

November 4, 2016

## Anti-Corruption: Does Canada Need a Beneficial Ownership Registry?

Note: Due to *Chatham House Rules* applying to this panel, none of the remarks will be attributed to a specific speaker.

Chair:

- Matthew Kronby, Partner, Bennett Jones LLP

Speakers:

- Claire Woodside, Director, Publish What You Pay Canada
- Denis Meunier, President, Denis Meunier Consulting
- Ian Wright, Chief, Financial Crimes, Finance Canada

The speakers highlighted the relevance of steps taken by Canada domestically to penalize payment of bribes abroad, particularly to government officials. In the light of these efforts, beneficial ownership transparency is viewed as an additional means of fighting corruption, money laundering risks, and threats of terrorism. On the other hand, there exists a juxtaposition between these goals and the willingness or ability of persons to operate anonymously.

While Canadian performance in the field of transparency can be generally characterized as stellar, Transparency International (hereinafter – TI) found several weaknesses in this respect. Following the G20 countries commitments made at their November 2014 G20 meeting on the matter of beneficial ownership, TI issued a report called “Just for Show? Reviewing G20 Promises on Beneficial Ownership” which assessed the progress of beneficial ownership in these countries. Therefore, the conversation was primarily focused around the following issues: what exactly beneficial ownership entails; why it matters; what Canada is doing; what more there is to be done; and, finally, why more cannot be done.

It was noted that the focus of legislation is currently on governments losing money (through illicit financial flows, tax evasion, etc.). As the phenomenon of leaks struck everyone, it demonstrated how powerful these vehicles are, and initiated calls for more transparency and disclosure of the beneficial ownership structures.

### What is beneficial ownership?

A beneficial owner is the ultimate owner who exercises control over property (e.g. resources, money etc.). The identity of the beneficial owner is often obscured by layers of many structures. Big financial figures – trillion dollars a year – have brought more attention to the discussion

where this money is going and how it could be reclaimed. A primary objective is reclaiming lost funds for the public purse by capturing lost tax revenue, without increasing the tax rate or imposing additional taxes. Literally every government in the world must like this idea.

For the perspective of every tax payer, there occurs “a personal sense of disgust” when faced with these losses – which may be expressed by the public wondering “Why do I have to pay my fair share and somebody gets away with not paying it?” When such revenue is lost, people end up thinking the system is not fair.

From a constitutional/political perspective, beneficial ownership regulation is a multijurisdictional issue, as various entities with the capacity to obscure ownership in Canada (corporations, partnerships, trusts etc.) may be created under provincial/territorial statutes or federal statutes. Consequently, business corporations acts and regulations in each jurisdiction could lead to identification of the beneficial ownership upon creation of a corporation.

### **How can beneficial ownership enable better controls over money?**

The speakers suggested to consider this problem from two perspectives: financial supervisor/regulator and business. From the financial supervisor/regulator's standpoint, it is important to define which type of corporations pose a risk for tax evasion/money laundering/corruption by performing a risk assessment of those corporations. The next step would be putting the onus on businesses to identify their beneficial owners and requiring them to provide verification of their identity, accuracy and completeness of their information when being created and when updating their ownership structure, followed by sanctions where warranted when they are non-compliant. Proper verification would allow the competent authorities to identify beneficial owners and to find out how to connect one person's activities through multiple companies together. An example was raised regarding a current situation in BC, where high-value properties are being registered under shell companies. In light of this situation, it could be incumbent on governments to require real estate brokers to confirm the beneficial ownership of the players involved in these transactions; however, no registry currently exists for this purpose. Even though public access to such information could be a prudent best practice, FATF standards require timely access by competent authorities.

From the business standpoint, it is important to facilitate due diligence obligations by making registers of beneficial owners available. There may be business opposition to this; however, such opposing views are not so strenuous that it would make such a practice impossible to implement. There are ongoing debates about centralization of information into a database for everybody's access – i.e., a public registry “plugged into” a global registry, including developing countries that do not have any mutual assistance agreements.

### **What is Canada doing to make progress on beneficial ownership?**

Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), the Government of Canada is entitled to exercise certain powers to minimize risks related to certain

transactions that could be prone to being vehicles for money laundering or financing of terrorist activities. It is noteworthy that transnational cooperation through FINTRAC is facilitated by more than 90 information sharing agreements around the world. However, these information sharing agreements are all limited by the PCMLTFA as regards the scope of disclosure. In another area, taxation for example, the Canada Revenue Agency has the power to exchange information in tax matters internationally under the Global Forum.

When discussing privacy concerns, it was noted that the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) contains trade-offs relating to making personal information public – in particular, 10 principles in its Appendix speak to those certain values that Canadians felt they wanted to have protected.

### Can Canada do more?

The speakers stated that there is a lack of political will to encourage the provinces to push these issues. Even though the federal government does not regulate securities, it does regulate federally-regulated and federally-incorporated companies. Therefore, it could have some influence in these areas. Given jurisdictional issues, however, it would be productive to convince at least one or two provinces to do more to ensure transparency regarding beneficial ownership – e.g., persuading Quebec and Ontario would be helpful.

The experts also noted that it would be unreasonable to wait for a crisis, and only then seek solutions. Therefore, a proactive approach is highly recommended, and the federal government should express the initiative. To do that properly, it is crucial to understand who has control. Steps can be taken in cooperation with financial intelligence units in other countries. Although there are privacy issues to consider, beneficial ownership information does not require sensitive personal information like social insurance numbers or individual addresses to be widely disclosed. Rather, what is important is transparency regarding property holdings. To make as much information as public as possible, sensitive information such as residential addresses could remain accessible to public authorities only, not to the public at large.

In some of the speakers' view, there is no such a thing as too much disclosure. In many cases, there are no privacy concerns that should arise to prevent achieving additional transparency with respect to beneficial ownership; in 99% of situations, shareholders are beneficial owners and are already subject to a certain level of disclosure. Therefore, requiring such shareholders to submit an additional form with the same information that is already disclosed should not make a big difference.