

About time to get a grip on money-laundering problems in Canada

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PUBLISHED BY THE HILL TIMES, May 10, 2021

It will be a complicated task to build an effective and harmonized database of beneficial ownership of federal and provincial/territorial corporate shareholdings, augmented to include real estate holdings, and publicly accessible to market stakeholders. But the effort will be worth it to strengthen integrity of capital markets and investor confidence.

One of the pleasant surprises in the April federal budget was the announcement to earmark \$2.1-million to build and implement a national corporate beneficial ownership registry. In December 2017, federal and provincial/territorial finance ministers had agreed in principle to pursue amendments to their respective legislative corporate law statutes to require corporations to hold accurate and up-to-date beneficial ownership information, but there has been little momentum to move forward with a publicly accessible pan-Canadian registry as an effective mechanism to identify illicit activities such as money laundering, tax evasion and other financial crimes. Canada has faced significant negative publicity in recent years as an easy place for money-laundering due to a perceived lack of enforcement.

The federal budget announcement caught many off-guard. Several reasons explain the sudden decision to prioritize a national registry to combat money-laundering. First, on Jan. 1, 2021, Congress passed the National Defense Authorization Act which includes the Corporate Transparency Act (CTA). The CTA is the first significant update to U.S. anti-money laundering laws in 20 years and requires all U.S. businesses to file beneficial ownership information with the Financial Crimes Enforcement Network (FinCEN). This necessitated Canadian federal government leadership. Second, the Canadian government wanted to rehabilitate Canada's damaged reputation as an easy mark for money-laundering to a strict jurisdiction scrutinizing domestic and foreign

transactional flows within the country and from outside. Our negative reputation on the world stage dampens investor appeal of Canada as a safe destination for investment.

Another motivating factor was the final report issued April 6, 2021, by Innovation, Science and Economic Development Canada following extensive public consultations last year on strengthening corporate beneficial ownership transparency in Canada. Stakeholders called on the federal government to take a lead role to build a seamless and standardized federal-provincial/territorial beneficial ownership registry, interoperable with existing federal and provincial registries. Finally, the federal government recognized an effective national registry of beneficial corporate ownership would assist in meeting another policy goal—to crack-down on tax evasion of individuals behind privately held companies and shell corporations.

The key features that would make the proposed beneficial ownership registry effective are the harmonization of requirements on corporations (and enabling statutes) to identify and report beneficial owners, comprehensive coverage, and access to law enforcement, tax, and other authorities as well as all sectors, including the securities industry, that have reporting obligations under AML legislation and are mandated to collect beneficial ownership information on the entities with which they do business. It is recognized that the task to build an integrated, central registry will be challenging, requiring extensive amendment to existing federal and provincial/territorial corporate statutes to create a consistent definition of beneficial ownership and a consistent beneficial ownership threshold above which owners must report their holdings.

Some provinces—Quebec, and Prince Edward Island, for example—have already moved forward, building beneficial ownership databases and can make a major contribution in building the national database. It seems most likely that the national database will be built incrementally from similarly structured provincial databases.

Moreover, in recent years, criminals from around the world have invested the proceeds of their crime in real estate, particularly in British Columbia, contributing to a red-hot housing market. In November 2020, the B.C. Land Owner Transparency Act came into force, establishing a searchable, public registry of individuals who hold beneficial interests in real estate through among other

entities, corporations, trusts or partnerships. The registry, the first of its kind in Canada, went live on April 30, 2021. It is a step in the right direction and can be combined with the planned national beneficial ownership registry providing additional datasets and serving as an example of how to incorporate and integrate beneficial ownership in real estate investments in other provinces/territories.

Sophisticated digital technologies and systems will be important in the functioning of a national registry—to ensure overall security of the data, minimize compliance costs, facilitate consolidation of federal and provincial/territorial corporate information, and enable user-friendly, efficient access to the dataset. For the securities industry, the beneficial ownership registry will facilitate the reporting of suspicious capital markets transactions to FINTRAC in compliance with the federal Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). Further, it will be a welcomed tool for investment dealers to comply with the “Know Your Client” obligations under the PCMLTFA which include the collection of beneficial ownership information.

The federal government’s decision to break the inertia to move forward and build a beneficial ownership registry should be applauded, to increase corporate transparency and more effectively combat money-laundering activities, tax evasion and other illicit activities. It will be a complicated task to build an effective and harmonized database of beneficial ownership of federal and provincial/territorial corporate shareholdings, augmented to include real estate holdings, and publicly accessible to market stakeholders. But the effort will be worth it to strengthen integrity of capital markets and investor confidence.

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The Hill Times