

Annex

To facilitate the provision of information on legislation, policies, practices and institutions on promoting beneficial ownership information transparency, including existing registry(ies) and mechanism(s) to make requests for such information, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to the following agencies/authorities, depending on their national system for obtaining and recording information on legal persons and legal arrangements in their country, e.g.:

- Company registry and any other relevant registry(ies)
- Agency(ies)/authority(ies)/body(ies) responsible for obtaining and maintaining beneficial ownership information
- National competent authorities responsible for international cooperation in criminal matters, including freezing and confiscation of criminal proceeds

Questionnaire on Beneficial Ownership Information

Contact Information

1. Definition of beneficial ownership & mechanisms for obtaining beneficial ownership information

- 1.1 Please provide the definition of “beneficial ownership” in your country for: (a) legal persons; and (b) legal arrangements, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).

Legal persons

Corporate law is an area of shared jurisdiction in Canada between the federal, provincial and territorial levels. The answers provided in this questionnaire relate to federal laws specifically, unless stated otherwise.

Under the federal *Canada Business Corporations Act* (CBCSA), private corporations are required to maintain and update registers of “individuals with significant control” (ISCs) over the corporation. These are natural persons who:

- (a) have any of the following interests or rights, or any combination of them, in respect of shares of the corporation carrying either 25% or more of voting rights, or 25% of its fair market value—

- i. the individual is the registered holder of them,
- ii. the individual is the beneficial owner of them (which includes ownership through any trustee, legal representative, agent or mandatary, or other intermediary), or
- iii. the individual has direct or indirect control or direction over them;

(b) have any direct or indirect influence that, if exercised, would result in control in fact of the corporation; or

(c) are designated as an ISC by regulation.

Two or more individuals are also each considered to be an ISC if they jointly hold shares that surpass one of the thresholds for a single ISC, or act in concert under an agreement or arrangement with respect to shares that surpass one of them.

Most provinces have substantially similar rules in place.

The *Proceeds of Crime (Money Laundering) and Terrorism Financing Regulations* (PCMLTFR), which specify measures that regulated businesses and professions should take to protect themselves against misuse for money laundering and terrorism financing, use the following definition of beneficial owner:

- Beneficial owners are the individuals who directly or indirectly own or control 25% or more of a corporation or an entity other than a corporation. In the case of a trust, they are the trustees, the known beneficiaries and the settlors of the trust. If the trust is a widely held trust or a publicly traded trust, they are the trustees and all persons who own or control, directly or indirectly, 25% or more of the units of the trust.

2. Access to basic information on legal persons

2.1 Please describe the **process** for obtaining *basic information* on legal persons created or registered in your country, including the role of the company registry.

Since corporate law is a shared jurisdiction, access to BO is dependent on law or relevant jurisdiction. At the federal level, privately-held CBCA corporations are required to prepare and maintain, at its registered office or at any other place in Canada designated by the directors, a register of its ISCs. At least once during each financial year of the corporation, it must take reasonable steps to ensure that it has identified all ISCs and that the information in the register is accurate, complete and up-to-date. Additionally, if the corporation becomes aware of any new ISC information, it is to record that information in the ISC register within 15 days. When canvassing registered shareholders for ISC information, the shareholders have a statutory duty to reply accurately and completely, to the best of their knowledge, as soon as feasible.

Regulations may be prescribed to instruct corporations on the manner of preparing and maintaining the ISC register, on the reasonable steps it must take to collect the information, and on what to do where no ISCs can be identified.

Most provinces have substantially similar rules in place.

2.2 Please list the **categories** of *basic information* on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date of incorporation, tax ID number, etc.

At the federal level, corporations must keep records of:

- (a) the names, the dates of birth and the latest known address of each ISC;
- (b) the jurisdiction of residence for tax purposes of each ISC;
- (c) the day on which each individual became or ceased to be an ISC, as the case may be;
- (d) a description of how each individual is an ISC, including, as applicable, a description of their interests and rights in respect of shares of the corporation;
- (e) any other information that may be prescribed by regulation; and
- (f) a description of the steps taken to identify ISCs and ensure that the information in the register is accurate, complete and up-to-date.

Most provinces have substantially similar rules in place.

2.3 Is the company registry available publicly & online in your country? **NO**

If **YES**, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

ISC registers are not currently publicly available at the federal level, although the Government of Canada has committed to enacting infrastructure for a public and searchable registry of federal corporations by the end of 2023. The Government also committed to make it scalable to allow access to the beneficial ownership data held by provinces and territories that agree to participate in a national registry.

The Province of Québec has passed Bill 78 that will require corporations to file beneficial ownership information with the corporate registrar, the Registre des Entreprises du Québec. Such information will be accessible to the public.

3. Access to beneficial ownership information of legal persons

3.1 Through which mechanism(s) can competent authorities (such as law enforcement, police, financial intelligence unit and tax agencies) access *beneficial ownership information* on companies and other legal persons created or registered in your country. Please select all that apply.

- Through a registry/registries with beneficial ownership information
- Through a different mechanism
- Competent authorities do not currently have access to beneficial ownership information

If **REGISTRY**, please provide further details on such registry(ies) including:

- Authority(ies)/agency(ies) responsible for obtaining and maintaining beneficial ownership information and for maintaining the register(ies). Please list if more than one;
- Categories of beneficial ownership information (data fields) obtained, recorded and maintained on the registry(ies), e.g. name, nationality, date of birth, address, etc.;
- Types of legal entities covered within the scope of the beneficial ownership registry(ies), including any exempt entities;
- Details of the registry's(ies)' access policy:
 - Is the information on the registry(ies) available to the public? **YES / NO**
 - If **YES**, please include a link(s) to the registry(ies).

- If **NO**, please list the authorities/agencies that have access to this information, or that can request access.
 - Does accessing beneficial ownership information in the registry(ies) entail any costs?
 - Does the registry(ies) provide features to search information by different types of information, e.g. legal entity name, name of director, name of beneficial owner, by first or last name, by business address, by registered agent? Is it possible to search for a combination of information (Boolean searches)?
- Frequency of updates of information and triggers for updates;
- Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).

As noted, a public registry mechanism is in development at the federal level, and forthcoming in Québec.

3.2 Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

Examples may include through private-public partnerships (e.g. involving financial institutions, notaries and/or corporate service providers), through stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.

At the federal level, investigative bodies, namely police, tax authorities and any entity prescribed by regulation with relevant investigative responsibilities for a variety of offences set out in the CBCA, can make a request directly to a CBCA corporation required to maintain an ISC register when certain conditions are met. The corporation must, as soon as feasible, provide the requesting body with a copy of its ISC register or disclose any information from the register specified by the requesting body.

The conditions to be met are that the investigative body have reasonable grounds to believe that the information would be relevant to the investigation of one of a list of offences set out in the CBCA, and that the corporation being requested has a suspected relationship to the offence. This includes being used to commit or facilitate the offence, to help evade detection, or that one of its ISCs is also an ISC for a different entity suspected of such activity.

Most provinces have substantially similar rules in place.

Under subsection 138(1) of the PCMLTFR, businesses and professions regulated for anti-money laundering purposes must, when required to verify the existence of an entity that is a corporation, obtain and verify information on that company's beneficial owners. This beneficial ownership information, recorded by the regulated entity may be obtained by an investigative body through a production order.

3.3 Are foreign legal persons, foreign (express) trusts or foreign legal arrangements allowed to operate in/own assets/ and/or register in your country? **YES**

If **YES**,

- how is basic information on these arrangements recorded (if at all)?

Certain basic information may need be provided to the provincial or territorial business registries in jurisdictions where the foreign entity operates. In the Province of Québec, once all elements of Bill 78 are in force, this will include the provision of beneficial ownership information.

- how is beneficial ownership information on these arrangements recorded (if at all)? Please provide details of the relevant legislation and practices.

Information on the beneficial ownership of these foreign entities may be obtained through businesses and professions regulated for anti-money laundering and anti-terrorist financing purposes, where these have established a business relationship with the foreign entity and are thus required to obtain and verify information on the entity's beneficial owners in accordance with the PCMLTFR.

4. Access to basic information and beneficial ownership information of (express) trusts and other similar legal arrangements

- 4.1 Does your country recognize (express) trusts or other similar legal arrangements? **YES**/ NO
- If **YES**, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar legal arrangements created or registered in your country.
 - If **NO**, please skip to question 5
- 4.2 How is *basic information* on (express) trusts and other legal arrangements obtained and recorded in your country?
- 4.3 How is *beneficial ownership information* on (express) trusts and other legal arrangements obtained and recorded in your country?
- Through a registry/registries with beneficial ownership information
 - Through a different mechanism**
 - Competent authorities do not currently have access to beneficial ownership information

If **REGISTRY**, please provide details on the registry(ies), authority(ies)/agency(ies) in charge of maintaining the registry(ies), type of information collected, and details on the access policy. If **ALTERNATIVE MECHANISM**, please provide details on the mechanism, type of information collected, and details on the access policy.

Information on the beneficial ownership of trusts and other legal arrangements may be obtained through businesses and professions regulated for anti-money laundering and anti-terrorist financing purposes, where these established a business relationship with the foreign entity and are thus required to obtain and verify information on the entity's beneficial owners in accordance with the PCMLTFR. Investigative bodies may obtain this information through a production order.

In Quebec, the legislative amendments establishing a public registry of company beneficial ownership will also require foreign trusts operating a commercial enterprise in the province to disclose their ultimate beneficiaries.

In Budget 2018, the Government committed to introduce greater tax reporting requirements for trusts, effective in 2021, in order to improve the collection of beneficial ownership information for income tax purposes. An amended set of legislative proposals were released by the Department of Finance for public consultation on August 9, 2022, including a proposal to move the effective date of the measure to taxation years ending after December 30, 2022.

5. Sanctions

- 5.1 Please describe the types of sanctions, sanctionable conduct, and targets of sanctions for non-compliance with beneficial ownership disclosure regulations (whether on the registry(ies) or through an alternative mechanism).

At the federal level, a corporation that, without reasonable cause, contravenes the requirements around maintaining accurate ISC registers or requests by an investigative body is guilty of an offence and

liable on summary conviction to a fine up to \$5,000.

Directors or officers of a corporation who knowingly authorize, permit or acquiesce in the contravention of those requirements (maintaining accurate ISC registers or requests by an investigative body) commit an offence, irrespective of the corporation's own criminal liability. Additionally, directors or officers who knowingly record false or misleading information in the ISC register, or provide false or misleading information about the register, or who knowingly authorize, permit or acquiesce in these actions, also commits an offence. These persons are liable on summary conviction to a fine up to \$200,000, and/or to imprisonment for a term up to six months.

Shareholders who knowingly contravenes their duty to provide information to the best of their knowledge when requested also commit an offence with the same penalties for directors and officers.

The CBCA also contains a general offence, punishable on summary conviction, for contravention of any provision of that law where no specific penalty is provided.

Most provinces have substantially similar rules in place.

Failure to comply with the beneficial ownership recordkeeping provisions in the *Proceeds of Crime (Money Laundering) and Terrorism Financing Regulations* can result in an administrative monetary penalty of up to \$100,000 per violation. Individuals and entities can also face criminal charges for criminal non-compliance with the Regulations, liable to on summary conviction, to a fine of not more than \$250,000 or \$1,000,000 and/or to imprisonment for a term of not more than two years less a day, or on conviction on indictment, to a fine of not more than \$500,000 or \$2,000,000 and/or to imprisonment for a term of not more than five years.

- 5.2 Please describe the powers available to the designated authority(ies)/agency(ies) to enforce sanctions for non-compliance with the beneficial ownership disclosure requirements, **including any statistics on enforcement of such sanctions.**

Administrative sanctions are enforced by the federal or provincial registrar, while criminal offenses are prosecuted by the relevant federal or provincial public prosecutor.

6. International Cooperation, asset recovery and challenges

- 6.1. Does your country make beneficial ownership information available to foreign competent authorities (directly or upon request)? Please provide details of the relevant legislative and regulatory framework in your country that allows for the international exchange of such information.

Only domestic investigative agencies may directly request ISC information from a CBCA corporation. Any foreign investigative body seeking ISC information would be required to secure the cooperation of domestic authorities.

Mutual Legal Assistance

The International Assistance Group (IAG) at the Department of Justice Canada (DOJ) is Canada's central authority for extradition and mutual legal assistance (MLA). The IAG regularly receives requests for beneficial ownership (BO) information. While Canada does not have a comprehensive national public database for BO of trusts and corporations and other business entities, various provincial, territorial, and federal public online databases do sometimes provide some limited BO information. The

IAG may refer requesting foreign states to such public databases and/or provide the results of searches from these databases. These resources are:

- Open-source Database of Federally Incorporated Corporations
<https://www.ic.gc.ca/app/scr/cc/CorporationsCanada/fdr1CrpSrch.html>
- Open-source Databases of Provincially/Territorially Incorporated Corporations:
 - Alberta: <https://www.alberta.ca/find-corporation-details.aspx>
 - British Columbia: <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministriesorganizations/ministries/citizens-services/bc-registries-online-services>
 - Manitoba: https://companiesoffice.gov.mb.ca/search_registry.html
 - New Brunswick: <https://www2.snb.ca/content/snb/en/sites/corporate-registry/registry.html>
 - Newfoundland:
<https://cado.eservices.gov.nl.ca/CADOInternet/Company/CompanyMain.aspx>
 - Northwest Territories: <https://www.justice.gov.nt.ca/en/corporate-registry-searches/>
 - Nova Scotia : <https://beta.novascotia.ca/search-business-or-non-profit-information-filed-registryjoint-stock-companies>
 - Nunavut: http://nunavutlegalregistries.ca/cr_index_en.shtml
 - Ontario: <https://www.ontario.ca/page/ontario-business-registry>
 - Quebec: http://www.registreentreprises.gouv.qc.ca/en/a_propos/neq/default.aspx
 - Prince Edward Island: <https://www.princeedwardisland.ca/en/feature/pei-business-corporateregistry#/service/BusinessAPI/BusinessSearch>
 - Saskatchewan:
<https://www.isc.ca/corporateregistry/findanexistingbusiness/Pages/Search-findinformation-on-an-existing-business.aspx>
 - Yukon: <https://ycor-reey.gov.yk.ca/search>

Where BO information sought by a requesting foreign state is not publicly available but may be obtained via law enforcement investigation which would not require judicial authorizations or compulsory process, that is, such investigation would involve only voluntary cooperation, the IAG may refer the request to the Royal Canadian Mounted Police (RCMP) for investigation or otherwise encourage informal police-to-police transnational cooperation. Voluntary cooperation includes requests for:

- public records;
- records in an unsealed court file;
- interviews of cooperating witnesses or accused/suspect;
- copies of criminal records;
- copies of fruits of wiretaps;
- assistance in locating a suspect or witness;
- copies of information in police files or in the possession of the police;
- assistance in conducting police surveillance or undercover measures that do not require judicial authorization;
- some vehicle identification information and firearms identification information; and
- Passport, customs or immigration records where judicial authorization is not required.

Foreign requests for BO information that requires judicial authorization engages Canada's MLA regime pursuant to the *Mutual Legal Assistance in Criminal Matters Act* (MLACMA; <https://laws-lois.justice.gc.ca/eng/acts/M-13.6/index.html>). The most common types of court-ordered MLA assistance are as follows:

- Compelled statements or testimony (usually limited to instances where use and derivative use immunity are given);
- Bank records;
- Search warrants; and

- Production orders.

Where compulsory or judicially-authorized assistance is required, the MLACMA sets out the legal requirements, including the requirement of a treaty, statutory or administrative basis for cooperation. Most MLA cooperation with Canada occurs via bilateral MLA treaties, although multilateral conventions are routinely used as the basis for such assistance as well. In the absence of a relevant treaty with MLA provisions, the MLACMA sets out a regime for a specific administrative arrangement to facilitate the request (s. 6). The MLACMA contains a Schedule under which states or entities may be designated as MLA partners absent a bilateral or multilateral basis. The MLACMA incorporates by reference many of Canada's domestic criminal judicial authorization regimes. The approval, execution, and sharing of BO information pursuant to a request for MLA assistance requiring judicial authorization engages the evidence-gathering and sending regimes under the MLACMA (s. 12-16 for warrants for search and seizure and some other judicial authorization types; s. 18-21 for production orders). While most MLA assistance does not require dual criminality (notable exceptions include requests for asset restraint, seizure or forfeiture of proceeds of crime, offence-related property or equivalent value/substituted assets; s. 9.3-9.4), the authorizing judge must be satisfied that there are reasonable grounds to believe: (a) that an offence has been committed in the foreign jurisdictions; and (b) evidence of the commission of the offence will be found in Canada.

Law Enforcement

Sharing of information with foreign law enforcement agencies is managed on a case-by-case basis, in compliance with the *Canadian Charter of Rights and Freedoms*, applicable treaties and legislation, in accordance with Ministerial Directives, policy, and officially sanctioned memoranda of understanding (MOUs) or agreements as per the RCMP operations manual. Much of this information can be shared on a police-to-police basis simply upon request from the foreign investigators. If needed for evidence, an MLAT may be required for the information.

The RCMP currently holds observer status with the Asset Recovery Interagency Network (ARIN) and Camden Asset Recovery Inter-agency Network (CARIN) asset recovery networks, which allow for informal police-to-police sharing.

Financial Intelligence Unit

As Canada's financial intelligence unit and anti-money laundering regulator, FINTRAC is able to disclose financial intelligence to partners when it has reasonable grounds to suspect that designated information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence. FINTRAC can also include relevant publicly available information (PAI) in disclosures to partners. PAI can include available corporate records that contain information on primary shareholders (along with executives and directors) of disclosure subjects.

Entities regulated under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) must implement an anti-money laundering and anti-terrorist financing compliance program (PCMLTFA 9.6 (1)), including requirements for customer identification (PCMLTFR, sections 53-62), and beneficial ownership identification (PCMLTFR, section 11.1), record keeping (sections 11.2-52.1), and the reporting of suspicious transactions (PCMLTFA, section 7). Per the PCMLTFA, FINTRAC also receives and analyses voluntary information records (VIRs) submitted by police and other law enforcement agencies about their investigations of money laundering and terrorism financing.

Under s.56 and 56.1 of the PCMLTFA, FINTRAC can enter into an agreement so that it may disclose and request financial intelligence with international partners. As of August 2022, FINTRAC has entered into over 113 such agreements with international partners.

- 6.2. Please describe how foreign competent authorities may request or access beneficial ownership information on legal persons and legal arrangements formed in your country. Which agency(ies)/authority(ies) is/are responsible for receiving and responding to foreign requests? **Please provide contact information and instructions.**

Mutual Legal Assistance

See response above at 6.1. Foreign competent authorities seeking BO information via MLA assistance from Canada are encouraged to communicate directly with the IAG:

International Assistance Group
Department of Justice
284 Wellington Street
Ottawa, Ontario
Canada K1A 0H8
Tel: (613) 957-4832
Fax: (613) 957-8412
Email: Cdncentralauthority@justice.gc.ca

Law Enforcement

The police of jurisdiction are responsible for providing beneficial ownership information. It is often completed via an informal request. These requests can be coordinated by the foreign country's attachés or liaisons in Canada or in turn through the RCMP liaison officers in country. If the foreign investigator has a contact, they can seek this information directly.

Financial Intelligence Unit

FINTRAC regularly receives international requests for corporate records and information on beneficial ownership of both corporations and trusts (which points to the relevance of Canadian legal entities and trusts in international ML operations). FINTRAC discloses PAI on corporate records if it is suspected to be relevant to an ML/TF investigation or prosecution of a substantially similar offence.

FINTRAC is part of the Egmont Group, an international network of financial intelligence units that collaborate and exchange information to combat money laundering and terrorist activity financing. FINTRAC can exchange information via the Egmont Secure Web (ESW). The ESW is an electronic communication system that allows encrypted sharing among members of emails and financial intelligence, as well as other information of interest to members and to the functioning of the Egmont Group.

- 6.3. In your opinion, what are the main challenges faced *by foreign competent authorities* to access beneficial ownership information held in your country?

The absence of a centralized up-to-date publicly searchable online national database of BO information for legal persons and legal arrangements is a significant impediment to foreign competent authorities seeking to access such information from Canada. The majority of corporations are registered with provincial governments, but rules and regulations for the keeping of beneficial ownership in Canada are not fully consistent across the country, nor fully implemented across all provinces and territories.

Furthermore, foreign requests for assistance requiring judicially authorized investigative techniques sometimes fail to supply the requisite evidentiary basis for the Canadian judge to find that there are reasonable grounds to believe: (a) that an offence has been committed in the foreign jurisdictions; and

(b) evidence of the commission of the offence will be found in Canada. Notably, these legal requirements preclude MLA compulsory assistance in civil or otherwise non-criminal investigations and proceedings.

- 6.4. In your opinion, what are the main challenges faced by *competent authorities of your country* to access/receive beneficial ownership information held in a foreign country?

The challenges outlined above at 6.3 in relation to foreign jurisdictions pose similar challenges for Canadian investigative and prosecuting authorities seeking BO information abroad. Furthermore, slow or unresponsive foreign competent authorities pose challenges for Canada's domestic competent authorities.

- 6.5. Do you have any case studies or examples where the transparency of beneficial ownership has *enabled or enhanced the effective recovery and return of proceeds of crime in (or for) your country?*

Yes, however, MLA requests with Canada are considered confidential state-to-state communications.

7. Good Practices for Beneficial Ownership Transparency

- 7.1. Has your country implemented any specific good practices relating to Beneficial Ownership Transparency that you wish to highlight? *Examples could include good practices in verification, data format, searchability, use of technology, enforcement of sanctions, automatic red flagging, use or risk-based approach.*

Not for CBCA corporations, as the centralized registry is not yet constructed.

8. Follow-up to the special session of the General Assembly against corruption

- 8.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 16¹ of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

N/A

¹ 16. We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal systems and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the ability of competent authorities in this regard.