

OPEN OWNERSHIP



openownership.org • @openownership • info@openownership.org

Attn: Policy and Legislation Division
BCA Beneficial Ownership
Ministry of Finance
PO Box 9418 Stn
Prov Govt Victoria B.C.
V8W 9V1

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RE: British Columbia Consultation on a Public Beneficial Ownership Registry

OpenOwnership drives greater corporate transparency across the world by making it easy to publish and access high-quality, linked data about who owns companies.

OpenOwnership is pleased to contribute to the British Columbia (B.C.) consultation on a public beneficial ownership (BO) registry, and delighted to be included in the consultation documents as a case study for public registries. This response is focused on why making the proposed BO registry public would improve its policy impact.

With an increased push for BO transparency both globally and in Canada, **OpenOwnership recommends that the B.C. Government capitalises on the current opportunity to adopt emerging international standards and best practice on BO disclosure, and make BO information available to the public as open data, free of charge, in a central registry.**



opencorporates



THE B TEAM



OpenOwnership is accelerating corporate transparency by making it simple to publish and access high-quality data about who owns companies. It is led by six leading transparency organisations and supported by DFID.

Responses to specific questions

Government-Maintained Transparency Registry

1. How would the requirement to provide the information in your transparency register to government impact your operations?

OpenOwnership does not expect the requirement to provide beneficial ownership information in a transparency register or in a central and public registry to significantly impact any company's operations. **Any additional compliance costs incurred are likely to be offset by a reduction in time and due diligence costs.** Two cost/benefit analyses that have been carried out looking at the costs of a beneficial ownership registry -- one by the UK in 2002 and one by the European Commission in 2007 -- both concluded that public registries of beneficial ownership would be more cost effective than the status quo, both for the overall economy as well as individual companies. The 2002 study estimated that “credit decisions by banks and companies would more accurately reflect underlying risk. This would improve the profitability of extending credit as well as putting downward pressure on its cost”. This benefit will particularly be felt by small companies. The report also adds that, “in hard cash terms, savings would come from reductions in fraud and fraud insurance premia, bad debts, loan losses, borrowing charges and reduced company running costs.”¹ Furthermore, a 2019 review of the UK public BO register found that “All Civil Society Organisations, most Law Enforcement Organisations and some Financial Institutions felt that the introduction of the [BO] register has had a positive effect on their work. This is primarily because the [BO] register was felt to have made the process of obtaining information about beneficial ownership quicker and easier, and in some cases cheaper.” Meanwhile, the median cost of compliance for companies in the UK was only GB£287.²

¹ https://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/9/9/ownership_long.pdf
[Accessed 12 March 2020]

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf [Accessed 10 March 2020]

2. Are there any steps that could be taken to streamline the process, including the uploading process?

OpenOwnership recommends that the processes and systems for the submission of beneficial ownership information are based on sound design principles, are accompanied by clear guidance and align with the other ways in which companies declare information.

Streamlining of submissions is best done through best-practice design of electronic forms and systems. A design process that draws on techniques like usability testing should result in disclosure forms that are easy to use and accessible to all. Clear and unambiguous guidance should mean that companies understand what information they need to disclose and their responsibility to do so. Where users must input data, designers should reduce the scope for user error and avoid duplicating data.

3. Are there any types of B.C. private companies you think should be exempted from the requirement to upload information? If so, why?

As all corporate structures are vulnerable to being used to making the proceeds of crime appear to be from legitimate sources, **OpenOwnership does not recommend any blanket exemptions for certain private companies.** However, certain company types do pose challenges globally for BO disclosures, such as SOEs. The impact of any exemptions of entity types on the achievement of policy goals in the country context should first be evaluated. As a principle, exemptions should be limited and proportionate.

4. Should B.C. change the share ownership threshold from 25 per cent to 10 per cent for determining beneficial ownership?

Having low thresholds means most, or all, people with beneficial ownership and control interests in a company are included in disclosures. This reduces the risk of persons with ownership or control remaining hidden. **OpenOwnership recommends setting clearly defined, low thresholds based on risk, and defining clear rules on calculating ownership through intermediaries.** There is an argument for harmonising thresholds with other disclosure regimes -- such as the Canadian federal disclosure regime -- especially with a view to connecting open registers.

5. Should a B.C. registry of beneficial ownership be linked with those in other Canadian jurisdictions?

OpenOwnership recommends that the B.C. BO registry be linked to those in other Canadian jurisdictions and that the relevant authorities cooperate to collect and share information in a standardised way.

A baseline set of agreed information would make it easier for provincial and federal authorities to share information and make investigations more timely, effective and efficient. The compliance costs for companies would also fall if a standard set of information for due diligence was available. As the World Bank notes, money launderers often use a combination of jurisdictions in order to put “legal distance” between the beneficial owners and their assets.³ Linking beneficial ownership information from different jurisdictions -- within and beyond Canadian borders -- is essential to realizing beneficial ownership data’s potential to expose transnational networks of flows. In order to facilitate this the B.C. register should contain BO information as open data. Open data will also make it easier to link BO data to other useful datasets, greatly improve third party usability of the data, and improve data quality.

OpenOwnership has developed the [Beneficial Ownership Data Standard](#) (BODS) as a template for publishing structured data about beneficial ownership in a format that can be read and understood by computer systems around the world.⁴

Public Access to Government Maintained Transparency Registry

6. How will publicly available beneficial ownership information impact your operations?

In addition to the responses to Question 1, evidence from the review of the UK register shows that 95% of businesses felt the process had not had any impact on the way their business operates. 64% of businesses found the information available on the BO register to be useful, with 29% considering it to be very useful. Only 5% of businesses said the information was not at all useful.⁵ For regulated sectors that need to conduct KYC and due diligence checks and deal with

³ <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> [Accessed 10 March 2020]

⁴ <https://www.openownership.org/uploads/briefing-on-beneficial-ownership-as-open-data.pdf> [Accessed 12 March 2020]

⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf [Accessed 10 March 2020]

BO information on a regular basis, the costs for these checks are proportionally higher for SMEs. Publicly accessible BO registers would level the playing field for these companies.

7. In your opinion, what degree of searching should the public have?

The BO register should have full searchability within a number of fields, free of charge, with consideration for local data privacy laws, and should make the underlying data

available under an open license. It is likely that the B.C. Government will need to collect additional information in order to be able to uniquely identify individuals and companies, which should be accessible to mandated authorities (e.g. Financial Investigation Units), but will not need to be disclosed to the public. Different jurisdictions with public BO registers have different degrees of this so-called ‘layered access’. At the very minimum, the register should be searchable by both company name and beneficial owner, have API access and offer regular bulk downloads of the underlying data. Having a public register means that law enforcement, businesses, journalists and citizens from around the world can access information on the beneficial ownership of companies, which best practices have shown can be used to improve the data, making it a more effective tool to combat money laundering.⁶ An API will allow value-added services to be built on top of the beneficial ownership register and for companies to integrate information into their own processes. A bulk download is essential for scrutiny and detection of red flags across the data set. In the UK, for example, Global Witness was able to detect patterns of illegal circular ownership by using a bulk dataset.⁷

Protection of Personal Information

8. Are there any reasons to limit/expand the availability of information on the registry beyond what is described above in Chart 2?

Governments should strike a balance between transparency and privacy. Striking this balance will involve a discussion on the inclusion and effect of various safeguards, limitations and exceptions. As an overarching principle, **governments should not collect and disclose more data beyond what is necessary to achieve its aim. What is made publically available should**

⁶ <https://www.openownership.org/uploads/the-case-for-public-beneficial-ownership.pdf> [Accessed 12 March 2020]

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<https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/> [Accessed 11 March 2020]

be sufficient to provide meaningful oversight and transparency.⁸ The fifth EU Anti-Money Laundering Directive (AMLD5) recommends at a minimum to disclose the BO name, the month and year of birth, the nationality and country of residence of the BO and the nature and extent of the beneficial interest held,⁹ but the B.C. Government should assess what is appropriate within the B.C. privacy context. OpenOwnership research has been unable to identify documented examples of harms that have arisen from the publication of BO data in open registers.¹⁰

9. Are there other situations in which an individual's information should be obscured other than the scenarios described above?

In the case of legitimate concerns such as threats of stalking, kidnapping or (domestic) violence, there should be a mechanism by which BOs are able to submit a claim for exemption. Practice in the UK, which has such a mechanism, shows that only a relatively small number of such claims are made.¹¹ To define an exemption exception too broadly -- e.g. around threats to safety due to wealth and power -- could exclude a large number of beneficial owners and exempt precisely those who would be of greatest interest to investigators. On the other hand, a definition that is inflexible and defined too narrowly may fail to capture the different types of unforeseeable harms that could arise in novel situations.¹² Proportionality and an analysis of the local privacy context will be key.

Verifying Beneficial Ownership Information

10. What role should the government play in making sure the beneficial ownership information is correctly reported?

Ensuring that BO information is correctly reported, or the verification of BO data as it is often referred to, is an important aspect of an effective BO disclosure regime. For the majority of companies with relatively simple ownership structures, determining and verifying the BO will be a relatively straightforward exercise. Determining BO is challenging for a minority of companies

⁸ <https://www.openownership.org/uploads/oo-data-protection-and-privacy-188205.pdf> [Accessed 12 March 2020]

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN> [Accessed 10 March 2020]

¹⁰ <https://www.openownership.org/uploads/oo-data-protection-and-privacy-188205.pdf> [Accessed 12 March 2020]

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<https://openstate.eu/wp-content/uploads/sites/14/2020/02/ILP-Lab-Ensuring-the-effectiveness-of-the-UBO-register-by-making-it-publicly-available-with-fewer-access-restrictions.pdf> [Accessed 10 March 2020]

¹² <https://www.openownership.org/uploads/oo-data-protection-and-privacy-188205.pdf> [Accessed 12 March 2020]

with complex, and often transnational ownership structures involving many different legal entities. In such cases, we may not reach 100% certainty that the disclosed BO data represents an accurate and complete picture. There is no one-size-fits-all solution to verification, and the right verification system for a country will depend on the specific country context. There are a number of checks and procedures that a government can implement at different stages of disclosure to ensure data is accurate, complete and reliable, in order to maximise the impact of BO registries. Many of these checks, such as cross checking information with other government-held registries, can be very effective ways of verifying BO information. By making registries available to the public, governments enable and empower third parties (journalists, the private sector, and others) to also verify that the BO information is correct. For instance, in the UK, there were 58,352 reports from the public regarding likely mistakes and discrepancies in the company register between July 2017 and March 2018.¹³ From 10 January 2020, obliged entities must report discrepancies between the information that they hold about a beneficial owner and the information that is in the register.¹⁴ **Governments should take a leading role in verification, and enable third parties to assist in conducting verification checks by making the register open and accessible to the public.** OpenOwnership will be publishing a briefing on verification of BO data in Spring 2020.

11. If there were a cost to search the database, would that change the way you interact with the beneficial ownership database?

OpenOwnership recommends that BO registries are open, public and accessible free of charge. A cost-barrier to registry access would undermine a number of potential benefits to public registers outlined above. Public and open registries will allow third parties to contribute to improving data quality. This would not be the case with registries with a paywall. Search requests submitted to the UK register increased from 6 million in 2014-2015 to 1.3 billion requests in 2015-2016 after removing the paywall.¹⁵ In 2016-2017 this increased to 2.1 billion

¹³ https://www.globalwitness.org/documents/19717/Getting_the_UKs_House_in_Order_xZZxobR.pdf [Accessed 10 March 2020]

¹⁴

<https://www.gov.uk/guidance/report-a-discrepancy-about-a-beneficial-owner-on-the-psc-register-by-an-obliged-entity> [Accessed 10 March 2020]

¹⁵ <https://www.globalwitness.org/en-gb/blog/10-lessons-uks-public-register-real-owners-companies/> [Accessed 10 March 2020]

requests.¹⁶ Registries with paywalls (and other restrictions, like registration), such as with the Irish register, also severely limit access for bulk data analysis, and the credit card payment mechanism would make it hard for large providers to integrate the data. In terms of running costs, a study commissioned by Global Witness in 2013 found that a register that is searchable and updated as ownership changes would cost the UK government GB£11m a year (with an initial outlay of GB£0.5m to set up). The 2002 UK government study estimated the savings in police time alone from having a public registry of beneficial ownership to be GB£30m a year, as well as making it easier to trace and recover stolen assets, therefore already providing net benefit before considering a range of other direct and indirect cost saving impacts.¹⁷ Other indirect potential benefits to the economy include increased competitiveness as well as increased ease of doing business.¹⁸

Compliance and Enforcement

12. Do you support the use of administrative penalties to ensure compliance? If so, what range of penalties is appropriate in light of the anti-money laundering goals? OpenOwnership recommends that **a BO regime should be enforced by a comprehensive and proportionate sanctions regime, including monetary fines and other penalties**. These can either be against the person submitting the information, registered officers of the company, the beneficial owner, or the entity. Non-monetary penalties could include refusal to incorporate a business, such as in Denmark, or preventing a person from engaging in certain business activities for a period of time, such as in France. Monetary sanctions should be proportionate. In Ghana, fines for failing to update BO information were so low that companies opted to pay these instead of submitting updated information to the BO register.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/633763/CompaniesHouse_AnnualReport_2017_web_version.pdf [Accessed 10 March 2020]

¹⁷ https://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/9/9/ownership_long.pdf [Accessed 12 March 2020]

¹⁸ https://issuu.com/the-bteam/docs/bteam_business_case_report_final.we?e=15214291/11025500 [Accessed 12 March 2020] and <https://www.openownership.org/uploads/the-case-for-public-beneficial-ownership.pdf> [Accessed 12 March 2020]

13. Do you support the use of suspensions or dissolutions of the corporation by the Corporate Registrar to ensure accurate beneficial ownership information is provided? Why? Why not?

Suspensions or dissolutions of the corporation could be part of a range of non-monetary sanctions in a particular sanctions regime, as outlined above.

Transparency Register for Other Entities

14. How would a government-maintained registry of trusts impact your operations?

Trusts are corporate vehicles that are also used in money laundering and the hiding of illicit assets. According to investigators interviewed by the World Bank, “trusts prove such a hurdle to investigation, prosecution (or civil judgment), and asset recovery that they are seldom prioritized in corruption investigations”¹⁹, and that their misuse is likely to be underreported as a result.

FATF take the position that trustees are required to obtain and hold beneficial ownership information, recognising centralised registries are a way to do this,²⁰ and increasingly recognising the importance of central registries in best practice.²¹ AMLD5 requires jurisdictions to have private central registries of trusts in place.²² **OpenOwnership recommends that at a minimum, the B.C. Government should adopt such international standards.**

15. Should the public have access to a government-maintained registry of trusts? Why? Why not?

N/A.

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<http://documents.worldbank.org/curated/en/784961468152973030/pdf/The-puppet-masters-how-the-corrupt-use-legal-structures-to-hide-stolen-assets-and-what-to-do-about-it.pdf> [Accessed 10 March 2020]

²⁰ <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> [Accessed 10 March 2020]

²¹ <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf> [Accessed 12 March 2020]

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN> [Accessed 10 March 2020]

16. If a registry of trusts is created, what would be an appropriate consequence for noncompliance?

As indicated in response to question 12, sanctions should be comprehensive and proportionate.

Questions Regarding Partnership Registration

17. How would increasing the information collected about partnerships impact your operations?

Following the response to Question 3, **OpenOwnership recommends including partnerships within the scope of its BO registry.** The UK decided to include partnerships in its disclosure regime in 2017 following reports of the abuse of Scottish Limited Partnerships (SLP).²³ SLPSs were attractive to international criminals as they could be set up without having to declare who really controlled or and benefited from it. Following their inclusion into the scope of the UK's beneficial ownership transparency rules, their rates of incorporation plummeted to the lowest in 7 years, 80% lower in the last quarter of 2017 compared to its peak at the end of 2015, suggesting suspicions of their use for illicit purposes were likely to have been correct.²⁴

18. If further information is required of partnerships, what would be an appropriate consequence for non-compliant partnerships?

As indicated in response to question 12, sanctions should be comprehensive and proportionate.

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<https://www.taxjustice.net/2018/07/31/the-abuse-of-limited-partnerships-in-the-uk-predicting-the-future-with-the-financial-secrecy-index/> [Accessed 12 March 2020]

²⁴ <https://www.globalwitness.org/en/blog/three-ways-uks-register-real-owners-companies-already-proving-its-worth/> [Accessed 12 March 2020]