

# CANADA

## BENEFICIAL OWNERSHIP TRANSPARENCY

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Canada does not fully comply with any of the G20 Principles. 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 and DNFBPs is either inadequate or not made available in a timely manner. Moreover, current rules on bearer shares 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 term beneficial owner is not defined in Canadian law with regard to company registration. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the **PC Act**) – Canada’s anti-money laundering legislation – also does not define beneficial owner, but further regulations to the act provide what type of beneficial ownership information must be collected by financial institutions and DNFBPs. These include:

- (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.*

Within this framework, the requirement covers some of the key issues such as the beneficial owner being a

natural person, but it does not mention ultimate control and limit the exercise of direct or indirect control to the equivalent of a percentage of share ownership.

### 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](#).

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. It also found that there are numerous opportunities in many sectors to undertake transactions with varying degrees of anonymity and to structure transactions in a complex manner, facilitating money laundering.

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.

### G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 0%

Current laws and regulations do not require legal entities to maintain information on beneficial ownership. Consequently, there is also no requirement that the beneficial ownership information is maintained within Canada. There is also no requirement for a nominee shareholder to declare to the company if they own shares on behalf of a third person. Shareholders are also not legally obliged to inform the company regarding changes in share ownership.

The Canada Business Corporation Act (CBCA)

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shares or debt obligations, including the number of securities held by each security holder. Similar requirements exist in corporate laws at the province level. However, there is no requirement to disclose who the ultimate beneficial owner of these shares is. As such, beneficial ownership information is only recorded if the legal owner of the shares happens to be the beneficial owner.

## G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 14%

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, authorities have to rely on the information collected by financial institutions and DNFBCs or on basic information contained in security registers, but access to those is also restricted.

Moreover, 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.

The law establishes that FINTRAC has authority to examine or require production of any records that financial institutions and DNFBCs retain, including beneficial ownership information of customers (PC Act, S.62 (1) and 63.1). The law, however, does not establish a timeline 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 securities register maintained by business corporations other than those with anti-money laundering obligations (i.e. financial institutions and DNFBCs).

Other government authorities, such as tax authorities when conducting investigations, or law enforcement bodies with court authorisation, may have access to the securities 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 also 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. 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. 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.

Financial institutions are 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.

## 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 DNFBCs 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 authorization.

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## G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 19%

### Financial Institutions

Score: 38%

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 organizations) when entering in a business relationship. However, only in the case of entities does the law require further measures to identify the beneficial owners of the customer. In these cases, financial institutions and securities dealers 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 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 customer is a politically exposed person (PEP) 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, and even in those cases, enhanced due diligence is only required for transactions above a certain threshold. Moreover, current rules on enhanced due diligence for PEPs apply only for foreign PEPs and do not cover domestic politically exposed persons and associates. The government opened a public consultation to discuss an amendment to the anti-money laundering law to extend enhanced due diligence requirements to domestic PEPs and heads of international organisations, but proposed changes to the law maintain high transaction thresholds for identification of PEPs and do not address the issue of beneficial ownership.

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. Equally, financial institutions are not required to submit 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 and criminal liability of directors and agents of legal entities who directed, authorized, assented to, acquiesced in or participated in the offence.

To date, no financial institution has been convicted for contravening the anti-money laundering act or associated regulations.

OSFI also monitors compliance by federal financial institutions with their obligations to implement effective anti-money laundering measures, as part of an overall risk-management framework. Deficiencies in effectively implementing such measures may result in the financial institution being “staged” or placed on a watch-list thereby becoming subject to more enhanced supervision by OSFI. Staging of a financial institution may not be made public under Canada’s financial institution legislation.

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## DNFBPs

Score: 8%

DNFBPs are not required to identify the beneficial owner of their customers. Some businesses and professions are required to conduct customer due-diligence, ascertaining the identity of customers, but not to identify or verify the beneficial owners (i.e. accountants and lawyers). 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: 33%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding 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) can request information from financial institutions under its administrative or investigative powers. When there are reasonable grounds to suspect that the information collected would be relevant to investigating or prosecuting a money laundering offence, FINTRAC has the authority to disclose the information to law enforcement.

Canadian authorities usually share beneficial ownership or other relevant information through mutual legal assistance requests or based on bilateral agreements / memorandum of understanding. For

instance, currently FINTRAC has information-sharing agreements with over 90 foreign intelligence units.

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 duty or duty-evasion offence.

Canada is a party to the OECD Convention on Tax Information Exchange and has currently signed tax information exchange agreements with 22 jurisdictions. Negotiations are ongoing with other seven jurisdictions.

## G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 13%

### Bearer shares

Score: 25%

Federally incorporated entities are permitted to issue bearer shares. 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

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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.