

BC Consultation on a Public Beneficial Ownership Registry

Submitted by the Chartered Professional
Accountants of British Columbia

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INTRODUCTION

The Chartered Professional Accountants of British Columbia (CPABC) welcomes the opportunity to participate in the Ministry of Finance's consultation on a Public Beneficial Ownership Registry.

CPABC is the training, governing, and regulatory body for more than 37,000 CPA members and 5,000 CPA candidates and students.

CPABC carries out its primary mission to protect the public by enforcing the highest professional and ethical standards and contributing to the advancement of public policy. CPAs are recognized internationally for bringing superior financial expertise, strategic thinking, business insight, and leadership to organizations.

CPABC seeks to provide a practical perspective that ensures corporate transparency without putting individuals' privacy at undue risk with respect to disclosing personal information or creating administrative burdens that stifles legitimate business.

Money laundering is a problem in British Columbia and across Canada. CPABC strongly supports greater corporate transparency in British Columbia. The impacts of money laundering, terrorist financing, and tax evasion are widespread and require strong provincial and national action.

In implementing the beneficial ownership register, CPABC recommends the BC government:

1. Ensure that the BC registry is as consistent in its requirements as possible with federal and other provincial registries to minimize the compliance burden on companies.
2. Examine potential safeguards, such as the use of unique identifiers, to protect private information on a public registry.
3. Create a registry that relies on technology to make compliance by companies as easy as possible and to ensure that information it contains is as accurate as possible.

“Almost without fail, anonymous shell companies appear at the center of major cases of corruption, money laundering and tax evasion.”

Transparency International Secretariat
Reliance on Information from Banks hindering Corruption and Money Laundering Investigations

GOVERNMENT-MAINTAINED TRANSPARENCY REGISTRY

CPABC's comments are based on the information available at this time. We note that information regarding timelines, costs, and measurable benefits are not included in the consultation paper. This additional information would assist in providing more informed opinions regarding the implementation and administration of the registry.

Impact on Operations

International experience suggests that the costs of a beneficial ownership register and registry compliance depends largely on jurisdictional requirements, business size, and complexity of structure.

For example, the UK Department for Business, Energy and Industrial Strategy (BEIS) completed a detailed post-implementation review in March 2019 where it specifically examined the costs associated with UK companies' use of the People with Significant Control (PSC) Register.¹

While the costs of submission to the PSC Register appear minimal, the costs incurred by companies to comply with the Register were found to vary depending on the company's size and complexity.

In Canada, we submit that unless consistency is prioritized across the country regarding beneficial ownership information requirements, a patchwork quilt of requirements and costs will emerge.

Further, to streamline the process, technology should be embraced to minimize the time and effort of companies to input and update data. The digitalization of information flows between businesses and registries appear to hold great promise.

In addition, the use of drop-down menus and unique identifiers for individuals have been noted by other jurisdictions as assisting with increased accuracy. For example, the Jersey Financial Services Commission uses Application Programming Interfaces (APIs) to enable reporting companies to export their beneficial ownership information to the central register.²

In order to minimize the impact and burden on companies, we suggest that consistency across jurisdictions in Canada, to the degree possible going forward should be a high priority. Consistency of terms, definitions, interpretations, and policies is important to the functioning of the anti-money laundering and terrorist financing (AMLTF) regime and any registry or registries. For those who have to comply, those who have to enforce, and those who have to verify beneficial ownership in the regime, it is very important that consistency be prioritized throughout Canada.

¹ Department for Business, Energy & Industrial Strategy, *Review of the implementation of the PSC Register*, BEIS Research Paper No. 2019/005, March 2019.

² Digital Jersey, "Jersey Develops RegTech Solution to Support Fight Against Financial Crime", July 5, 2017.

PUBLIC ACCESS TO GOVERNMENT-MAINTAINED TRANSPARENCY REGISTRY

Public Access

Around the world, lessons are being learned as countries implement beneficial ownership registries and best practices are still developing and evolving. There is a wide range of options available for level of access granted to the registry.

At one end, individual companies maintain their own registries of beneficial owners and make it available for inspection to competent authorities (as will be the case in BC on May 1, 2020). At the other end of the spectrum, the government maintains a registry that is open and searchable by the public.

While CPABC values corporate transparency, it also recognizes the need to balance this with privacy. We submit that a government-maintained registry is desirable, and would encourage a slow roll out to any publically accessible registry to ensure appropriate safeguards are in place.

A central registry available to government, law enforcement, and other competent authorities would provide access to the required information to combat money laundering while minimizing the potential risks to personal and corporate privacy.

Once the central registry is established and necessary security and privacy concerns are addressed, the registry may then work towards opening to the public. This tiered approach, we submit, meets the desired law enforcement goals while ensuring greater transparency does not come at the expense of privacy.

Possible Impacts of Public Access

Generally, CPABC is in favour of greater corporate transparency in British Columbia, and across the country. The amount and type of information to make public in a publicly accessible registry is likely one of the most controversial aspects of a public registry.

Disclosing less than “full” information requires implementing data security filters and the technical expertise and costs associated with them.

What is known is that information that is made public will remain in public. Therefore, the initial due diligence in assessing elements, such as unique identifiers and possible tiered information, is critical in achieving a balance between Canadians’ privacy rights and the wider public interest objectives.

Protection of Personal Information

We submit that the safety of individuals should be a key consideration while developing the registry. There are potential risks in an openly public registry for loss of privacy (personal and business), identity theft, harassment, safety, and security. An openly public registry introduces a new risk platform with new disclosures.

It is clear that not all those accessing the registry will need full access to the information. Therefore, tiered access would allow for discernment of what information needs to be disclosed to achieve the objectives of the registry. Further, erring on the side of individual privacy does not negate the possibility of more information being accessible in the future, since the registry may be designed to evolve over time.

Although making certain types of data available to some parties and not others requires presumed additional costs for data security, this cost is warranted to avoid negatively impacting the privacy of individuals.

We submit that the use of unique identifiers may reduce the unique personal information visible to certain users of the registry, thereby reducing some risk to a beneficial owner. It is a question of degree and typology of the information that needs to be disclosed for public access for the registry to function and meet its objectives.

For example, if a unique identifier removes the need for any date of birth details then this may reduce risks for beneficial owners, the registry can function, and its objectives can be met.

Exemptions should be possible and there should be flexibility as to the need and nature. The risks that beneficial owners and/or their families face may be extremely varied. Their risks may have nothing to do with a private company, but a beneficial ownership registry can nevertheless become a new access point to previously undisclosed information, such as principal residence location. Timely consideration by government of exemption applications as they arise will be important.

In the UK, exemptions may be applied for safety and security. However, these have not been applied consistently nor, arguably, met their goals.

In one case, a PSC attempted to have their business address removed from the registry in response to the real threat of a stalker. However, the exemption was not granted because the situation was not directly related to their business, according to the exemption policy.³

Other examples of protecting individuals include the Norwegian model where they have established an automatic notification system that would inform an individual when and who had consulted their file.⁴

The Norwegian model may be difficult given the likely size and complexity of the BC registry. However, a system like the one used by the City of Quebec's assessment portal may provide some additional security. To access the City's assessment portal, an individual must identify the reason for which they are making the search request. By adding such a step, it may dissuade possible abuse of the search portal.⁵

³ Department for Business, Energy & Industrial Strategy, *Post-implementation review of the people with significant control register*, 2019, p. 24.

⁴ The Norwegian Tax Administration (NTA) allows the public to search the tax lists, however, logs are kept of who performs searches in the lists. The NTA determined that by creating a log they are able to limit the amount of information an individual can view and also make available information about who searched who. See: <https://www.skatteetaten.no/en/forms/search-the-tax-lists/>

⁵ See: https://www.ville.quebec.qc.ca/citoyens/taxes_evaluation/evaluation_fonciere/form_demande_informations.aspx

COMPLIANCE AND ENFORCEMENT

Verifying Beneficial Ownership Information

The usefulness of the registry for all users is directly correlated with the credibility of the information that it contains. The government, as owners of the registry, therefore will play a significant role in ensuring the information contained therein is accurate.

Other jurisdictions where transparency registries already exist, such as the UK, provide insight into what actions and elements would assist in enhancing the credibility of the information on the registry. These include:

- The use of unique identifiers for each entity and beneficial owner should be part of the registry from the outset;
- Proof of identification is to be obtained;
- Government must both react to information it receives about inaccuracies in the registry and it must also seek them out efficiently using risk analysis and technology; and
- Reporting entities in the regime that must verify beneficial ownership should be able to contribute to its accuracy by reporting discrepancies or inaccuracies.

Cost to Access Database

Regardless of the degree of public access, there will be new costs for government and cost recovery on behalf of the taxpayer is a potential objective. There may be alternatives in who bears that cost and could include from the public for each use, monthly fees for users who are reporting entities in the regime or perhaps it also becomes part of the cost of corporate registration in each jurisdiction.

Examples from other jurisdictions suggest that free and open access for the public leads to greater use. In the UK, for example, the PSC Register has experienced far greater access as a free and open registry than it did when paywalls existed.

The use of the registry has grown exponentially to over two billion data searches a year since the data was made free and open, compared with just over six million access requests when payment was required to access information.⁶ The removal of the paywall is likely not the only factor involved but “free” eliminates what may otherwise be a barrier.

Enforcement

As noted above, a register is only as useful as the credibility of the information. To ensure compliance and accuracy, enforcement options must be available to the government. We submit that in order to be consistent with the importance of the information and the reasons for creating the registry, the range of sanctions available must serve to deter and penalize where warranted.

Sanctions provisions should provide a range to effectively and appropriately respond to the variety of circumstances which can be anticipated for non-compliance. The range of sanctions available should be flexible enough to be reasonable for situations of incapacitation or honest mistake, but severe enough to be dissuasive for those with criminal intent.

⁶ Open Ownership and Global Witness, Learning the lessons from the UK's public beneficial ownership register, October 2017.

TRANSPARENCY REGISTER FOR OTHER ENTITIES

CPABC notes that enhanced reporting regarding trusts is required under the *Income Tax Act* after December 31, 2021. As a result, reporting to a government-maintained registry may be in whole or part duplicative.

The use of trusts in Canada is prevalent and there is great variation as to their use; from benefitting retirees, looking after disabled persons, and to tax or estate planning. It could be expected that there would be many exemptions that should apply; for example to protect minors, disabled persons, remove pension plans, lawyer's trust accounts, and etc.

The information that would likely assist law enforcement and competent authorities may be reported to CRA through changes recently made and effective after December 31, 2021.

Individual partners and certain partnerships are required to report information under the *Income Tax Act*. In particular, partnerships where a corporation or a trust are partners are specifically required to file a partnership information return. Therefore additional reporting to a government-maintained beneficial ownership registry may be in whole or part duplicative.

⁵ Open Ownership and Global Witness, Learning the lessons from the UK's public beneficial ownership register, October 2017.

CONCLUSION

There is no doubt that money laundering and other financial crimes are a significant problem in Canada. CPABC strongly supports efforts by the provincial, territorial, and federal governments to implement new initiatives to combat these dangerous activities.

Further, we believe that efforts to move towards greater corporate transparency are important and necessary, however, these actions must be taken in a balanced way to protect the privacy and safety of Canadians and minimize the administrative impact on corporations.

ABOUT THE CHARTERED PROFESSIONAL ACCOUNTANTS OF BRITISH COLUMBIA

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