

G20 High-Level Principles on Beneficial Ownership Transparency Canada's Measures - October 2015

Recognizing the importance of transparency of corporations and trusts in the fight against domestic and international crime, the Government of Canada in 2013 presented an Action Plan on the Transparency of Corporations and Trusts. In line with this plan, Canada has implemented additional measures to prevent and detect the illicit use of corporations and trusts and continues to review the effectiveness of its transparency measures. This document summarizes Canada's various measures related to the G20 Principles and consequently, with the relevant Financial Action Task Force Standards.

Canada's anti-money laundering and anti-terrorist financing (AML/ATF) regime is based on several laws including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and the *Criminal Code*. The PCMLTFA and its regulations, as well as the *Canada Business Corporations Act* (CBCA) and its regulations, are the key federal laws that contain provisions relating to corporate transparency. The CBCA recognizes that transparency contributes to good corporate governance. Given that entities in Canada can also incorporate provincially, laws similar to the CBCA also exist at that level.

Basic Information on Corporations

When federally incorporated under the CBCA, entities can operate in any Canadian province and must comply with several requirements, including:

- Providing basic information to Corporations Canada when submitting a request to incorporate (i.e., name and address of the registered office, names and addresses for service of directors);
- Providing to Corporations Canada, within 15 days, any changes to the board of directors and/or the address of the registered office;
- Maintaining and keeping a registry of shareholder information in Canada, or which is accessible from Canada;
- Having a registered office in Canada; and
- Ensuring that at least 25 per cent of the directors are resident Canadians.

The basic information provided to Corporations Canada, is publicly available on the Corporations Canada website (<http://corporationscanada.ic.gc.ca/eic/site/cd-dgc.nsf/Intro>). The CBCA also provides that shares shall be in a registered form. The CBCA contains a number of measures to ensure compliance, including inspections and sanctions.

Public disclosure of shareholders who own directly or indirectly, or control or direct, 10 per cent or more of the voting rights of a company listed on a stock exchange in Canada is currently required, among several measures, by provincial securities regulators.

Beneficial Ownership Information on Corporations

The PCMLTFA includes several measures applicable to financial institutions and intermediaries (e.g., banks, trust companies, securities dealers, money services businesses) and non-financial businesses and professionals (e.g., real estate brokers, accountants), which are commonly referred to as reporting entities. In particular, there are requirements for reporting entities to conduct customer due diligence on their clients, including corporations. The Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (PCMLTFR) were amended in January 2013 to further strengthen customer due diligence measures. These amendments came into force on February 1, 2014, and include improvements in respect of:

- the identification of the beneficial owners of clients that are corporations and trusts (i.e., obtaining, taking reasonable measures to confirm the accuracy of, and keeping records of the information);
- the requirement to obtain information on the purpose and nature of a business relationship when entering into such a relationship with a client;
- the ongoing monitoring of business relationships with clients, using a risk-based approach; and
- the application of enhanced measures when dealing with high-risk customers and activities.

The PCMLTFR further identify “beneficial owners” as all individuals owning or controlling, directly or indirectly, 25 per cent or more of the shares of a corporation. Regarding trusts, the identification includes information on all trustees and all known beneficiaries and settlors of the trust.

The PCMLTFA and its regulations contain a number of measures to promote compliance, including examinations by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and penalties for non-compliance.

Domestic and International Access to Basic and Beneficial Ownership Information of Corporations

Competent authorities in Canada can access publicly available basic information of corporations through federal and provincial government websites, upon request or by sourcing commercial databases. Competent authorities, such as law enforcement, can also obtain beneficial ownership information from reporting entities subject to the PCMLTFA, through production orders or other mechanisms. Similarly, international access to information not publicly available is done through the usual Mutual Legal Assistance Treaty procedures.

Risk Assessment

To better understand the money laundering (ML) and terrorist financing (TF) risks associated with its AML/ATF regime, Canada conducted its first formal assessment of inherent ML/TF risks including risks related to legal persons and trusts in Canada. The report was released on July 31, 2015 and can be found at <http://www.fin.gc.ca/pub/mltf-rpcf/index-eng.asp>

Bearer Shares

Following public consultation in 2014 on various corporate governance issues related to the CBCA, the Government of Canada committed in Budget 2015 to explicitly ban bearer shares under the CBCA.