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October 18th, 2023

The Honourable Pamela Wallin
Standing Committee on Banking, Commerce and the Economy
Senate of Canada
1 Wellington St
Ottawa ON K1A 0A6
Canada

Subject: Suggested Amendments and Discussion to Strengthen Bill C-42 and the Canada Business Corporations Act (CBCA)

Dear Ms. Wallin,

On behalf of our coalition of civil society organizations, which includes Publish What You Pay Canada, Transparency International Canada, and Canadians For Tax Fairness, we express our support for Bill C-42. Our Coalition has been advocating for a publicly accessible and searchable registry of beneficial owners for six years.

Overall, Bill C-42 is a positive step for corporate transparency and the introduction of this bill will be helpful in limiting abuse of federal corporations by organized crime networks. To further strengthen the objectives of this bill, we recommend modest legislative amendments for committee:

- Requiring ISCs to submit valid, non-expired, government-issued photo ID numbers to corporations for safekeeping and future ID verification
- Adding search by country of residence and by the name of the corporation
- Ensuring that all publicly accessible data fields are searchable
- Adding indictable offences for sections 21.1(1) or 21.31(1) of the CBCA so it is consistent with non-compliance penalties under the PCMLTFA.

We believe these amendments will improve the effectiveness of Canada's registry system and deter illicit funds to a maximum effect. As well in our discussion document, we suggest reference language and ideas for future consideration from existing corporate transparency legislation in British Columbia, the United States, and the United Kingdom.

We trust that committee members will review our suggested improvements to Bill C-42, and we thank you for your continued leadership on this vital matter for our country.

Yours sincerely,

Sasha Caldera, Campaign Manager, Publish What You Pay Canada
 James Cohen, Executive Director, Transparency International Canada
 DT Cochrane, Economist, Canadians for Tax Fairness

P.S. Should you have any questions about the content in this discussion document, please contact Sasha Caldera: scaldera@pwyp.ca

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Amendments and comments for existing elements in Bill C-42 are below:

This section consists of proposed amendments to clauses of the Bill. Please note amendments are in **red text**.

Proposed Amendments for existing language in Bill C-42	Comments/Explanation
<p>Register</p> <p>21.1 (1) The corporation shall prepare and maintain, at its registered office or at any other place in Canada designated by the directors, a register of individuals with significant control over the corporation that contains</p> <p>(a) the names, the dates of birth and the latest known address of each individual with significant control;</p> <p>(b) the jurisdiction of residence for tax purposes of each individual with significant control;</p> <p>(c) the day on which each individual became or ceased to be an individual with significant control, as the case may be;</p> <p>(d) a description of how each individual is an individual with significant control over the corporation, including, as applicable, a</p>	<p>The added clause requires corporations to hold ID numbers from valid, non-expired government-issued photo identity documents from ISCs.</p> <p>Important to note that <u>we are not recommending that corporations hold copies of identity documents due to privacy and information intrusion risks</u>; yet, we believe that ID numbers will pose less risk.</p> <p>While being an extra requirement for record-keeping for corporations, this clause will assist all corporations for future identity verification measures by Corporations Canada.</p> <p>Refer to the United States H.R. 2513 - <i>Corporate Transparency Act, 2019</i> for similar requirements where beneficial owners submit ID numbers from non-expired government identity documents.¹</p>

¹ Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. (2019) (enacted)
<https://www.congress.gov/bill/116th-congress/house-bill/2513/text>

<p>description of their interests and rights in respect of shares of the corporation;</p> <p>(e) ID number from a valid, non-expired government-issued photo identity document for all individuals of significant control;</p> <p>(e)(f) any other prescribed information; and</p> <p>(f)(g) a description of each step taken in accordance with subsection (2).</p>	
<p>Information available to public</p> <p>21.303 (1) The Director shall make available to the public the following information sent to the Director under section 21.21 for each individual with significant control:</p> <p>(a) their name;</p> <p>(b) their address for service, if it has been provided to the corporation;</p> <p>(c) their residential address, if their address for service has not been provided to the corporation;</p> <p>(d) country of residence;</p> <p>(e) the name of the corporation;</p> <p>(d)(f) the information referred to in paragraphs 21.1(1)(c) and (d); and</p> <p>(e)(g) any other prescribed information.</p>	<p>This amendment recommends search by country of residence and by name of the corporation.</p> <p>Being able to search by country of residence and the name of the corporation will vastly strengthen the effectiveness and deterrence capability of Canada’s registry. By allowing these specific fields to be available to the public, international whistleblowers, foreign competent authorities, journalists, and NGOs can use the registry to carry out forensic analyses with ease.</p> <p>Country of residence can be taken from information already included within the service address or residential address.</p> <p>The name of the corporation should also be disclosed to the public in order to make reverse-search functions easy.</p>
<p>Searchability</p> <p>21.303 (2) The Director shall make all information in 21.303(1)(a) to (g); searchable, free-of-cost to the public.</p>	<p>This amendment specifies that all fields which are to be made public shall be searchable, free of cost to the public.</p>

	<p>Making searchability free of cost will reduce the burden for any small business or FINTRAC reporting entity needing to use ISC information for due diligence purposes.</p>
<p>Offence — contravention of subsection 21.1(1) or 21.31(1)</p> <p>21.4 (1) Every director, individual of significant control, or officer of a corporation who knowingly authorizes, permits or acquiesces in the contravention of subsection 21.1(1) or 21.31(1) by that corporation commits an offence, whether or not the corporation has been prosecuted or convicted.</p> <p>Offence — recording of false or misleading information</p> <p>(2) Every director, individual of significant control, or officer of a corporation who knowingly records or knowingly authorizes, permits or acquiesces in the recording of false or misleading information in the register of the corporation referred to in subsection 21.1(1) commits an offence.</p> <p>Offence — provision of false or misleading information</p> <p>(3) Every director, individual of significant control, or officer of a corporation who knowingly provides or knowingly authorizes, permits or acquiesces in the provision to any person or entity of false or misleading information in relation to the register of the corporation referred to in subsection 21.1(1) commits an offence.</p> <p>Offence — subsection 21.1(4)</p> <p>(4) Every shareholder who knowingly contravenes subsection 21.1(4) commits an offence.</p>	<p>Including individuals of significant control for each offence ensures that those specific persons cannot influence another director or officer of a corporation to commit an offence.</p> <p>The objective of these amendments is to deter sophisticated criminals from knowingly committing offences so they risk facing significant time in prison and/or paying large fines. We want Canada to have a strong set of punitive measures.</p> <p>As for penalties we recommend an indictable offence because a summary conviction does not normally exceed two years of imprisonment. Committee members may also consider a hybrid structure.²</p>

² See: <https://fintrac-canafe.canada.ca/pen/5-eng>

<p>Penalty (5) A person who commits an offence under any of subsections (1) to (4) is liable on summary conviction conviction of indictment to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years, or to both.</p>	
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General observations and reference language for consideration:

This section consists of general observations that our team has noted and includes reference language which committee members may consider for adoption in Bill C-42 wherever they see fit. Please note reference language is in **red text**.

Strengthened Identity Verification Language: It is worth noting that 21.3(1) of the CBCA specifies that, “A corporation to which section 21.1 applies shall disclose to the Director, on request, any information in its register of individuals with significant control.” Moreover, amendments to the *Income Tax Act* in Bill C-42, allow information sharing to Corporations Canada to validate and verify information.

We believe that language from *Bill 20, Business Corporations Amendment Act, 2023* which received royal assent in British Columbia can serve as more specific language to strengthen identity verification measures.³

Division 2 – Registrar's Transparency Register

Verification of identity of significant individual

- (1) On the request of the registrar, a significant individual, or a person in a prescribed class of persons who can verify the identity of the individual, must provide to the registrar
 - (a) any prescribed records, or
 - (b) information or proof the registrar considers necessary to verify the identity of the individual.

³ Bill 20, *Business Corporations Ammendment Act, 2023*, 42nd session, British Columbia, 2023 <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/progress-of-bills> (The bill received royal assent on May 11th 2023)

(2) The records, information or proof must be provided under subsection (1) in the prescribed form and manner.

Provincial corporations may elect to be treated as a prescribed class: We recommend for a section to be inserted which allows for willing provinces and the Government of Canada to reach an agreement to treat provincial corporations as a prescribed class, (e.g., a “reporting corporation”). This can allow smaller provinces to permit provincial corporations to send ISC information to the federal government without having to create their own provincial registry system. The advantage of this approach makes it easier for provinces to use Canada’s federal registry to disclose beneficial ownership information while saving resources. Provinces would need to agree and subsequently pass legislation. Reference language could be as follows:

Intergovernmental Coordination

The Minister, may on behalf of the Government of Canada agree with the government of a province to treat some or all provincial corporations, or specified provincial entities as reporting corporations solely for the purposes of collecting information on individuals of significant control.

Additional observations to Bill C-42 for future consideration:

This section consists of observations that our team has noted that can complement Bill C-42 in the future, and we have included some reference language which committee members may consider studying and amending. Please note reference language is in **red text**.

Measures to identify individuals of significant control in instances when an ISC does not exist in the Canada Business Corporations Regulation (CBCR).

We recommend an amendment to the CBCR to identify individuals of significant control in instances when a corporation cannot do so.

Currently, section 21.2 of the CBCA specifies, “A corporation to which section 21.1 applies shall take prescribed steps if it is unable to identify any individuals with significant control over the corporation.” The prescribed steps are in the CBCR⁴ and we recommend the following amendment:

34. For the purpose of section 21.2 of the Act, a corporation to which section 21.1 of the Act applies that is unable to identify any individuals with significant control over the corporation must set out the following in its register of individuals with significant control:

- (a) a statement **by a senior officer** to the effect that the corporation has determined that it is unable to identify any individuals with significant control over the corporation; and

⁴ See:

https://www.gazette.gc.ca/rp-pr/p1/2022/2022-10-29/html/reg3-eng.html?utm_campaign=ised-isde-cc_risc-22-23&utm_source=gazette_notice&utm_medium=read_regs&utm_content=eng

(b) a summary of the steps taken to try to identify these individuals.

As we recognize few private corporations will intentionally restructure their shareholdings to avoid disclosing an ISC, some might and this amendment assigns responsibility on a senior officer to attest that it has taken prescribed steps.

Corporations Canada can also consider issuing guidelines for corporations noting that entities without ISCs may be considered as higher risk and subject to audits.

Lowering the ISC threshold from 25% to 10%:

In principle, we are supportive of lowering the ISC threshold from 25% to 10%. This decision does require Canada to evaluate benefits and drawbacks and could be considered in the bill itself as a progressive measure, or for further study when Canada reviews its *Proceeds of Crime Money Laundering and Terrorist Financing Act* (PCMLTFA) in 2023.

While 25% is a common starting point for Canada, we expect this threshold will be lower in subsequent years amongst G7 and EU partners. We do not foresee that lowering the ISC threshold at the federal level will inhibit provinces and territories from participating in a pan-Canadian registry.

Specificity for indirect influence and control over a corporation:

While section 2.1(1) of the CBCA has measures for indirect control and influence in its definition of an ISC, Canada can also study and consider language from paragraph 6, Schedule 2 of the *U.K. Economic Crime (Transparency and Enforcement) Act 2022*. The U.K. approach adds more specificity for indirect influence and control for beneficial owners:

...a person (“X”) is a beneficial owner of an overseas entity or other legal entity (“Y”) if one or more of the following conditions are met.

1. X holds, directly or indirectly, more than 25% of the shares in Y.
2. X holds, directly or indirectly, more than 25% of the voting rights in Y.
3. **X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y.**
4. **X has the right to exercise, or actually exercises, significant influence or control over Y.**
5. The trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet any of the conditions specified above in relation to Y, and, X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity. The government recognizes that some may deliberately reduce their shareholding in an effort to avoid scrutiny. That is why condition 4 above exists. Condition 4 ensures that

anyone who has a right to or actually exercises significant influence or control over a company is still required to be registered, even if they own less than 25% of the shares.⁵

Requiring foreign companies operating in Canada to disclose ISCs:

The CBCA does not require foreign corporations operating in Canada to disclose ISCs. This is a limitation of the scope of the Act itself. The risks of foreign corporations not disclosing ISCs make it difficult for Corporations Canada and other competent authorities such as the Canada Revenue Agency to understand whether those ISCs are corrupt foreign officials who might be knowingly avoiding detection.

As of October 2023, 132 countries have committed to national beneficial ownership registries, yet when examining selected countries on Canada's Sanctions List, the vast majority do not have any sort of registries, except for the Russian Federation and China whose registries are planned to be private⁶. Below is a list of countries currently on Canada's Sanctions List and their status (in brackets) of national beneficial ownership registries⁷:

Countries on Canada's Sanctions List and Beneficial Ownership Registry Status

Belarus (none)
Central African Republic (none)
China (planned, non-public)
Iran (none)
Libya (none)
Nicaragua (none)
Russian Federation (planned, non-public)
South Sudan (none)
Venezuela (none)
Yemen (none)

Taking stock of the lack of beneficial ownership registries in these countries, Canada is facing the risk of foreign interference and influence. It is worth noting the U.S. Corporate Transparency Act requires all foreign companies to disclose beneficial owners.⁸ We recommend that Canada's federal government work with provinces and territories and require disclosure for ISCs of foreign companies operating in Canada as part of extra-jurisdictional registrations.

⁵ See:

<https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/factsheet-beneficial-ownership>

⁶ See: <https://www.openownership.org/en/map/>

⁷ See:

https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/cuurent-actuelles.aspx?lang=eng

⁸ See:

<https://www.taftlaw.com/news-events/law-bulletins/new-federal-rule-requires-many-domestic-and-foreign-companies-to-report-beneficial-ownership-information-to-fincen>