

Dec 3rd 2021

Attn: Financial Action Task Force (FATF) / GAFI
2, rue André Pascal
75775 Paris Cedex 16 FRANCE

Re: Revisions to Recommendation 24 and the Interpretive Note for Public Consultation

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 to the consultation considering revisions to FATF Recommendation 24 and its Interpretative Note. We make this submission together as a coalition of Canadian civil society organizations that have been advocating for increased beneficial ownership transparency in Canada for over three years. More information about each organization is included at the end of this discussion document.

With organizational mandates focusing on anti-corruption, transparency, and combating tax avoidance and evasion, we strongly recommend beneficial ownership registries be made publicly available in order to deter the proceeds of crime and maximize access for any entity who requires this information. Publicly disclosing beneficial ownership information in a central registry and ensuring 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 FATF members to deter, detect, investigate, and prosecute criminals who hide the proceeds of crime within various entities. In this regard, below we have shared both contextual and legislative examples from Canada, both at the federal and sub-national levels, which may be informative.

Governments are increasingly committing to making beneficial ownership registries, and thus the FATF recommendations should align with what is effectively becoming best practice. In April 2021, Canada announced that it will create a publicly accessible beneficial ownership registry for federal private corporations in its 2021 federal budget.¹ This follows 48 countries that are committed to implementing publicly accessible registries covering the whole economy.² In 2020, UK Overseas territories including Bermuda, British Virgin Islands, and the Cayman Islands pledged to publicly disclose beneficial ownership information in registries.³ At the 2021 G7

¹ See:

<https://www.osler.com/en/blogs/risk/april-2021/canada-s-budget-introduces-long-awaited-beneficial-ownership-registry-to-combat-money-laundering>

² See: <https://www.openownership.org/map/>

³ See:

<https://www.gov.uk/government/publications/overseas-territories-adopting-publicly-accessible-registers-of-beneficial-ownership>

Summit in the UK, there was a commitment on behalf of all G7 member states to implement centralized, and publicly accessible registries.⁴

We agree with the FATF approach of eliminating the use of bearer shares and bearer share warrants as these instruments are widely abused. In addition, we agree with the FATF approach of requiring nominees to disclose information and linkage to nominators. Finally, we agree with the FATF approach of requiring foreign legal persons to disclose beneficial ownership information and suggest legislative criteria to identify relevant foreign legal persons.

Please note that for ease of reading, we have copied text from the consultation document itself and provided our responses on page two.

Thank you for taking the 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
James Cohen, Executive Director—Transparency International Canada
Toby Sanger, Executive Director—Canadians For Tax Fairness

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⁴ See: http://www.g7.utoronto.ca/finance/FMCBGs_communique_-_5_June.pdf

Multipronged approach to collection of Beneficial Ownership information

The requirement in paragraph 7 includes a compulsory company approach, a requirement for a public authority or body to hold beneficial ownership information (a beneficial ownership registry or another body) or an alternative mechanism, and the supplementary measures. Countries should decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they will use to enable efficient access to information by competent authorities, and should document their decision. Do you agree with the approach set out in paragraph 7 of the Interpretive Note?

While we agree with the FATF approach for a centralized registry, we do not recommend the FATF recommend alternative mechanisms to collecting beneficial ownership information until this mechanism is explicitly defined.

Jurisdictions should commit to central registry systems because registry systems can easily satisfy FATF recommendations of providing adequate, accurate, and up-to-date information in comparison to an alternative mechanism. A centralized, beneficial ownership registry that is managed by a financial intelligence unit (FIU) or tax authority will be easier for policymakers to align with FATF objectives because alternative measures will likely not have centralized information that is readily retrievable and are not designed with anti-money laundering goals as the object provisions.

Alternative mechanisms without such provisions could place a serious burden upon FIs, DNFBPs, and other businesses seeking to retrieve beneficial ownership information that is accurate, adequate, and up-to-date, especially if there is no guidance from a registrar. A registrar managing a central registry can independently verify and audit information, and issue compliance notices to companies who might be missing information or submitting inaccurate information. This unique feature of a central registry greatly improves compliance and the quality of beneficial ownership information contained within the registry itself so FIs, DNFBPs, and all companies can reliably access the registry for their own due-diligence needs. Publicly accessible registries offer a further benefit of deterring commonly abused legal-persons and offer journalists, whistleblowers, and civil society the ability to access data and flag inconsistencies to the registrar.

We recommend a central, publicly accessible registry that contains verified beneficial ownership information. Information should be easy to retrieve with no barriers to access for DNFBPs or FIs. Law enforcement and competent authorities may access a separate tier of information for investigative purposes. We speak more about our criteria for a registry in the final question of this document.

Bearer Shares and Nominee arrangements

Should bearer shares and bearer share warrants without any traceability be subject to additional controls as set out in amendments to paragraph 14 of the Interpretive Note?

We agree with the additional controls for bearer shares and bearer share warrants set out in paragraph 14. In 2019, the Government of British Columbia has required all bearer shares to be converted into registered shares.⁵

We recommend that all bearer shares and bearer share warrants are converted into company shares. Should shareholding thresholds 25% or greater, or should the bearer certificate indicate control of a legal person, then those natural individuals should be deemed as the beneficial owners and required to disclose ownership and control status on a beneficial ownership registry.

Is the draft glossary definition sufficiently clear to avoid inadvertently applying excessive controls to traceable and legitimate uses of such instruments? If there remains undue controls, how should this be mitigated?

We believe the draft glossary definition is sufficiently clear and is aligned with efforts undertaken by FATF members to ban the usage of bearer shares.

Should nominee arrangements be subject to the disclosure requirements as set out in amendments to paragraph 15 of the Interpretive Note? Will the proposed rules and the new glossary definitions create undue restrictions for institutional investors or other legitimate uses of such instruments, and if so, how should this be mitigated?

We believe that disclosure requirements for nominees should specify its link to the beneficial owner of a legal person in order to prevent abuse of companies. Nominees were assessed as a third-party money laundering threat in Canada.⁶

Are there other specific mechanisms that should be permitted, in addition to those proposed, which could ensure their transparency?

We recommend that shareholding information about nominees and bearer shares be available on any beneficial ownership registry.

Risk-Based Approach

Should countries be required to assess the ML and TF risks associated with foreign-created legal persons and take appropriate steps to manage and mitigate them? What constitutes a sufficient link with the country?

We recommend that countries should be required to assess money laundering and terrorist financing risks associated with foreign-created legal persons operating within jurisdictions and the sufficient link can consist of the following criteria:

- (a) the entity has a permanent establishment in a jurisdiction,

⁵ See:

<https://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-transparency-register>

⁶ See:

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

(b) the entity is resident in the jurisdiction, or

(c) the entity holds, directly or indirectly in any manner whatever, and either alone or together with all bodies corporate with which it is affiliated, real or immovable property in the jurisdiction the total fair market value of which exceeds \$7,000,000 CAD.⁷

In our opinion, the above criteria take into consideration the permanency of a business operation and sets parameters regarding the size of a foreign-created legal person or residency. These criteria will help bring all foreign-created legal persons which are of significance into the compliance regime of a jurisdiction, while excluding lower-risk foreign-created legal persons, such as small enterprises and vacation properties.

Should a risk-based approach be applied to verification of beneficial ownership information?

We recommend that a risk-based approach is appropriate when the registrar decides to request further information from foreign-created legal persons for compliance purposes. FATF members can consult national FIUs and use ML/TF risk assessment matrices based on business type, or relationship-based risks.⁸ To facilitate this approach, we recommend all beneficial owners of a foreign-created legal entity are required to submit identity documents and the entity itself retains copies and submits them to the beneficial ownership registry.

Access to Information

Taking into account needs of competent authorities and other stakeholders, and concerns relating to privacy, security and other potential misuse of BO information, do you agree with the requirements on access to information as set out in paragraphs 12 and 13?

At a minimum, jurisdictions should ensure that all beneficial ownership information that is available to FIs, DNFBPs, competent authorities, and law enforcement should be verified.

We recommend that beneficial ownership registries should be two-tiered where law enforcement and competent authorities possess timely access to detailed information concerning natural beneficial owners and select information is available to the general public, DNFBPs, and potentially FIs.

Table 1 below summarizes the key benefits of making beneficial ownership information publicly accessible in a registry, in comparison to a centralized registry that is only available to law enforcement and competent authorities.

Table 1 - Comparison of publicly accessible registries and centralized registries

⁷ Threshold is determined from analysis of corporate ownership of real property in the Greater Toronto Area: <https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5eb1885baf692776cd28d308/1588693087923/opacity-executive-summary-english.pdf>

⁸ See: <https://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/rba/rba-eng>

	Publicly accessible registry	Centralized registry only available to law enforcement and competent authorities
AML Due-Diligence	Any entity with AML requirements can access information within the registry to satisfy beneficial ownership due diligence requirements.	Only competent authorities may access the registry for their own auditing or due diligence needs.
Business, DNFBPs, FIs, and investors	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 trusted investment and business environment.	Businesses, particularly small-medium enterprises, would either have to pay or would not be able to access this information at all.
Data quality and accuracy	Independent observers can help law enforcement and competent authorities to improve data quality by flagging potential issues and identifying suspicious activity.	Law enforcement 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.
Deterrence of proceeds of crime	Maximum deterrence against money launderers from funneling proceeds of crime and terrorist financing through shell companies and real estate.	While a private, centralized registry helps law enforcement with investigations, it does not deter the volume of illicit cash entering an economy because criminals assume that law enforcement will not be able to monitor all suspicious activities. Illicit cash disrupts markets and jeopardizes public safety.
International cooperation to combat	FATF member states such as Canada will align with the strongest standards from the	Weaker standards and illicit funds have a greater chance to proliferate in FATF members, thus increasing the risk of

proceeds of crime	UK PSC Registry and EU AMLD5 agreement.	terrorist financing, tax evasion, and illegaltrafficking of various licit and illicit goods and commodities (e.g. gold, diamonds, wildlife, drugs, etc.), as well as human trafficking.
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Access to a beneficial ownership registry should be extended beyond competent authorities and be made publicly accessible, searchable, and free of cost. The general public, FIs, DNFBPs, companies, and FIUs, should have full searchability of select fields to fulfill anti-money laundering obligations.

Searchability 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 possible that citizenship, usual residential address, and countries of tax residency carry higher expectations of privacy, so further analysis undertaken by FATF members are needed to determine if these fields should be made public without infringing upon privacy statutes. For insights into such an analysis within a Canadian context, please refer to *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*.⁹

Table 2: Fields of information to be publicly disclosed and privacy rationale in Canada

Proposed fields of information to be collected and publicly disclosed	Explanation and privacy rationale (see analysis for full details)
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 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 in Canada under The System for Electronic Disclosure by Insiders (SEDI). ¹⁰
Date shareholder became or ceased to be a beneficial owner	Clarifies ownership record.

⁹ See: [A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis](#)

¹⁰ See: <https://www.sedi.ca/sedi/>

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. ¹¹
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.
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	Improves positive identification. For instance, the province of Quebec uses the following definition in legislation that received royal assent to publicly disclose ultimate beneficial ownership information. <i>"A registrant who must declare the domicile of a natural person under a provision of this Act may also declare a professional address for the natural person."¹²</i>
Country of usual residence (past and present)	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

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

¹² See: <https://www.canlii.org/en/qc/laws/astat/slg-2021-c-19/latest/slg-2021-c-19.html>

	order to ensure effectiveness for whistleblowers in other jurisdictions. ¹³
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ANNEX:

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.

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 the 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.

¹³ See: <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>