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CHARTERED
PROFESSIONAL
ACCOUNTANTS
CANADA

**Submission in response to
*Strengthening Corporate Beneficial Ownership
Transparency in Canada***

**Chartered Professional Accountants of Canada
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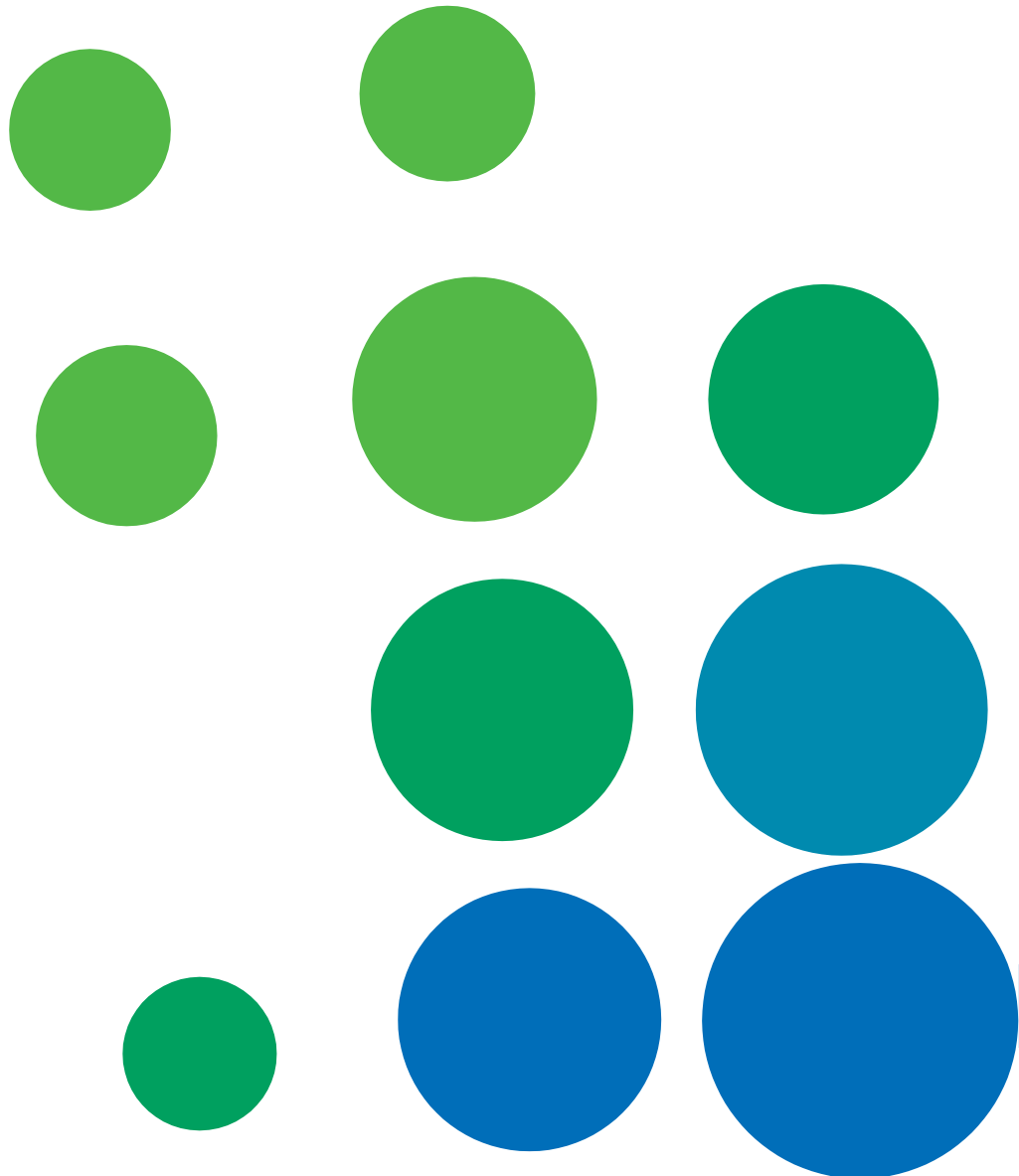


Table of Contents

| | |
|---|---|
| Executive overview..... | 3 |
| Main points and findings in brief..... | 3 |
| CPA Canada and the CPA profession..... | 4 |
| Registry recommendations..... | 5 |
| Tiered access and unique identifiers..... | 6 |
| Responses to the questions in the consultation paper..... | 7 |

Executive overview

Chartered Professional Accountants of Canada (CPA Canada) is pleased to comment in response to the Government of Canada's consultation paper *Strengthening Corporate Beneficial Ownership Transparency in Canada*.¹ (Please note that CPA Canada consents to the disclosure of this submission in whole. English and French versions of this submission will be available soon on our website: cpacanada.ca)

The CPA profession strongly supports increased corporate transparency that assists in the identification of high-risk parties and enhances the traceability of assets and sources of funds to prevent further illicit conduct. With this submission based on considering the information presented in the consultation paper, CPA Canada recommends policy and implementation options for a beneficial ownership registry or registries to serve the public interest.²

Main points and findings in brief

Two main points, including findings from our international research, are important to highlight at the outset of this submission. These points cover best practices internationally in beneficial ownership public registries; the fact that additional information is needed to evaluate the options including a possible phased-in approach; and the need for consistency in rules across jurisdictions in Canada, regardless of the registry model.

- Evolving best practices internationally for public registries, such as tiered access and unique identifiers, should be considered along with a possible phased-in approach for Canada

The lessons of other countries' approaches and experiences where public registries are operating are informative in consideration of Canada's approach. Two elements seem most pertinent from the international experience, based on our research and interviews with those experienced with the registries abroad. Those elements are the role of unique identifiers and a tiered-access approach to the registry.

The use of publicly accessible unique identifiers for beneficial owners and companies can enhance a registry's usefulness, provide for greater accuracy and increase users' confidence in distinguishing between individuals and companies with similar or identical names. Assigning a unique identifier to a beneficial owner following the validation of their identity is critical to support the credibility of the beneficial ownership information.

Based on our research, it appears that all countries with a public registry have adopted a tiered access model. At least three countries in Europe, in following EU directives, have taken a phased-in approach to public registries, whereby they centralize the information as a first phase before moving toward a public registry with tiered access.

Tiered access means law enforcement authorities have full access to the information on beneficial owners that was provided whereas the general public usually has access only to data such as first name and surname, month and year of birth, nationality, country of

¹ Innovation, Science and Economic Development Canada and Finance Canada. [Strengthening Corporate Beneficial Ownership Transparency in Canada](#). February 2020.

² Please note that the use of the terms "registry" (and registries) and "register" follows the usage cited in the glossary of the consultation paper.

residence, and the nature and extent of the beneficial interest held or control exercised. Determining what information should be protected by (or shielded behind) the unique identifier will be integral to the design of tiered access.

We note that the consultation paper does not include important information concerning possible timelines, costs and data regarding measurable benefits expected from a public registry while balancing the regulatory burden, privacy concerns and protection of Canada's reputation. We believe this information is necessary for the evaluation of options. In addition, the consultation paper does not appear to identify or address any form of potential evolution or transition toward best practices for registries that are still evolving and in early stages internationally.

- Rules need to be consistent across jurisdictions in Canada, regardless of registry model

Consistency of beneficial ownership information, relevance and accuracy of data across jurisdictions are critical if a centralized registry or registries are to be efficient and useful to competent authorities and for reporting entities in discharging their legal requirements and in addition for some, including CPAs', ethical responsibilities. CPA Canada has expressed its recommendation that governments across jurisdictions strive for consistency of beneficial ownership information.

CPA Canada and the CPA profession

CPA Canada represents the Canadian accounting profession, both nationally and internationally. Operating in the highly complex and global accounting eco-system, CPA Canada is a convener, facilitator, contributor and disseminator of information that advances the profession. The organization works closely with the provincial, territorial and Bermudan CPA bodies to champion best practices that benefit business and society. With more than 217,000 members, CPA Canada is one of the largest national accounting bodies in the world. The organization supports the setting of accounting, auditing and assurance standards, advocates for economic and social development in the public interest, and develops leading-edge thought leadership, research, guidance and educational programs.

We recognize and encourage the work of federal, provincial and territorial governments to coordinate their actions and to work collaboratively across jurisdictions on corporate transparency.

On behalf of the profession, CPA Canada contributes in the public interest to anti-money laundering (AML) policy and regulatory consultations with the federal government including through CPA Canada's representation on the Advisory Committee on Money Laundering and Terrorist Financing (ACMLTF) and its subcommittees.

The CPA profession agrees with the concepts, cited initially in Finance Canada's discussion paper in 2018, of maintaining the balance between deterring and detecting money laundering and terrorist financing and improving corporate transparency, while respecting the constitutional and privacy rights of Canadians. These concepts were reiterated in the Finance Canada news release and joint statement of June 13 and 14, 2019, respectively. The consultation paper notes the need to consider how to increase corporate transparency "while balancing privacy concerns, and maintaining (Canada's) reputation as an attractive place to invest and do business."

Accountants – specifically those with the CPA designation – and accounting firms providing accounting services to the public and including at least one CPA as a partner, employee or administrator have obligations as reporting entities in federal legislation and regulations governing Canada’s anti-money laundering regime.

The CPA profession is also aware that its members may be required as reporting entities to verify the identity of the beneficial owners where applicable, starting as soon as next year, based on recently proposed amendments to AML regulations. In that respect, our members would benefit from having access as reporting entities to beneficial ownership information if it were available in a registry or registries.

Registry recommendations

It is worth noting that neither the Financial Action Task Force (FATF) recommendation on beneficial ownership transparency nor the interpretative note on the recommendation call for registries of beneficial ownership information to be publicly accessible. Internationally, the approach to meeting the FATF standard on beneficial ownership transparency varies across jurisdictions. In our response to the consultation questions, we present some of the findings of our research into the different approaches across countries.

In line with the FATF standard, if the primary policy objective is for competent authorities to have timely access to adequate and accurate information, then that goal can be achieved with a central registry or registries. We believe it would be important for the public’s support of the requirements and costs of implementing a public registry if the government were to present evidence of how a public registry helps to combat illegal activity such as money laundering.

As noted in the consultation paper, the House of Commons Standing Committee on Finance recommended in 2018 that a pan-Canadian beneficial ownership registry be accessible specifically to competent authorities and reporting entities with customer due diligence obligations.

If a public registry is required, featuring two or possibly three tiers of access could make information available to competent authorities, reporting entities and the public at large, respectively. The information available at each tier of access would vary, from unrestricted access for competent authorities, to limited, as appropriate, for reporting entities and the public at large, for reasons of personal privacy, personal safety and/or business confidentiality.

CPA Canada recommends an evolving approach to the registry – from an initial two or three-tier approach (as outlined below) before considering moving to a fully publicly accessible approach. This would allow the government to achieve the best result in the public interest. An evolving approach could start by developing a central registry or registries offering two to three tiers of access, then allowing use on a pilot or trial basis to allow financial institutions and other reporting entities to utilize the system before extending it to a fully publicly accessible approach. This phased approach would ensure the government has the ability to evolve to a publicly accessible registry which addresses the policy, implementation and technological issues which are detailed in our responses to various questions (starting on page 6).

As a registry of beneficial ownership has been on the horizon for the government, at least since the Finance Canada consultation paper in 2018, we have raised the current collection of corporate information. In particular, we noted the Corporations Information Act Annual Return for Ontario Corporations which is filed with Canada Revenue Agency with a corporation’s income tax return using Schedule 546. The Schedule includes non-tax information under the

authority of the Ontario Corporations Information Act and it is sent to the Ontario Ministry of Government Services (MGS) for the purposes of recording the information on the public record maintained by the MGS. We posit that this existing methodology of collecting non-tax information could be expanded to include required beneficial ownership information and suggest that consideration be given to expanding it to other jurisdictions to achieve collection, compliance and enforcement all while minimizing some of the regulatory burden on private companies.

Tiered access and unique identifiers

There are a number of considerations in contemplating a registry that is publicly accessible.

In a publicly accessible registry, unique identifiers can be utilized to protect specific information from being made visible to the public at large and their use can also support the creation of tiered access to a registry. For example, the use of a unique identifier which distinguishes between beneficial owners with certainty can reduce the disclosure of personal identifying information, such as a principal residence address, which may otherwise be called for in the public's use of the registry while such information remains accessible to competent authorities.

When exploring the degree of access, the requirements of the AML regime in Canada are also relevant. Note that in some jurisdictions, the government may need to start with the requirements of existing legislation. In Quebec, for example, information is already publicly accessible via its business registry. British Columbia requires certain personal information be publicly accessible under the Land Owner Transparency Act – elements of personal information that may differ from what may be required by other jurisdictions.

Secondly, tiered access to a central registry allows jurisdictions to meet the FATF standards, making information available to competent authorities, and others, and to manage personal and business privacy concerns in the public interest:

- Tier One – the full suite of information is accessible only to the competent authorities.
- Tier Two – specific information is available to reporting entities in the AML regime, with the unique identifier as a means to shield more sensitive information.
- Tier Three – limited information is available to the public at large, in this tiered access registry with the unique identifier as a means to shield more sensitive information.

Ultimately, we encourage the government to use technology, including emerging technologies such as encryption-based tools, to full advantage in designing a registry or registries to achieve the policy objectives and allow for data analytics that will render the registry more valuable to competent authorities and reporting entities in the AML regime. The technological solution(s) that serves all jurisdictions must allow for the interaction with and contributions by various stakeholders, the building up of information and the security elements to prevent misuse and unintended effects.

Responses to the questions in the consultation paper

Should Canada establish a Public Registry (or Public Registries) of Beneficial Ownership?

1. *Should Canada establish a public registry (or public registries) of beneficial ownership for corporations, and why?*

As a founding member country of FATF, Canada must demonstrate leadership and improve upon its corporate transparency with a national strategy, invest to achieve international AMLTF standards/recommendations and consider the evolving “best practices” globally. Recommendations to improve corporate transparency in Canada have been made by FATF in its 2016 Mutual Evaluation Report of Canada’s regime and by the House of Commons’ Standing Committee on Finance in 2018.

In pursuit of the above, a phased transition (see Question 2 for further details) to a public registry or registries should be undertaken for Canada to obtain the greatest benefit from the collection of beneficial ownership (BO) information by private companies in order to protect Canada’s economy, society and reputation.³ Pursuant to new requirements under the Canada Business Corporations Act and anticipated through new or expected provincial legislation, private companies are being tasked with responsibilities to obtain and maintain BO information which must be available via a registry or registries to optimize upon the BO information’s intended purpose of combatting money laundering, terrorist financing and other illegal acts.

A public registry or registries should be established to enhance efficiency and effectiveness of the AMLTF regime by:

- enabling law enforcement and competent authorities to have timely access to information necessary for domestic and international investigations,
- enabling Canada to cooperate with other countries, pursuant to its agreements, in the deterrence, identification and prosecution of MLTF, and
- enabling reporting entities within the Canadian AMLTF regime who are charged with the responsibility to verify BO, access to relevant information to establish and/or corroborate customer/client data as required by law.

A public registry of private company BO would also help in creating “daylight” regarding other illegal acts such as tax evasion, thereby potentially improving deterrence, identification and prosecution.

Further, to combat corruption and foster a “speak up culture” for the future that values and protects law abiding corporations and citizens, Canada needs a public registry or registries so that individuals and companies alike can do their own due diligence and be informed about the organizations they do business with.

³ Please note that the use of the terms “registry” and “register” follows the usage cited in the glossary of the consultation paper.

In addressing the question posed above, we note that the Consultation Paper does not appear to address any form of potential evolution or transition toward best practices for registries that are still evolving internationally, and no data is presented concerning possible timelines, costs and measurable benefits expected while balancing regulatory burden, privacy concerns and maintaining Canada's reputation. We believe additional information along these lines is necessary and would have allowed us to provide more detailed feedback and robust insights.

2. *If not a public registry (or public registries), should Canada establish a central registry accessible only to competent authorities? What are the advantages and disadvantages of having a central registry over a public registry (or public registries)?*

A central registry (or registries) is supportable as it would be a marked improvement on current BO transparency and would answer the "the primary goal" of ensuring that competent authorities can have timely access to BO information necessary for domestic and international investigations. It would also demonstrate Canada's commitment to enhancing corporate transparency helping to safeguard its reputation as an attractive country to invest and do business in.

Notwithstanding the above, a central registry is considered to have a significant drawback in that it is "closed" and typically does not provide access to reporting entities within the AMLTF regime who are charged with the responsibility of verifying BO. Being "closed", a central registry is also said to lack the "eyes" on its credibility that may come from the public at large, other companies' use of the registry for their own due diligence or the media and journalists.

A central registry could, however, be the first phase of a phased approach toward the still-evolving international "best practices" for corporate registries. For example, a central registry or registries could be set up, and a pilot period could be established during which private companies reporting their BO information, government and competent authorities utilize the system and address issues as they may present before more access is granted. A second pilot period could follow allowing for additional restricted access to the central registry by those AMLTF reporting entities who have requirements to verify BO before ultimately moving on to a publicly accessible registry or registries. Assuming an evolutionary approach would not be prohibited by additional costs, it may provide for useful experience and a more successful public launch ultimately that lessens/mitigates the risks that may come by moving too quickly to a fully publicly accessible registry, as evidenced by international experience (see also our detailed response to Question 17).

Nationally, it has been established that approximately 70% of money laundering takes place using corporations, as noted in the consultation paper.⁴ In a Canadian context, money launderers will seek out the weakest links (i.e., provinces which lack legislation requiring beneficial ownership information) and therefore BO data regarding private corporations in Canada, regardless of jurisdiction, must be accessible to competent authorities through registries or a registry regardless of how constructed or linked.

⁴ Financial Action Task Force (2016). *Anti-money laundering and counter-terrorist financing measures – Canada, Fourth Round Mutual Evaluation Report*, pp. 102-103. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>

Whether Canada begins with a central registry and evolves or moves immediately to a publicly accessible registry, BO information for the entire country must be available on a timely basis to competent authorities at a minimum.

If yes, what key features would make a Public Registry (or Public Registries) effective?

3. *What additional compliance costs might corporations face if required to transmit their beneficial ownership information to a national registry, and how might these costs be reduced?*

In general, the cost of BO register and registry compliance for business will depend on the jurisdictional requirements, business size, complexity of structure and the frequency of change of shareholders, relative shareholdings, values (if required) and/or control in determining and updating BO. Unless legislative consistency is prioritized throughout Canada, a patchwork quilt of requirements and costs will emerge.

The optimal use of technology will be important in the overall functioning and cost of compliance for transmitting information to a registry or registries. While some companies may need an alternative to online functionality, a user-friendly technology solution should allow for reasonable compliance costs in transmitting BO information to a registry or registries. Actual costs to comply with the requirement for a beneficial ownership registry per company will likely vary according to the underlying jurisdictional requirements for required BO information, business size, complexity of structure and the frequency of change of shareholders, relative shareholdings, values (if required) and/or control in determining and updating BO.

4. *Should directors of a corporation be liable for non-compliance with the corporation's beneficial ownership registry obligations?*

The usefulness of a registry or registries is directly correlated with the credibility of the information that it contains. Consistent with the importance of the information and the reasons for creating a registry, the range of sanctions available must serve to deter and penalize where warranted. Sanction provisions should provide a range and flexibility to appropriately respond to the variety of circumstances for non-compliance which can be anticipated such as incapacitation, honest mistakes, lack of understanding or concern, and criminal behavior.

Generally, we agree that directors should be one of the parties potentially held liable for non-compliance with a corporation's beneficial ownership registry obligations. Each jurisdiction's sanctions and applicable liability for the recording and maintenance of company BO information in a register is a potential reference in discerning whether there should be any difference(s) in the sanctions and applicable liability in complying with BO registry obligations.

Unless consistency is prioritized in Canada, a patchwork quilt of liabilities and sanctions will emerge. This will impede awareness, understanding and compliance by individuals and companies alike.

5. *Should the public be charged fees to access all or parts of beneficial ownership and other company information, to help cover the costs of implementation, verification and enforcement?*

Regardless of the degree of public access implemented in a registry or registries, there will be new resources required and costs for government including for verification and enforcement. Consequently, cost recovery may be a potential option. There may be alternatives or combinations to consider in who bears the cost and it could include offsetting penalties collected, cost recovery from the public at large for each use, monthly fees for frequent users or perhaps it becomes part of the cost of corporate registration in each jurisdiction.

If a registry (or registries) is created with a fee, it may encourage appropriate use and provide additional information for ensuring data security and privacy protection.

Free access would eliminate what may otherwise be a barrier and likely would result in the greatest amount of national and international access to the information.

6. *What processes (if any) should be put in place for verifying the beneficial ownership information provided (e.g., proof of identification for directors, beneficial owners and/or officers/agents of a corporation)?*

The usefulness of a registry is directly correlated with the credibility of the information that it contains. Elements that would enhance the credibility of information in the registry include:

- Unique identifiers used for each entity and beneficial owner from the outset
- Proof of identification should be obtained
- Government must both react to information it receives about inaccuracies in the registry and it must also seek them out proactively and efficiently using both risk and data analysis and technology
- Those reporting entities in the regime that must verify beneficial ownership should contribute to its accuracy by reporting discrepancies or inaccuracies.

7. *What means could be used to verify identities (e.g., a driver's license, passport, or bio-identifiers)*

The usefulness of a registry is enhanced if reporting entities can utilize the information because it has been verified in accordance with the requirements of the AMLTF regime. In this regard, FINTRAC's 2019 guidance *Methods to verify the identity of an individual and confirm the existence of a corporation or an entity other than a corporation* should be referenced.

In the future, it is expected that new technologically advanced identification methodologies will emerge or be developed for governments' use. It will be important to equip the registry or registries with the flexibility of adopting such advancements as they become available.

8. *How frequently should corporations be required to update the information provided to the registry?*

The usefulness of the registry is directly correlated with the credibility of the information that it contains. This means the information needs to be both accurate and up to date. Each jurisdiction's timeline requirements for the recording and maintenance of company BO information should be a reference for when the registry information should also be updated.

Unless consistency is prioritized in Canada, a patchwork quilt of requirements and timeliness of information will emerge. This will impede awareness, understanding and compliance by individuals and companies alike.

9. *Under what circumstances, if any, should corporations be exempted from providing beneficial ownership information to a public registry?*

The risks that beneficial owners and/or their families face may be extremely varied and those risks may have nothing to do with a private company but a BO registry can nevertheless become a new public access point to previously undisclosed information. Flexibility for exemptions should be ensured to allow for future requests for the safety and security of individuals based on issues the nature of which it may not be possible to anticipate at the outset of the registry or registries. It is also unclear in a publicly accessible registry how protection can be afforded after information has been publicly displayed and new or different threats to safety or security arise subsequently. This demonstrates the need for diligence and care upfront in determining what personal information is needed, for competent authorities only, or should be made public.

Additionally, there are legitimate business transaction reasons why corporations should be exempted from providing BO information to a public registry. For example, through corporate restructuring and BO reporting, business intelligence or planning for succession, mergers or acquisitions may be inadvertently/implicitly disclosed to competitors, suppliers or other stakeholders. To avoid unnecessary consequences, flexibility for exemptions should be ensured to allow for future requests in respect of shielding valid business planning or transactions.

Should there be limitations on information disclosed through a Public Registry (or Public Registries)?

10. *What are the potential risks to beneficial owners of making their information accessible through a public registry (or public registries) (e.g., identify theft, access by hostile foreign governments)?*

There are potential risks in an openly public registry for loss of privacy (personal and business), identity theft, harassment, and threats to safety and security. The risks that beneficial owners and/or their families face may be extremely varied and those risks may have nothing to do with a private company but a BO registry can nevertheless become a new public access point to previously undisclosed information. Utilizing unique identifiers may reduce the unique personal information required for registry use thereby reducing some risk to a beneficial owner. The potential risks demonstrate the need for diligence and care upfront in determining what personal information is needed by competent authorities only or should be made public.

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.

11. *Should certain beneficial ownership information provided to the registry be accessible only to law enforcement, tax and other authorities? Should a tiered access model be adopted based on the entity seeking the information? What information should be withheld and under what conditions?*

The amount and type of information to make public in a publicly accessible registry is likely one of the most controversial aspects of considering a public registry or registries. Making certain types of data available to some parties and not others (i.e., two or three tiers) requires additional effort and creates additional responsibilities for data security.

However, considering the potential risks to beneficial owners mentioned above and the capabilities of technology, tiered access is the preferable and recommended option transitionally and/or permanently. Tiered accessibility allows for decisions on what is needed to be disclosed to whom to achieve the objectives of the registry and the access may evolve over time as experience and familiarity with the registry or registries grows. For example, tiered access could be built in allowing for the greatest amount of information to be available to competent authorities followed by a reduced and restricted access to information by reporting entities under the regime who must verify BO and the least amount of unique information may be available to the public at large.

What is known is that information that is made public will stay public such that the due diligence upfront in assessing elements including unique identifiers and possible tiered information is critical in achieving a balance between Canadians' privacy concerns and the disclosures required publicly for fighting crime.

12. *Should individual beneficial owners be able to seek exemptions from having some or all of their information made public, on grounds of safety, protecting the privacy of legitimate investment decisions, or similar reasons? Under what basis should such requests be granted?*

Exemptions should be possible and there should be flexibility as to the need and nature. We also believe that exemptions will be difficult to legislate and operationalize. The risks that beneficial owners and/or their families face may be extremely varied and those risks may have nothing to do with a private company but a BO registry can nevertheless become a new public access point to previously undisclosed information. Flexibility for exemptions should be ensured to allow for future requests for the safety and security of individuals based on issues the nature of which may not be possible to anticipate at the outset of the registry or registries.

It is also unclear in a publicly accessible registry how protection can be afforded after information has been publicly displayed and new or different threats to safety or security arise subsequently. This demonstrates the need for diligence and care upfront in determining what personal information is needed and should be made public. Utilizing unique identifiers may reduce the unique personal information required for registry use

thereby reducing some risk to a beneficial owner. The potential risks demonstrate the need for diligence and care upfront in determining what personal information may be made public.

13. *Which other organizations (e.g., FINTRAC, private sector entities with anti-money laundering obligations) should have access to the withheld information and under what conditions?*

FINTRAC, private sector entities with BO verification requirements, CRA, CSIS, CBSA may all have (different) needs for non-public information. This should be carefully considered perhaps through tiered access to achieve a balance between Canadians' privacy concerns and the disclosures required publicly for fighting crime.

14. *In other jurisdictions, have public registries demonstrated effectiveness in ensuring accurate information, supporting investigations by law enforcement, tax, and other competent authorities?*

In the absence of upfront validation and ongoing verification processes, public registries cannot be considered as authoritative sources of accurate beneficial ownership information.

As noted in the consultation paper, stakeholders in the U.K. have expressed concerns with the accuracy of the beneficial ownership data in the public registry -- known as the People with Significant Control (PSC) Register -- and the fact it is not definitive data. This is in large part due to the absence of standardized ways to file the data in the U.K.'s public registry and the fact that unique identifiers are not leveraged to validate the information. Furthermore, Companies House, the executive agency that manages the registry, manages it first and foremost as a repository of information and does not currently actively verify the information it receives. This situation benefits the "bad actors" in the system who may either falsify their information or simply not register any information at all.

In 2019, the U.K. Department for Business, Energy & Industrial Strategy published the *Review of the implementation of the PSC [People with Significant Control] Register*. The report found that law enforcement authorities had knowledge of non-compliant behaviour and inaccurate information being filed in the registry. It is therefore not surprising the report points out that many law enforcement authorities believed the registry's ability to provide complete transparent beneficial ownership information was limited given the fact it goes unchecked. Furthermore, "most Law Enforcement Organisations did not think that the PSC register has had any impact on crime prevention. It was felt that individuals' intent on committing crime would find ways around the system."⁵

It is worth noting that countries such as the Netherlands and Ireland have taken steps to ensure the accuracy of the beneficial ownership information available in public registries. (Please see the response to Question 17 for more details). Should the government decide to establish a central registry in Canada, CPA Canada believes it would be worth learning from those countries where they have made efforts to ensure the accuracy of the beneficial ownership information in their registries.

⁵ U.K. Department for Business, Energy and Industrial Strategy. 2019. *Review of the implementation of the PSC Register*.p.37

15. *In other jurisdictions, have public registries reduced the misuse of corporations for criminal or other illicit activities?*

(No response.)

16. *Have public registries had an effect on investment levels?*

(No response.)

17. *Are there international best practices and experiences that Canada can learn from were it to adopt a public registry (or public registries)?*

In collaboration with the International Federation of Accountants (IFAC), CPA Canada is working on an upcoming report on beneficial ownership transparency to be released in the spring of 2020. The report will explore how various jurisdictions around the world are grappling with questions regarding the extent to which, how, and by whom, beneficial ownership information is collected, centralized, reviewed and published. As policy-makers continue to consider these issues at the global and national levels, this upcoming report seeks to ground the discussion with evidence-based and practical perspectives, including those of the accountancy profession.

In advance of the report's release, there are several preliminary findings to share on best practices and experiences in countries where the public registry approach has been adopted or where it is under consideration. The comments are organized under these topics:

- A. Public registries in operation
- B. Who is required to register
- C. Validation and accuracy of information
- D. Access to the registry
- E. Exemptions from public access
- F. Timeframe to update registries
- G. Compliance and liability
- H. Trusts
- I. Role of technology

A. Public registries in operation

Several countries around the world have either adopted or entertained the possibility of adopting a public beneficial ownership registry.

In the U.K., in addition to the existing public registry at Companies House, the government has mandated all British Overseas Territories and Crown Dependencies to introduce public registries for companies in the coming years (the exact timeline remains unknown).

In the European Union, the Fifth Anti-Money Laundering Directive requires member countries to make beneficial ownership registries publicly available. To the best of our knowledge, the following member countries have rolled out public registries: Ireland, Germany, Belgium, Sweden, Denmark, Slovenia, Luxembourg and Malta.

In addition to European nations, other countries have in recent years conducted consultations on public beneficial ownership registries and/or committed to implementing them (e.g. Australia, Hong Kong, New Zealand, South Africa).

B. Who is required to register

The types of entities that are required to provide beneficial ownership information to a public registry vary significantly from one country to another. For instance, in the U.K. and Ireland, only private companies have to register whereas, in other countries such as the Netherlands, Germany and Belgium, foundations are also required to register.

It should be noted everywhere in the world publicly listed companies are exempted from providing beneficial ownership information to a public registry.

C. Validation and accuracy of information

In the absence of upfront validation and ongoing verification processes, public registries cannot be considered as authoritative sources of accurate beneficial ownership information, as noted in the response to Question 14, above. The example and experience with the public registry in the U.K., as explained in Question 14, is particularly relevant to this issue of validation and accuracy of information.

In the Netherlands and Ireland, unique identifiers similar to the Canadian social insurance number for each beneficial owner must be provided to the registrar. This enables the registrar to validate the identity of beneficial owners leveraging government databases. For instance, in the Netherlands, it is intended that an automated check will be performed with respect to the information registered in the Persons Database as compared to what is provided at the time of registration in the beneficial ownership registry of natural persons who are residing in the Netherlands. In the case of Ireland, the personal public service number of beneficial owners is required by the registrar for verification purposes.

In some cases, if law enforcement authorities (such as those in Ireland, for example) and/or “obligated persons” under the law (such as auditors and chartered accountants) (for example, in Germany) identify in the course of their work a discrepancy between the information in a central registry and the beneficial ownership information available to them, they must notify the registrar.

D. Access to the registry

Some registries (such as those in Ireland, Germany, the Netherlands and Belgium) require users (either companies that need to file or people that want to search the database) to create a free account to log in. In some jurisdictions (Ireland, the Netherlands and Belgium), members of the general public are required to pay a nominal fee to access the beneficial ownership information of entities (it is usually one fee per entity).

All countries with a public registry have adopted a tiered access model, which means law enforcement authorities have full access to the information on beneficial owners that was provided whereas the general public usually has access only to data such as first name and surname, month and year of birth, nationality, country of residence, and the nature and extent of the beneficial interest held or control exercised.

In some countries (such as Germany and Belgium, for example), individuals that can demonstrate that access to registry information is required in order to conduct their due diligence obligations (such as accountants and lawyers) may be granted access to more beneficial ownership information than the general public.

E. Exemptions from publication

In many countries (Ireland, Germany, the Netherlands and Belgium), the beneficial ownership details of minors can be exempted from publication upon request. In some cases (Germany, the Netherlands and Belgium), people with a disability or who are deemed “incapacitated”/“legally incapable” can also seek an exemption.

In many countries (the U.K., Germany, the Netherlands and Belgium), if public access to the information of a beneficial owner can expose this individual to the risk of falling victim to criminal offences (e.g. fraud, kidnapping, hostage taking, blackmail, extortion or robbery-like extortion, coercion, threat, violence or intimidation), then such access can be restricted upon request (supporting documents need to be provided when submitting the exemption request).

It should be noted that in the U.K., Ireland and the Netherlands, the beneficial ownership information that is exempted from public access is still made available to law enforcement agencies.

F. Timeframe to update registries

Depending on the jurisdiction, registered entities have between two weeks (the U.K., Ireland) and one month (Belgium) to update beneficial ownership information if there are any changes. Belgium also requires registered entities to confirm that beneficial ownership information is accurate and up-to-date on an annual basis.

G. Compliance and liability

In most countries we researched (the U.K., Ireland, Germany, the Netherlands, and Belgium), failure to provide beneficial ownership information to the central registry or willfully providing false information can result in administrative and/or criminal fines. These sanctions or fines for non-compliance can be applied to either the corporate entity, its directors or governing body and/or the beneficial owners themselves.

In order to ensure maximum compliance with reporting requirements, the government agency or department in charge of the public registry typically has some kind of regulatory jurisdiction over the registered entities (for example, the Jersey Financial Services Commission is the registrar and has the power to deny incorporation).

H. Trusts

The beneficial ownership reporting requirements that apply to trusts vary considerably from one country to another. In some places, trusts are exempted from these reporting requirements all together. Other jurisdictions have adopted a completely opposite approach

by making public (or planning to, in the case of the Netherlands) the beneficial ownership information of trusts in central registries. For its part, the U.K. settled for a nuanced approach by virtue of which the registry for trusts is not public, but is available to law enforcement bodies and the UK Financial Intelligence Unit.

Determining whether the beneficial ownership information of trusts should be available to the public is a challenging issue. Trusts are extensively used in some jurisdictions (like the U.K.) and can have a legitimate *raison d'être* such as protecting the identity of vulnerable people (such as children, for instance). However, trusts can also be deliberately used to construct murky ownership structures by adding multiple layers of ownership.

I. Role of technology

Leveraging technology is typically essential to establish a cutting-edge registry and to keep compliance burden to a minimum for all parties, according to our interviews with those knowledgeable with public registries. For instance, Application Programming Interfaces (APIs) can be used to facilitate the uploading (and downloading) of beneficial ownership information by entities into the registry. Artificial intelligence and data linkages can also facilitate the validation of the beneficial ownership information provided by registered entities.

Recent FATF paper

Related to whether to establish a public registry is the challenge that many jurisdictions face in achieving “a satisfactory level of transparency regarding the beneficial ownership of legal persons,” as noted in a recent paper on beneficial ownership for legal persons by FATF.⁶

The paper provides examples of best practices from delegations in implementing FATF Recommendation 24. It cites several key features of an effective approach, including:

- adequacy, accuracy and timeliness of information in beneficial ownership
- obliged parties to verify or/and monitor the accuracy of the information
- supplementary information platform in addition to company registry
- ongoing reporting at company level / to the reporting entities or company registry
- verification through different means
- highly effective law enforcement authorities with adequate resources
- using technology to facilitate checking and validation
- access by competent authorities
- effective, proportionate and dissuasive sanctions.

⁶ Financial Action Task Force. 2019. *Best Practices on Beneficial Ownership for Legal Persons*.p. 5.

Concluding note

CPA Canada, on behalf of the accounting profession, is committed to contributing to strengthening the AML regime in Canada including through increased corporate transparency.

We appreciate the opportunity to provide comments in response to the government's consultation paper and look forward to continuing the discussion regarding the best approach to beneficial ownership transparency – and AMLTF policy and regulations -- in the public interest.