



# FINANCIAL TRANSPARENCY COALITION

Berlin  
Brussels  
Buenos Aires  
Lima  
London  
Nairobi  
New Delhi  
Washington

The Director General  
Financial Systems Division  
Financial Sector Policy Branch  
Department of Finance, Canada  
Via email: [fin.fc-cf.fin@canada.ca](mailto:fin.fc-cf.fin@canada.ca)

May 16, 2018

**Re: Financial Transparency Coalition submission to Canada's review of its Anti-Money Laundering and Anti-Terrorist Financing Regime**

To whom it may concern,

Thank you for the opportunity to provide comments on the consultation regarding the Review of Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime.

The Financial Transparency Coalition is a global civil society network<sup>1</sup>. We work to curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system that works for everyone.

Canada has one of the weakest frameworks among G20 countries for identifying, collecting information on and maintaining records for beneficial ownership information for legal entities<sup>2</sup>. Notwithstanding the commitments made by Canada towards undertaking "concrete action" to realize the G20 High-Level Principles on Beneficial Ownership Transparency in 2014, as well as the fact that Canada is one of the founding members of the Financial Action Task Force (FATF), Canadian companies and other legal entities remain vulnerable to exploitation.

According to Tax Justice Network's Financial Secrecy Index<sup>3</sup>, Canada not only lacks beneficial ownership registration for companies and partnerships, but also lacks effective legal ownership registration (see Canada's technical report and notes, starting at question 134 here<sup>4</sup>). In addition, it is not clear if the new law of June 2017 that prohibits the issuance of bearer shares effectively

---

<sup>1</sup> The members of the Financial Transparency Coalition's coordinating committee are Centre for Budget and Governance Accountability, Christian Aid, European Network on Debt and Development, Fundacion SES, Global Financial Integrity, Global Witness, Latin American Network on Debt, Development and Rights, Pan-African Lawyers Union, Tax Justice Network, Tax Justice Network – Africa, and Transparency International.

<sup>2</sup> G20 Leaders or Laggards? Reviewing G20 promises on ending anonymous companies. April 2018, available at [https://www.transparency.org/news/feature/while\\_the\\_g20\\_draggs\\_its\\_feet\\_the\\_corrupt\\_continue\\_to\\_benefit\\_from\\_anonymous](https://www.transparency.org/news/feature/while_the_g20_draggs_its_feet_the_corrupt_continue_to_benefit_from_anonymous)

<sup>3</sup> <https://financialsecrecyindex.com/>

<sup>4</sup> <https://financialsecrecyindex.com/database/Canada.xml>



addresses their risks, especially with regard to deadlines and consequences for outstanding (pre-existing) bearer shares<sup>5</sup>.

In contrast, several developing countries like Afghanistan, Ghana, Kenya, Nigeria, Indonesia and Ukraine have committed to establishing public beneficial ownership registries. The UK was the first country to establish a public beneficial ownership registry, and has recently accepted an amendment to its Sanctions and Anti-Money Laundering Bill, opening up the way for its Overseas Territories to establish public beneficial ownership registries by 2020. Furthermore, the revised terms of the EU's Fourth Anti-Money Laundering Directive (AMLD) have a requirement for companies in all Member States to disclose their beneficial owners in a publicly available registry. Other countries have already established public beneficial ownership registries, including Denmark and Ukraine.

Please find our main recommendations with regard to the consultation as follows.

## I. **Establish a publicly available, centralized register of beneficial owners of all legal entities and arrangements.**

The Government of Canada should **establish a publicly available, centralized, standardized register of beneficial owners of all legal entities and arrangements** including, but not limited to companies, trusts, foundations, limited liability partnerships, associations, cooperative societies, etc. in an open data format<sup>6</sup>.

- A progressive and well-rounded definition of a beneficial owner should be adopted for the purpose of identifying beneficial owners of all legal entities and arrangements, consistent across Canadian territories. A beneficial owner is the real or natural person who ultimately owns, controls or benefits from a legal entity either directly or indirectly by using legal arrangements. Beneficial owners of legal arrangements further include all natural persons who are related parties of that arrangement. For example, in case of a trust, this would include all trustee(s), settlor(s), protector(s), beneficiaries or class of beneficiaries, and any other person with direct or indirect control over the trust.
- The criteria for the identification of an individual as the beneficial owner of a legal entity should at the very least include:
  - Direct or indirect ownership of 5% of the shares in a company (or ideally, even lower thresholds),
  - Directly or indirectly holding over 25% of the voting rights in the company,

<sup>5</sup> <https://financialsecrecyindex.com/database/Canada.xml#b141>

<sup>6</sup> You may follow this check-list for establishing a public beneficial ownership registry: [https://www.taxjustice.net/wp-content/uploads/2017/04/TJN2017\\_BO-Registry-ChecklistGuidelines-Apr.pdf](https://www.taxjustice.net/wp-content/uploads/2017/04/TJN2017_BO-Registry-ChecklistGuidelines-Apr.pdf)



- Directly or indirectly holding the right to appoint the majority of the board, and
  - Have the right to or actually exercising significant control or influence over the company or the board.
- The beneficial ownership registry should be publicly available in open data format. With the G20 Open Data Principles as a minimum standard, the data should be open by default, timely and comprehensible, accessible, usable, comparable and interoperable, and be targeted towards improved governance and citizen engagement.
  - All legal entities should be required to collect, maintain and promptly update beneficial ownership information in their own records, as well as file a return of the same within 15 days to the state registry authorities, as well as upon request from the authorities.
  - The legislation on beneficial ownership in Canada must aim towards establishing the following:
    - Identifiers for legal entities,
    - A taxonomy of types of ownership and control,
    - A framework for recording changes over time, and
    - A framework whether ownership or control is direct or indirect via intermediate parties.

A publicly available beneficial ownership registry in open data format will be available to financial institutions, designated non-financial businesses and professions (DNFBPs), contractors, potential creditors as well as the media, civil society and the public to learn about beneficial ownership information at no cost. An open beneficial ownership registry would also reduce delays in law enforcement, as well as increase public awareness regarding the beneficiaries of the companies with which they conduct business or of the products and services they consume.

Some jurisdictions have considered creating paywalls that require payments to access beneficial ownership information that is nominally public. We strongly recommend against using this mechanism, as it would significantly impact access, especially for those with fewer financial resources, diminishing use and undermining the intent of collecting and sharing beneficial ownership in the first place.

## **II. DNFBPs (Designated Non-Financial Businesses and Professions) should be required to collect beneficial ownership information.**

- Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) should be amended to require all reporting entities, including DNFBPs, such as real estate brokers, sales representatives and developers, who are now



# FINANCIAL TRANSPARENCY COALITION

Berlin  
Brussels  
Buenos Aires  
Lima  
London  
Nairobi  
New Delhi  
Washington

exempt from the obligation of identifying beneficial ownership to 1) determine and verify the identity of the beneficial owner; 2) to determine if their customers are politically exposed persons, heads of international organizations, their family members or their close associates; and 3) to not open accounts or complete financial transactions until the beneficial owner has been identified and their identity verified with government-approved identification. The burden to meet this requirement will be relieved with the implementation of a publicly accessible beneficial ownership registry.

According to an Ernst & Young study, [91% of senior executives](#) surveyed worldwide believe it is important for them to know the beneficial owners of entities they do business with. Several prominent business leaders have also called for company ownership transparency, including [Paul Polman, CEO of Unilever](#); [Bob Collymore, CEO of Safaricom](#); [Dominic McVey, entrepreneur](#); [Richard Branson, Founder of Virgin Group](#); [Arianna Huffington, co-founder of The Huffington Post](#); [Mo Ibrahim, founder of Celtel](#); [Oliver Bäte, CEO of Allianz](#); [Marc Benioff, Founder, Chairman and CEO, Salesforce](#); [Andrew Liveris, Chairman and CEO, The Dow Chemical Group](#); and [François-Henri Pinault, CEO and Chairman of the Board of Directors, Kering Group](#). For more information on the business case for beneficial ownership transparency see [here](#), [here](#) and [here](#).

We are happy to provide further detail and background to these recommendations. Please feel free to contact Eryn Schornick of Global Witness at <[eschornick@globalwitness.org](mailto:eschornick@globalwitness.org)>; Andres Knobel of Tax Justice Network at <[andres@taxjustice.net](mailto:andres@taxjustice.net)> or Sargon Nissan of Financial Transparency Coalition at <[snissan@financialtransparency.org](mailto:snissan@financialtransparency.org)>.

Sargon Nissan  
Director  
Financial Transparency Coalition