It slows down the investigation as law enforcement must determine who the true owner of each company is as they trace the proceeds of crime back to the predicate offence. Tracing the proceeds of crime is already a time-consuming endeavour; money launderers further complicate this practice by deliberately exploiting the anonymity provided by the company structure.

Without anonymity, it is possible to unwind these transactions and see that ultimately, the funds have always been effectively controlled by the criminal during every stage of the process.

Although the separate legal personality of the company is what creates this anonymity, anonymity was not a primary feature that led to the recognition of the corporate body at law. Rather, the primary feature of the company structure, dating back to *Joint Stock Companies Act 1856* (UK)¹¹ was to create a separate legal personality distinct from the shareholders to shield them from the liabilities incurred by the company. When the company structure is looked at globally, there are five key features, none of which are anonymous ownership:

1. legal personality,
2. limited liability,
3. transferable shares,
4. delegated management under a board structure, and
5. investor ownership.¹²

Rather than being a core feature of a company structure, anonymous ownership is a result of the need to create a separate legal personality combined with the historical data limitations at the corporate registries across the globe.

Disclosure is the answer to anonymity. The Expert Panel stated that “disclosure of beneficial ownership is the single most important measure that can be taken to combat money laundering.”¹³ This sentiment

¹¹ 19 & 20 Vict. C. 47.

¹² Armour, John, Henry Hansmann and Reinier Kraakman, “The Essential Elements of Corporate Law: What is Corporate Law?”, *Harvard Law and Economics Research Paper* No. 643 (2009), http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_643.pdf.

¹³ Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 2.

is echoed by the non-governmental organizations including the Tax Justice Network,¹⁴ Transparency International Canada¹⁵ and Canadians for Tax Fairness.¹⁶ Disclosure simplifies the tracing process for investigators when following the proceeds of crime. It also allows data analytics without undermining any of the primary functions of the company structure.

Those are the arguments in favour of increasing beneficial ownership transparency of B.C. private companies as well as the recently passed *Land Owner Transparency Act*, establishing the world's first publicly accessible registry of the beneficial owners of real estate. However, the government of B.C. recognizes that increasing beneficial ownership transparency of companies through a similar registry would represent a business and cultural change concerning company information; it would create new filing requirements for B.C.'s approximately 430,000 private companies while removing a level of privacy company owners have become accustomed to.

We are seeking your input and feedback about the impacts of such a registry of beneficial ownership of B.C. private companies, including:

- Business impacts,
- Efficient collection of data,
- Public access,
- Scope, and
- Role of government.

The Current State of Company Beneficial Ownership in B.C.

B.C. has already taken significant steps to improve the ownership transparency of B.C. companies. Bill 24, the *Business Corporations Amendment Act, 2019* received Royal Assent on May 16, 2019. It fully eliminated bearer shares and requires B.C. private companies to list their beneficial owners, referred to as "significant individuals" in the legislation, in a transparency register at the company's corporate records office by May 1, 2020.¹⁷ The transparency register is then accessible by law enforcement, tax authorities and certain regulators.

¹⁴ Knobel, Andres, Moran Harari and Markus Meinzer, "The State of Play of Beneficial Ownership Registration: A Visual Overview", Tax Justice Network, June 27, 2018, at page 2 <https://www.taxjustice.net/wp-content/uploads/2018/06/TJN2018-BeneficialOwnershipRegistration-StateOfPlay-FSI.pdf>.

¹⁵ Transparency International Canada, "No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts" 2016, at page 34 <http://www.transparencycanada.ca/wp-content/uploads/2017/05/TIC-BeneficialOwnershipReport-Interactive.pdf>.

¹⁶ Transparency International Canada, Canadians for Tax Fairness and Publish What You Pay Canada. "Opacity: Why Criminals Love Canadian Real Estate (And How to Fix It)" at page 40 <http://www.transparencycanada.ca/wp-content/uploads/2019/03/BOT-GTA-Report-WEB-copy.pdf>.

¹⁷ Please see the B.C. website, Bearer Share Certificate Elimination & Transparency Register, <https://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-transparency-register>, for more information.

Bill 24 established the criteria and tests that B.C. private companies are to use when identifying their significant individuals. Private companies must list every individual who is caught by one of the following rules:

- the registered owner of 25% or more of the shares or shares entitled to 25% or more of the votes,
- has a beneficial interest in 25% or more of the shares or shares entitled to 25% or more of the votes,
- has indirect control of 25% or more of the shares or shares entitled to 25% or more of the votes,
- has the right to elect, appoint or remove a majority of the company's directors,
- has indirect control of the right to elect, appoint or remove a majority of the company's directors, or
- has the ability to exercise direct and significant influence on an individual or group of individuals with the right to elect, appoint or remove a majority of the company's directors.

Bill 24 also requires companies to look for individuals who meet or exceed the 25 per cent threshold through combined interests or rights, who act in concert with others, or who jointly hold the above interests or rights.

The above legal tests for significant individuals bring the Financial Action Task Force definition of beneficial ownership into B.C. law. As a result, significant individuals are equivalent to beneficial owners in B.C. and the two terms are synonymous when speaking in the B.C. context. For the remainder of this document, the term beneficial owner will be used to refer to these individuals.

Once these measures take effect on May 1, 2020, B.C. will be compliant with Financial Action Task Force Recommendation 24.

As part of this consultation, the B.C. Ministry of Finance is also accepting feedback on the amendments created through Bill 24. Please send your feedback as part of your submission to BCABO@gov.bc.ca.

Canadian Context

In June 2019, amendments to the *Canada Business Corporations Act* (CBCA), requiring CBCA corporations to maintain a register of individuals with significant control in their records office for inspection by shareholders, directors, law enforcement, tax authorities and certain regulators took effect. Manitoba recently passed amendments to its *Corporations Act* modeled on the federal amendments. Manitoba's changes are set to take effect by April 8, 2020 at the latest. Saskatchewan introduced similar amendments on November 18, 2019.

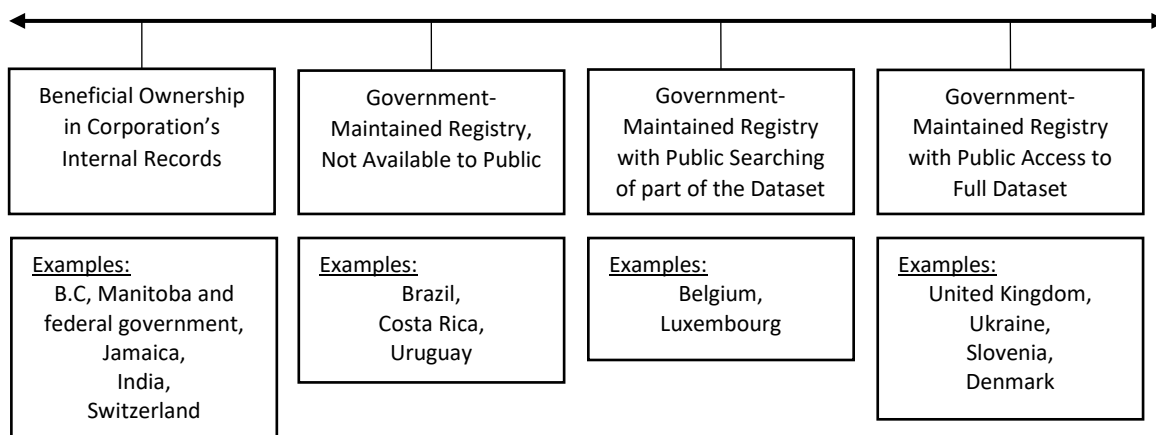
The amendments in Manitoba and at the federal level are very similar to the recent amendments to the B.C. *Business Corporations Act* regarding the transparency register as ultimately, both changes reflect the work undertaken by the Federal-Provincial-Territorial Working Group on Beneficial Ownership to bring Canada, as a nation, into compliance with Financial Action Task Force Recommendation 24.

In October 2019, Quebec initiated a similar consultation and has indicated a preference for using the definition of “individuals with significant control” to align with the federal definition.

Overall, while the legislative language is different across the jurisdictions, those differences reflect the differing legal frameworks of the underlying corporate statutes. They do not reflect a differing objective or underlying policy.

International Context

Increasing beneficial ownership transparency of corporate bodies is an international trend with many countries around the world taking steps to increase this information. In order to comply with Financial Action Task Force Recommendation 24, there are a range of options; from requiring companies to keep beneficial ownership information in their internal records to a fully-accessible dataset of information compiled by the government.



Lately, the trend has been more towards full public access. In particular, the European Union’s 5th Anti-Money Laundering Directive¹⁸ requires 31 European countries to have a publicly accessible government-maintained registry of beneficial ownership by January 10, 2020. Similarly, the Extractive Industries Transparency Initiative (EITI) requires all 52 EITI countries to publicly disclose the beneficial ownership information of corporations involved in the extractive industries in their country by January 1, 2020.¹⁹ With these two international initiatives, more and more countries are implementing registers on the rightward side of the above range of options.

Next Steps in B.C.

The Expert Panel on Money Laundering in B.C. Real Estate included a description of the 5 best practices of beneficial ownership registries.

¹⁸ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, *OJ L 156, 19.6.2018, p. 43–74* <http://data.europa.eu/eli/dir/2018/843/oj>.

¹⁹ EITI International Secretariat, The EITI Standard 2019 Requirement 2.5 at page 20 <https://eiti.org/document/eiti-standard-2019#r2-5>.

Chart 1 – B.C.’s Progress on Expert Panel’s 5 Beneficial Ownership Best Practices²⁰

Best Practice		B.C.’s Status
1. Information should be maintained about both the beneficial owner and the legal owner.	In progress	Bill 24 requires companies to maintain this information in their records office. To fully meet this, the information needs to be stored in a government database.
2. The ownership threshold for disclosure should be no greater than 10 per cent.	Not Started	B.C. has chosen the 25% threshold to align with Federal-Provincial-Territorial Working Group on Beneficial Ownership.
3. The beneficial ownership register should include all types of non-individual owners.	Not started	Transparency register requirement applies to B.C. private companies. There is no register of beneficial owners of B.C. partnerships or trusts.
4. The beneficial ownership register should be easily accessible and regularly updated.	Not started	Transparency register is only accessible by law enforcement, tax authorities and designated regulators
5. Bearer shares should be forbidden	Complete	Bearer shares eliminated through Bill 24.

Because of the Expert Panel’s recommendation to develop a registry with these best practices, as well as the work being done across Canada and internationally, we would like your input on the specific questions throughout this document as B.C. considers its next steps for increasing beneficial ownership transparency.

²⁰ Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, pages 30-31.

Consultation Topics

Government-Maintained Transparency Registry

Once the requirement to maintain a transparency register at the company's office takes effect, investigators will need to go to the physical location of each company's corporate records office in order to inspect it. This is the minimum required to be compliant with the Financial Action Task Force; however, concerns have been raised regarding this approach's effectiveness in curtailing money laundering. For instance:

- it requires initial evidence that the company is being used for criminal activities before law enforcement will think to check the company's transparency register,
- the process of physical inspection means the check is costly for law enforcement,
- the process of physical inspection itself has the potential to alert the criminals that they are being investigated,
- because the data is not in a single location, data analysis cannot be performed, and
- aside from money laundering concerns, government cannot analyze data for social, demographic or economic trends including Gender-Based Analysis +.²¹

Advocates argue that these issues can be alleviated by requiring companies to upload their transparency register information to a government-maintained registry.²² Doing so does not mean the information will be accessible by the public; that is a separate consultation topic to be addressed below. Rather, it will allow law enforcement, tax authorities and the authorized regulators to access the data much faster and in a more cost-effective manner.

A government-maintained registry of beneficial ownership information would mean taking the beneficial ownership information located in each company's records office as of May 1, 2020 and uploading this information to a government database. The other requirements would remain the same: private companies would still be required to perform an annual review to ensure the information is correct within 2 months of the companies' anniversary date and would be responsible for updating the information within 30 days after becoming aware of the information.²³

Questions

1. How would the requirement to provide the information in your transparency register to government impact your operations?
2. Are there any steps that could be taken to streamline the process, including the uploading process?

²¹ Gender-Based Analysis + "is an analytical process used to assess how diverse groups of women, men and non-binary people may experience policies, programs and initiatives." – Government of Canada, <https://cfc-swc.gc.ca/gba-acs/index-en.html>.

²² Government-maintained registry is being used to describe a beneficial ownership registry or companies as no decision has been made concerning which government body would be responsible for the registry if government proceeds.

²³ Sections 119.3 and 119.31, *Business Corporations Act*, SBC 2002, c. 57. See also *Business Corporations Amendment Act, 2019* (Bill 24), <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/progress-of-bills>.

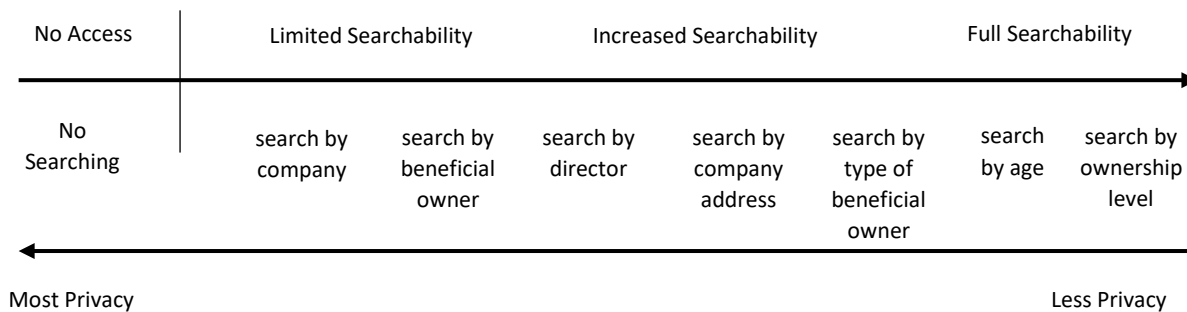
3. Are there any types of B.C. private companies you think should be exempted from the requirement to upload information? If so, why?
4. Should B.C. change the share ownership threshold from 25 per cent to 10 per cent for determining beneficial ownership?
5. Should a B.C. registry of beneficial ownership be linked with those in other Canadian jurisdictions?

Public Access to Government Maintained Transparency Registry

In stating its vision of an effective anti-money laundering system, the Expert Panel on Money Laundering in B.C. Real Estate stressed that the beneficial ownership information of legal persons should be public.²⁴ A benefit of doing so is that it gives businesses, customers and investors the opportunity know who they are dealing with.

In addition to the public at large, certain Canadian entities (referred to as anti-money laundering actors), notably in the financial sector are interested in this beneficial ownership information as they have know-your-customer requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.²⁵ That is, before they are permitted to take on a client as a customer, they must undertake due diligence to verify the true identity of their prospective customer including beneficial ownership information. Lawyers across Canada are similarly required to identify and verify clients before agreeing to represent them under their professional rules.²⁶ Granting public access would help these groups fulfill their requirements.

Related to the question of public access is the question of how much access to give. At one end of the spectrum is a system that allows the public to search by company name only. At the other end is a system in which the entire dataset, aside from information the legislation keeps private,²⁷ is accessible by the public: either through downloadable datasets or application programming interface (API). The latter allows interested users to develop their own tools for searching the data. As the searchability increases though, there is a corresponding decrease in privacy granted to the beneficial owners.



²⁴ Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, at page 9.

²⁵ SC 2000, c. 17.

²⁶ B.C.'s *Law Society Rules* 3-98 to 3-109, Law Society of BC. It should be noted that Identification and verification are two distinct concepts in the Rules. In January 2020, the amendments to the client identification and verification rules will provide more options for how to confirm a client's identity.

²⁷ Detailed personal data about beneficial owners will not be available under any type of publicly accessible government-maintained registry. This is described in more detail in the next topic.

Advocates of full searchability of the database argue that full access deputizes every member of the public to act as verifiers of the information. If inconsistencies are found, they can be pointed out to the government for further follow-up. This role is most facilitated when the public has the greatest level of access to the data. That is, members of the public can develop tools to perform their own red flag analysis. This is the case with the United Kingdom’s Persons with Significant Control Register as the API is available to any interested person.

Case Study: OpenOwnership.org’s combined registries

OpenOwnership.org bills itself as “the global beneficial ownership register” as it has created a combined registry of beneficial ownership with data taken from the United Kingdom, Denmark, Slovakia and Ukraine. It is able to do so as all four countries enabled full data access through APIs.

OpenOwnership has developed the Beneficial Ownership Data Standard to assist governments in developing beneficial ownership registries that can be integrated with OpenOwnership.org’s global registry. By following this standard, B.C. could allow its information to be available on the OpenOwnership.org registry.

Questions

6. How will publicly available beneficial ownership information impact your operations?
7. In your opinion, what degree of searching should the public have?

Protection of Personal Information

Government is aware that public searchability of the registry means personal information will be displayed publicly. Under the *Land Owner Transparency Act*, which will establish a public registry of beneficial owners of land in B.C., the collected information has been divided into public information and information that is not publicly available:

Chart 2 – Information Collected under the Land Owner Transparency Act

Information Available Publicly	Information Not Available Publicly
<ul style="list-style-type: none"> Individual’s full name* 	<ul style="list-style-type: none"> Date of birth*
<ul style="list-style-type: none"> Whether the individual is a Canadian citizen or permanent resident of Canada* 	<ul style="list-style-type: none"> Last known address*
<ul style="list-style-type: none"> If neither of the above, every country or state of which the individual is a citizen* 	<ul style="list-style-type: none"> Social insurance number
<ul style="list-style-type: none"> If the principal residence is Canada, the city and province of that residence 	<ul style="list-style-type: none"> Individual’s tax number if any,
<ul style="list-style-type: none"> If the principal residence is outside Canada, the city and country of that residence 	<ul style="list-style-type: none"> Whether or not the individual is resident in Canada for the purposes of the <i>Income Tax Act (Canada)</i>*
	<ul style="list-style-type: none"> The date on which the individual became or ceased to be an interest holder*
	<ul style="list-style-type: none"> A description of how the individual is an interest holder*

* information required about beneficial owners in each private company’s transparency register under the *Business Corporations Act*. See Appendix 2 for full details.

A publicly accessible government-maintained registry would take the *Land Owner Transparency Act* as the starting point regarding what information is public through a search.

Finally, as was done with *the Land Owner Transparency Act*, if public access is selected, there will be a mechanism to obscure the information of vulnerable individuals. In particular, individuals under the age of 19 or individuals who have been determined to be incapable of managing their own financial affairs will be automatically obscured. Similarly, there will also be an application process for individuals to request that their information be obscured if its publication could reasonably be expected to threaten the safety or mental or physical health of the individual or a member of the individual’s household.

Questions

- Are there any reasons to limit/expand the availability of information on the registry beyond what is described above in Chart 2?
- Are there other situations in which an individual’s information should be obscured other than the scenarios described above?

Verifying Beneficial Ownership Information

A concern about transparency registers stored at companies’ records offices and government-maintained registries is that there is not sufficient verification of the information contained therein.

Generally, to ensure the information in a government-maintained registry is accurate, government can take a reactive approach, a proactive approach or a mixture of the two.

The reactive approach refers to situations where the government only takes steps to verify the information about beneficial owners when alerted by another party that the information is potentially incorrect. For example, with a publicly-accessible database, every member of society can search the information and then report on potentially false information they come across. Once a report is generated, government will be able to follow-up with the particular company.

Another reactive approach relies on anti-money laundering actors, who must identify the beneficial owners of their customers, to inform the government when their information differs from that on the government-maintained registry. For instance, when a company opens about a bank account at a Canadian bank, the bank is required to investigate the identity of the company's beneficial owner as part of the know-your-customer process. After verifying the identity of the customer, the bank can then double check this information against the information in the government database.

The proactive approach would involve government enforcement officers monitoring the information in the government-maintained registry for suspicious entries and following up with the companies to ensure the information they provided is correct. As there are over 430,000 B.C. private companies, for the government to adopt a proactive approach, government resources (staffing, training) will need to be allocated to this task. These would be additional resources beyond those required to establish the registry and for its ongoing maintenance. It is possible to fund the registry, including a proactive approach to verification, by charging the public search fees.

Questions

10. What role should government play in making sure the beneficial ownership information is correctly reported?
11. If there were a cost to search the database, would that change the way you interact with the beneficial ownership database?

Compliance and Enforcement

Once the government issues a request to a private company to update its beneficial ownership information, the issue of how to ensure this request is complied with arises. Currently, under the *Business Corporations Act* there are two tools to ensure the beneficial ownership information is correct. First, the permitted authorities (law enforcement, tax authorities and specified regulators) can seek a compliance order from the court that is backed up by the court's contempt proceedings. For more serious falsifications, the offending party can be charged with an offence.

Administrative penalties are another option to ensure compliance. Administrative penalties would require a government administrator/investigator empowered to levy fines in the face of non-compliance. These types of penalties are present in the recently enacted *Land Owner Transparency Act* that allows the enforcement officer to levy penalties of up to \$50,000 plus 5 per cent of the assessed value of the property in question. See Appendix 3 for full list of *Land Owner Transparency Act* penalties.

Another option to enforce compliance would be to give the Corporate Registrar the power to suspend a company's status in the face of non-compliance. Suspension would prevent the company from updating

its corporate information and could ultimately lead to dissolution²⁸ due to non-compliance if it continued long enough. One enforcement option is to extend the suspension powers of the Corporate Registrar to include suspension a company that has failed to correct its beneficial ownership information once requested.

Questions

12. Do you support the use of administrative penalties to ensure compliance? If so, what range of penalties is appropriate in light of the anti-money laundering goals?
13. Do you support the use of suspensions or dissolutions of the corporation by the Corporate Registrar to ensure accurate beneficial ownership information is provided? Why? Why not?

Transparency Register for Other Entities

As it stands now, the transparency register requirement under the *Business Corporations Act* is limited to B.C. private companies. However, other legal entities, notably partnerships and trusts, are also susceptible to being used for money laundering purposes. In fact, FATF recommends that countries have beneficial ownership transparency for both legal persons (Recommendation 24) and legal arrangements including trusts (Recommendation 25).²⁹ Similarly, the European Union's 5th Anti-Money Laundering Directive requires 31 European countries to establish registers for both.

Once the land owner transparency registry is developed, individuals who have beneficial ownership of real property in B.C. through partnerships or trusts will be required to disclose those interests. Otherwise, there is no general registration process to cover all such arrangements in B.C.

In B.C., there is no registry of trust arrangements. Such a measure would be a tremendous shift in how B.C. regulates trusts as there is currently no registry. At this stage, the Ministry of Finance is seeking general feedback concerning a registry of trusts with further consultations to follow if this option is pursued.

Questions Regarding a Register of Trusts

14. How would a government-maintained registry of trusts impact your operations?
15. Should the public have access to a government-maintained registry of trusts? Why? Why not?
16. If a registry of trusts is created, what would be an appropriate consequence for noncompliance?

All partnerships governed the by *Partnership Act* are required to register with the Corporate Registry. Because of this registration requirement, the Corporate Registry is already in possession of the following information that helps identify the beneficial owners of partnerships:

- a. the name and general nature of the business carried on by the partnership,
- b. the full name and address of each general partner,
- c. for limited partnerships and LLPs, the location of the registered office, and

²⁸ Dissolution of the company would mean that company would no longer exist.

²⁹ Financial Action Task Force, the *FATF Recommendations*, Recommendations 24 and 25, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

- d. for limited partnerships, the term of the limited partnership, the fair value of contributions made by the limited partners, and the basis on which the limited partners are entitled to receive income.

This information combined with a government-maintained database of beneficial owners of B.C. private companies, means that much of the work towards gathering beneficial ownership information of B.C. partnerships will be accomplished through the corporate beneficial ownership registry.

However, there will nonetheless remain some gaps in the beneficial ownership of partnership information. The identities of the limited partners and the partners in a limited liability partnership will not be in the database. Likewise, if the partners are corporations incorporated outside of B.C. the beneficial owners will not be available in the B.C. government-maintained database without further action.

Questions Regarding Partnership Registration

17. How would increasing the information collected about partnerships impact your operations?
18. If further information is required of partnerships, what would be an appropriate consequence for non-compliant partnerships?

Concluding Remarks

Thank you for taking the time to read through this paper and engage with the ideas and issues it addresses. Your input will help inform government's decisions regarding a beneficial ownership registry for B.C. companies and shape the legislative changes.

Please send your comments to BCABO@gov.bc.ca or:

Attn: Policy and Legislation Division
BCA Beneficial Ownership
Ministry of Finance
PO BOX 9418 Stn Prov Govt
Victoria, B.C.
V8W 9W1

The consultation period is open until 4 pm March 27, 2020.

Public Nature of Consultation Process

The Ministry of Finance will share comments it receives with other branches of government, specifically the Corporate Registrar, who is responsible for the administration of the corporate registry and the Land Title and Survey Authority, who is responsible for the administration of the land owner transparency register.

Freedom of information legislation may require that responses be made available to members of the public who request access.

Appendix 1 – Glossary of Terms

“anti-money laundering Actor” – means a person with responsibilities to investigate their clients under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

“beneficial owner” (Financial Action Task Force meaning) – refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. This term is the focus of this paper.

“beneficial owner” (legal meaning) – refers to a person with a beneficial interest in the property. This includes a person with a beneficial interest in the property as a beneficiary in a trust but also includes a person with an interest in the property held by an agent or personal or legal representative. This paper never refers this type of beneficial owner.

“corporate shareholder” – refers to a shareholder of a company that is itself, a body corporate (B.C. company, federally-incorporated corporation, extra-provincially incorporated corporation).

“Federal-Provincial-Territorial Working Group on Beneficial Ownership” – refers to the group of federal, provincial and territorial government bodies and agencies working towards increasing beneficial ownership transparency across Canada.

“Gender-Based Analysis +” – refers to the analytical process of assessing a policy, program or initiative to determine its impact on diverse groups of women, men and non-binary people <https://cfc-swc.gc.ca/gba-acis/index-en.html>.

“government-maintained registry” – the centralized registry, operated by government where all the information about B.C. private companies’ beneficial owners is stored. The word “registry” is used in this document to indicate a centralized database, while “register” is used for decentralized records stored in the companies’ records offices.

“Know your customer”, “KYC” – means the requirement of businesses to verify the identity of its customers prior to taking on the customer as a client under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

“public access” – refers to allowing members of the public to access a B.C. private company’s information about beneficial owners.

“significant individual” – is the legislative term for individuals described in section 119.11 of the *Business Corporations Act*. The tests of significant individuals in section 119.11 of the *Business Corporations Act*, implement the Financial Action Task Force definition of beneficial owner into B.C. law. This term is synonymous with beneficial owner (Financial Action Task Force meaning).

“transparency register” – the internal register at the B.C. private company’s records office listing the required information of the company’s beneficial owners that is accessible by law enforcement, tax authorities and specified regulators.

Appendix 2 – Information Required in the B.C. Private Company’s Transparency Register

For each significant individual, the company’s transparency register must contain the following information:

1. full name, date of birth and last known address,
2. if they are a Canadian citizen or permanent resident of Canada,
3. if they are not a Canadian citizen or permanent resident of Canada, every country or state of which they are a citizen,
4. if they are a resident in Canada for the purposes of the *Income Tax Act* (Canada),
5. the date when they became or ceased to be a significant individual in the company, and a description of how they are a significant individual.

Appendix 3 – Land Owner Transparency Act Penalties

Penalties Related to the Filing of a Transparency Report with the Land Title and Survey Authority

Maximum Penalty - \$50,000 plus 5% of the assessed value of the property (for individuals, the maximum is \$25,000 plus 5% of the assessed value).

- Failure to file a transparency report when required.
- Filing a non-compliant transparency report.
- Providing false or misleading information in a transparency declaration or report.

General Penalties

Maximum Penalty - \$50,000 (for individuals, the maximum is \$25,000).

- Failure of an interest holder to provide information to the person completing the transparency report.
- Inappropriately affixing an electronic signature to a transparency report in non-compliance with the Act.
- Failure to respond to a demand for information from the enforcement officer.
- Failure to verify the information in the transparency declaration or transparency report is accurate when requested to by the enforcement officer or administrator.
- Failure to provide proof of a fact stated in a transparency report, transparency record or other document when requested to by the enforcement officer or administrator.
- Providing false or misleading information in:
 - o a written statement to a person completing the transparency report,
 - o an application to the administrator to conduct a search or inspection,
 - o an application to have information omitted from the registry due to a health or safety risk,
 - o an application to correct or change information about the person on the registry,
 - o a written statement or record given to the enforcement officer in respect of a demand for information,
 - o the verification statement or proof requested by the administrator or enforcement officer, and
 - o a written statement as part of the process of disputing the enforcement officer's penalty.
- Inappropriate disclosure or use of information in a transparency report by the person preparing the transparency report.
- Misuse of information on the public registry to:
 - o solicit the person, or
 - o harass the person.
- During the enforcement officer's inspection:
 - o obstructing that inspection,
 - o withholding, destroying, concealing or refusing to provide information required for the inspection, and
 - o providing false or misleading records or information.