

CANADA

BENEFICIAL OWNERSHIP TRANSPARENCY

Canada does not fully comply with any of the G20 Principles. It is one of just two G20 countries designated with a “weak framework”. The ability of competent authorities to access beneficial ownership information is seriously restricted by the fact that the information collected in company registries, by legal entities and arrangements themselves or by financial institutions is either inadequate or not made available in a timely manner. Moreover, current rules on bearer instruments and nominee shareholders and directors are also inadequate, allowing beneficial owners to easily hide their identities.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 25%

Canada is not fully compliant with Principle 1. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* – Canada’s anti-money laundering legislation – does not define beneficial owner. Further regulations to the act provide what type of beneficial ownership information financial institutions (such as banks, life insurance, securities dealers, money services businesses) must collect, including the names of all natural persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation, or other entity. However, the regulations do not mention ultimate control and limits the exercise of direct or indirect control to the equivalent of a percentage of share ownership.

The following information must be collected by obliged entities to identify the beneficial owner:

(a) in the case of a corporation, the names of all directors of the corporation and the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation;

(b) in the case of a trust, the names and addresses of all trustees and all known beneficiaries and settlors of the trust;

(c) in the case of an entity other than a corporation or trust, the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the entity; and

(d) in all cases, information establishing the ownership, control and structure of the entity.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 80%

Canada published an Assessment of Inherent Risks of Money Laundering and Terrorist Financing in August 2015. The final assessment is available [online](#).

No public consultations were held prior to the publication of the 2015 Assessment and it is not clear whether external stakeholders, such as financial institutions, DNFBPs or their industry associations were consulted directly.

The assessment covered 27 economic sectors and financial products and found that many of those are highly vulnerable to money laundering and terrorist financing. Of the assessed areas, domestic banks, corporations (especially private for-profit corporations), certain types of money services businesses and express trusts were rated the most vulnerable, or very high. The assessment also highlighted the use of shell companies by criminal groups and individuals to launder money, and identified real estate brokers, representatives and developers as being exposed to a high or very high money laundering risk. Despite these findings, the current legal framework does not include adequate mitigation measures, such as making it mandatory for these professionals to identify customer’s beneficial owners.

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 0%

Current laws and regulations do not require legal entities¹ to maintain information on beneficial ownership themselves². Consequently, there is also no requirement that the beneficial ownership information is maintained within Canada.

There is also no requirement for nominee shareholders to declare to the company if they own shares on behalf of a third person. Yet, nominee shareholder arrangements are a frequent occurrence and typically involve the issuance of shares in the name of a lawyer, who holds the shares on behalf of the beneficial owner. While companies are generally obliged to keep share registers, there is no obligation on nominees to disclose their status and information on the identity of their nominator, nor to indicate when changes occur in the beneficial ownership of the share.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 18%

Timely access to beneficial ownership information by competent authorities in Canada is restricted. As there is no beneficial ownership registry and legal entities are not required to maintain beneficial ownership information themselves, authorities have to rely on the information collected by financial institutions or on basic information contained in shareholder registers, but access to those is also restricted.

For instance, Canada does not have a central company registry and information collected in the majority of provinces is insufficient to support the identification of the beneficial owner. In the majority of provinces, with the exception of some such as Alberta, Manitoba and Quebec, company registries do not even include information on shareholders. Only the names of directors are recorded. Moreover, there is no guarantee that the information recorded in the province registries is accurate and current as registry authorities are not required to verify the information provided by legal entities upon registration.

With regard to information collected by financial institutions, the law establishes that FINTRAC has authority to examine or require production of any records that financial institutions retain, including beneficial ownership information of customers. The law, however, does not establish a timeline

¹ For the purpose of this assessment, legal entities are understood as private, non-listed companies.

² Canada possesses a federal system of government in which federal and provincial governments are granted particular powers under the Canadian Constitution and therefore have jurisdiction over different activities. This assessment focusses mainly on Canadian federal and Ontario laws, although it should be noted that many of the provincial laws discussed are similar across Canada (with some exceptions in Quebec, where the Code civil governs business activity). Criminal law powers are held by the federal government, therefore the PCMLTFA and PCMLTFR laws apply

within which obliged entities must provide the information required. The Office of the Superintendent of Financial Institutions (OSFI), Canada's prudential banking and insurance regulator, also has power to inspect records maintained by a federally incorporated financial institution.

FINTRAC does not have the authority to inspect the shareholder registers maintained by business corporations other than those with anti-money laundering obligations, such as financial institutions.

Other government authorities, such as tax authorities when conducting investigations, or law enforcement bodies with court authorisation, may have access to the shareholder register held by business corporations, but there is no guarantee that the access happens in a timely manner.

G20 PRINCIPLE 5: TRUSTS

Score: 50%

Canada has a domestic trust law and allows the administration of foreign trusts. However, the current legal framework is still not fully in line with the G20 Principle.

There is no statutory duty in Canada for trustees of a trust to retain records on the beneficiaries or settlors of the trust, including on the natural persons behind them in case those are legal entities. Nevertheless, trustees under Canadian common-law rules must account for their administration of the trust to those who have an interest in the trust. This may result in a practical need for the trustees to retain records of the beneficiaries, but not necessarily on the beneficial owners. If the trust is documented by way of a trust deed, the beneficiary information will normally be included in the trust deed, but this document is not filed with a governmental authority and there is no registration requirement for trusts. Trustees with tax obligations in Canada also need to provide information on the parties to the trust. However, there is no explicit requirement that they need to provide information on the natural persons benefitting from the trust.

Trustees are not required to proactively disclose to financial institutions or DNFBPs, upon entering on a relationship with them, their status. Financial institutions are nevertheless required to obtain, and take reasonable measures to confirm, the name and address of all trustees and all known beneficiaries and settlors of a customer that is a trust. FIs rely mostly on the customer to declare the relevant information

across the country. Business law, including the laws of partnership, corporations and securities law are under provincial jurisdiction, however they tend to be somewhat similar across the country (with some exceptions in Quebec). The federal government possesses powers over federally-regulated corporations. Regulation over businesses and professions such as accountants, lawyers, and casinos is provincial under the Canadian constitution.

and do not require official documentation to establish the identity of the beneficial owner. They are also not required to conduct independent verification of the information provided.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 33%

FINTRAC has authority under the law to examine or require production of any records that financial institutions and DNFBPs retain, including beneficial ownership information of customers that are trusts (PC Act, s. 62(1) and 63.1). OSFI also has similar powers and can inspect records maintained by financial institutions incorporated in Canada.

FINTRAC however does not have authority to inspect the beneficiary records held by trustees themselves or recorded in trust deeds. Other governmental authorities may have access to records held by trustees, such as tax authorities when conducting investigations, or law enforcement authorities with required court authorisation.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 24%

Financial Institutions

Score: 50%

Current laws and regulations require financial institutions to ascertain the identity of individuals or to confirm the existence of entities (entities meaning: corporations, trusts, partnerships, funds, and unincorporated associations or organisations) when entering in a business relationship. However, only in the case of financial institutions (including banks, money services businesses, life insurance firms and brokers, and securities firms and brokers) does the law require further measures to identify the beneficial owners of the customer. In these cases, these reporting entities should obtain the following information:

(a) in the case of a corporation, the names of all directors of the corporation and the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation;

(b) in the case of a trust, the names and addresses of all trustees and all known beneficiaries and settlors of the trust;

(c) in the case of an entity other than a corporation or trust, the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the entity; and

(d) in all cases, information establishing the ownership, control and structure of the entity.

The law requires these financial institutions to “take reasonable measures to confirm the accuracy of the [beneficial] information obtained.” In the absence of a central beneficial ownership registry in Canada, the options available to confirm the accuracy of beneficial ownership information are limited. Canadian financial institutions will often rely on one or more of the following as reasonable measures to confirm the accuracy of beneficial ownership information obtained: (i) require that a senior officer of the customer certify in writing that the beneficial ownership information is accurate.; (ii) require copies of the customer’s corporate securities register, share certificates, trust deed, shareholders agreement (if any), partnership agreement, or (iii) require a legal or accounting opinion confirming beneficial ownership.

Financial institutions are not required to verify, or take reasonable measures to verify, whether a beneficial owner of a legal entity customer is a domestic or a foreign politically exposed person (PEP), a head of an international organisation (HIO), a family member or a close associate. Enhanced due diligence requirement for PEPs applies only in respect of customers of financial institutions that are individuals and it does not extend to the beneficial owners of legal customers.

If financial institutions determine that the individual customer is a domestic PEP, a HIO or a family member or close associate of a domestic PEP or HIO, they must perform a risk assessment of that client to determine if the individual is a high risk for money laundering or terrorist activity financing. If yes, they must take reasonable measures to establish the source of the funds deposited or expected to be deposited into the account and obtain senior management approval to keep the account open.

The law also does not mandate that a financial institution should not proceed with a business transaction if the beneficial owner has not been identified. If the beneficial ownership information cannot be obtained, the financial institution may open an account and perform transactions for the customer but must treat the customer as high risk and apply enhanced risk mitigation measures. Financial institutions are not automatically required to file a suspicious transaction report if the beneficial owner has not been identified.

FINTRAC is the authority responsible for supervising financial institutions’ anti-money laundering obligations. According to the anti-money laundering law, there are two avenues of sanctions for non-compliance: criminal prosecution and administrative monetary penalties. The law also provides for administrative or criminal liability of directors and agents of legal entities who directed, authorised, assented to, acquiesced in or participated in the offence.

DNFBPs

Score: 8%

DNFBPs are not required to identify the beneficial owner of their customers. While DNFBPs, such as real estate brokers and developers, casinos, accountants, dealers in precious metals and stones, and notaries public in the province of British Columbia are subject to the requirements of the PCMLTFA generally, they are not subject to the requirement to obtain beneficial ownership information. They are only required to conduct customer due-diligence, ascertaining the identity of customers, but not to identify or verify the beneficial owners. In the case of lawyers, while the anti-money laundering act includes them as a designated non-financial business and profession, the Supreme Court of Canada has decided that this provision is unconstitutional, on the basis that it interferes with the lawyer's duty to keep client information confidential. Nevertheless, provincial self-governing law societies have published rules that include know your customer requirements for lawyers and firms.

Canada only scores points under this principle due to provisions that allow for criminal and civil liability of directors and managers if they engage in money laundering or any other illegal activity.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 71%

Investigations into corruption and money laundering require that authorities have access to relevant information, including beneficial ownership. In Canada, there is no centralised database that can be used by domestic or foreign authorities to consult information on legal ownership and ultimate control. Domestic authorities usually are required to obtain a court order even to access basic ownership information held by legal entities and trustees. Only the country's financial intelligence unit (FINTRAC), acting in a supervisory capacity, can request information from financial institutions under its administrative examination powers. However, information obtained during examinations cannot be used for the purposes of intelligence production.

Financial intelligence is shared proactively or upon request by FINTRAC with law enforcement when FINTRAC determines that there are reasonable grounds to suspect the information would be relevant to investigating or prosecuting a money-laundering or terrorist-financing offence. FINTRAC provides disclosures to appropriate federal, provincial or municipal law enforcement agencies, as well as the Canadian Security Intelligence Service (CSIS), Canada Border Services Agency (CBSA) and Canada Revenue Agency (CRA), provincial and territorial securities commissions, among others.

Beneficial ownership information that financial institutions obtain from their customers is not automatically disclosed to FINTRAC, although FINTRAC may receive information as part of the reports it receives from financial institutions. FINTRAC has publications on intelligence sharing, which are

available [online: <http://www.fintrac-canafe.gc.ca/publications/brochure/2011-02/1-eng.asp>](http://www.fintrac-canafe.gc.ca/publications/brochure/2011-02/1-eng.asp)

FINTRAC has the authority to disclose certain information to foreign authorities that have powers similar to those of FINTRAC, if: (a) it has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money-laundering or terrorist-financing offence, and (b) there is a MOU with such foreign authority. FINTRAC currently has information-sharing agreements with over 90 foreign FIUs. Disclosures to foreign jurisdictions may include beneficial ownership information, if available.

The International Assistance Group (IAG) at the Department of Justice was established to carry out most of the responsibilities assigned to the Minister of Justice under the Mutual Legal Assistance in Criminal Matters Act. The IAG reviews and coordinates all the mutual legal assistance requests made either by or to Canada.

Competent authorities in Canada are allowed to use their powers and investigative techniques to attend a request from a foreign authority.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 58%

Tax authorities in Canada do not have direct access to beneficial ownership information. They may as part of a tax investigation request basic information on legal ownership maintained by legal entities and arrangements. The FINTRAC also has the authority to disclose information to the Canada Revenue Agency if it suspects the information would be relevant to a tax or duty-evasion offence.

Canada is a party to the OECD Convention on Tax Information Exchange.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 13%

Bearer shares

Score: 25%

Federally incorporated entities are permitted to issue bearer instruments. There are no requirements that bearer shares need to be converted into registered shares or held with a regulated financial institution or professional intermediary.

OSFI's Guideline B-8 contains some measures that should be undertaken by federally regulated financial institutions for dealing with corporations issuing bearer shares. According to the guideline, if a client is a corporation that can issue bearer shares, then enhanced due diligence is required as bearer shares allow the identity of beneficial owners to be hidden. Financial institutions should thus take reasonable measures to mitigate the risks, including for example requiring the immobilisation of shares and requiring corporations to replace bearer shares with shares in registered form, among others.

Nominee shareholders and directors

Score: 0%

Nominee shareholders and directors are allowed in Canada and there is currently no requirement that they should disclose the identity of the beneficial owner(s). There is also no requirement for professional nominees to be licensed or keep records of the persons who nominated them.