



CORPORATE TRANSPARENCY

CONSULTATION

PAPER

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Corporate Transparency Consultation Paper

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MESSAGE FROM THE MINISTER OF FINANCE

In recent years, the Gouvernement du Québec has implemented several measures to strengthen corporate transparency, which remains one of the most effective means of combating tax evasion and avoidance, money laundering, the financing of criminal activities and fraud.

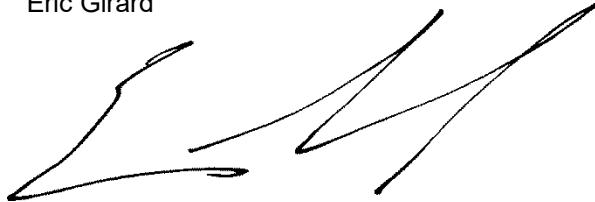
As stated in the 2019-2020 budget, the government is continuing its efforts to ensure that Québec sets an example with respect to best practices in corporate transparency. As announced, the government is launching a consultation on measures that could potentially strengthen corporate transparency.

The three proposed initiatives are based on recommendations made by various internationally-recognized organizations, which several countries have adopted to date.

Therefore, I encourage interested persons to read this document and provide their feedback, suggestions and opinions by submitting a brief to the Ministère des Finances.

At the end of the consultation period, the submissions received will be analyzed and taken into account to develop the measures that might be implemented. Thank you in advance for your participation in this consultation.

Eric Girard

A handwritten signature in black ink, consisting of several fluid, connected strokes that form a stylized representation of the name Eric Girard.

Minister of Finance

October 3, 2019

MESSAGE FROM THE MINISTER OF LABOUR, EMPLOYMENT AND SOCIAL SOLIDARITY

Through the administration of the enterprise register, the Registraire des entreprises is contributing to the protection of the public and to the economic and social development of Québec. Thanks to the amount of information it contains, its user-friendliness and its free nature, the register stands out from others and acts as a model. For the past 25 years, the citizens of Québec, as well as other Canadian provinces and countries have had access to information concerning, so far, nearly one million enterprises doing business in Québec.

As part of the 2019-2020 budget, the government took several steps to improve the reliability of the information contained in the enterprise register, either by funding various measures or by announcing the launch of this public consultation.

The proposed initiatives are mainly based on changes to be made to the enterprise register, which is one of the most effective tools for achieving the government's objectives with respect to corporate transparency.

That is why I am proud to invite you to participate in this consultation in large numbers by submitting a brief to the Ministère des Finances.

Jean Boulet,

A handwritten signature in black ink that reads "Jean Boulet". The signature is written in a cursive, flowing style.

Minister of Labour, Employment and Social Solidarity

October 3, 2019

INTRODUCTION

The fight against fraud, tax evasion, tax avoidance, money laundering and the financing of criminal activities is one of the priorities of the Gouvernement du Québec.

Over the past few years, international tax evasion and avoidance schemes have been uncovered through various document leaks, exposing issues related to, among other things, tax havens and aggressive tax planning. Several of these schemes involve shell companies, which make it possible to hide the true identity of these entities' ultimate beneficiaries.¹

In order to counter these schemes, several countries have taken different steps to identify more effectively the ultimate beneficiaries of corporations operating on their territory.

It is in this international context that Québec incorporated the issue of corporate transparency into its Tax Fairness Action Plan, published in November 2017. Since then, the government has continued to implement measures to ensure the integrity of Québec's tax system.

To this end, the government took a number of steps in the 2019-2020 budget to improve the reliability of the information provided in the enterprise register.

The government also announced in the budget that it intended to hold consultations on two approaches to improve corporate transparency, namely:

- the obligation for all enterprises to obtain and disclose information on ultimate beneficiaries to the Registraire des entreprises du Québec;
- the possibility for an individual to search the enterprise register using the name and address of a natural person.

Following the recent implementation of an initiative in British Columbia, the following approach is being added to this consultation:

- the obligation for all landowners to disclose information on ultimate beneficiaries.

The government is examining these three potential approaches, which are aimed at improving transparency, but which may raise issues as regards the protection of personal information and the administrative burden on individuals and enterprises.

The government will welcome feedback on these approaches from interested parties by December 15, 2019.

¹ For the purposes of this document, the term "ultimate beneficiary" is preferred and includes the terms "beneficial owner" and "individuals with significant control".

1. CORPORATE TRANSPARENCY

1.1 Background

Over the past few years, document leaks, including the “Panama Papers” in 2016 and the “Paradise Papers” in 2017, have shed light on financial schemes involving shell companies. The objectives of these financial schemes were:

- to avoid paying tax (tax evasion and tax avoidance schemes);
- to support criminal activities (e.g. money laundering, terrorist financing and corruption);
- to circumvent international sanctions.

To counter the use of such schemes, a number of countries have implemented or are contemplating measures to improve disclosure on the beneficial owners or ultimate beneficiaries of corporations.

- Since 2015, the European Union requires from its Member States that they establish, in a central register specific to each of them, a system for identifying the ultimate beneficiaries of enterprises.²
- In 2016, the United Kingdom established a register of the beneficial owners of corporations.³
- In 2017, various European countries continued their efforts to establish central information registers on the ultimate beneficiaries of corporations.⁴
- In early 2017, Australia held public consultations on the collection and use of information on ultimate beneficiaries.⁵
- In the summer of 2017, U.S. senators proposed for adoption the *Corporate Transparency Act 2017*,⁶ which sets out new measures for corporations using nominees.

² Official Journal of the European Union, “DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC”, June 5, 2015, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=ES>>, accessed on September 30, 2019.

³ House of Commons Library, “Registers of beneficial ownership – Briefing paper”, August 7, 2019, <<https://www.opengovpartnership.org/wp-content/uploads/2019/06/UK-Open-Government-National-Action-Plan-2016-18.pdf>>, accessed on September 30, 2019.

⁴ European Commerce Registers’ Forum, “Beneficial Ownership Working Group Report”, August 1, 2017, <<https://ebra.be/wp-content/uploads/2017/09/ECRF-Beneficial-Ownership-Working-Group-Report.pdf>>, accessed on September 30, 2019.

⁵ Australian Government – The Treasury, “Increasing Transparency of the Beneficial Ownership of Companies”, February 12, 2017, <<https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies>>, accessed on September 30, 2019.

⁶ United States Congress, “H.R.3089 - Corporate Transparency Act of 2017”, June 28, 2017, <<https://www.congress.gov/bill/115th-congress/house-bill/3089>>, accessed on September 30, 2019.

- Over the past few years, Singapore^{7,8} and Hong Kong⁹ have updated their corporate laws to require corporations to collect information on ultimate beneficiaries.
- In 2018, Canada amended the *Canada Business Corporations Act* to require the identification of ultimate beneficiaries.¹⁰

These initiatives build on measures proposed by the Organisation for Economic Co-operation and Development (OECD) in recent years to improve available information on ultimate beneficiaries.

What does “ultimate beneficiary” mean?
<p>Generally speaking, an ultimate beneficiary is a natural person who effectively exercises significant control, directly or indirectly, over a corporation, trust or other entity, such as a partnership.</p> <p>This means that the names provided in legal documents are not always those of an entity’s real owners. The legal owners of an entity, including a corporation or trust, are not necessarily the persons who own or control the entity in question, i.e. the ultimate beneficiaries.</p> <p>Identifying ultimate beneficiaries makes it possible to pinpoint the people who are truly behind the operations and activities of a corporation, trust or other entity.</p>

Source: Government of Canada.

1.2 The Committee on Public Finance’s recommendations

When it tabled its report in April 2017,¹¹ the National Assembly’s Committee on Public Finance made recommendations to the Gouvernement du Québec to strengthen corporate transparency, particularly through the Registraire des entreprises du Québec (REQ). The Committee on Public Finance recommended that:

- the REQ:
 - undertake, as soon as possible and in collaboration with the appropriate departments and bodies, the necessary work to set up a central public registry of Québec enterprises that will make it possible to identify the ultimate physical beneficiaries of enterprises. This register should also make it possible, among other things, to identify, by entering the name of a taxpayer in a search engine, all the enterprises in which the taxpayer has an interest;

⁷ Singapore Government, “Companies (Amendment) Act 2017”, March 31, 2017, <<https://sso.agc.gov.sg/Acts-Supp/15-2017/Published/20170330?DocDate=20170330>>, accessed on September 30, 2019.

⁸ Singapore Government, “Companies (Amendment) Act 2018”, September 14, 2018, <<https://sso.agc.gov.sg/Acts-Supp/35-2018/Published/20180910?DocDate=20180910>>, accessed on September 30, 2019.

⁹ Government of the Hong Kong Special Administrative Region of the People’s Republic of China, “Companies (Amendment) Ordinance 2018”, February 1, 2018, <<https://www.cr.gov.hk/en/publications/docs/es1201822053-e.pdf>>, accessed on September 30, 2019.

¹⁰ Parliament of Canada, “A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures”, December 13, 2018, <<https://www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent>>, accessed on September 30, 2019.

¹¹ Committee on Public Finance, “Le phénomène du recours au paradis fiscaux – Observations, conclusions et recommandations”, September 29, 2015, <http://www.finances.gouv.qc.ca/documents/Autres/fr/AUTFR_memoireparadisfiscaux.pdf>, accessed on September 30, 2019.

- the Gouvernement du Québec:
 - assess and allocate the human, financial and material resources necessary for the REQ to set up the central public register of Québec enterprises,
 - amend legislation on partnerships and corporations and, ultimately, the *Civil Code of Québec* (for sole proprietorships) to prohibit the registration in Québec of enterprises whose ultimate physical owner or owners are not clearly identified and for which the information provided does not lead to their identification.

1.3 Measures of the Tax Fairness Action Plan

In response to the recommendations made in the Committee on Public Finance's report, the Québec government published the Tax Fairness Action Plan¹² in November 2017. This Plan included three options to strengthen corporate transparency.

☐ **Measure 10: Québec is making the information in the Québec enterprise register more accessible**

In order to increase the accessibility and reliability of the enterprise register's data, the government has announced several measures:

- enable the public to search the register using an individual's name under certain conditions;
- broaden the list of bodies that may obtain information contained in the register;
- improve public protection and reliability of the register's data. To achieve this, the government intends to:
 - grant the REQ the power to require the provision of any document or information needed to verify the accuracy of the information provided by enterprises,
 - compel enterprises to disclose additional information, such as their website, email address or telephone number,
 - broaden the application of penal sanctions relating to the filing of false, incomplete or misleading declarations and extend the prescription period for a penal offence under the *Act respecting the legal publicity of enterprises*.

¹² Ministère des Finances du Québec, "Tax Havens: Tax Fairness Action Plan", November 16, 2017, <http://www.finances.gouv.qc.ca/documents/Autres/en/AUTEN_ParadisFiscaux.pdf>, accessed on September 30, 2019.

1.4 Recent measures

Since the publication of the Tax Fairness Action Plan, the government has put in place various measures to meet its commitment to strengthen corporate transparency:

- in the 2018-2019 budget:
 - a search tool for querying data in the Québec enterprise register (ORDRE project), which entails the development of an authenticated and secure electronic service delivery system that will allow authorized investigators in particular to do advanced searches in the Québec enterprise register in real time,
 - Québec's participation in the system to link Canadian enterprise registers (LIREC project);
- in the 2019-2020 budget:
 - broadening of the list of Québec bodies with investigative powers that will be able to use the search tool for querying data in the Québec enterprise register and allowing these bodies to enter into agreements with the REQ,
 - intensification of the REQ's inspection, monitoring and investigative activities to increase data reliability,
 - replacement of the industry code classification system currently used by the REQ with the North American Industry Classification System (NAICS),
 - easing of regulatory and procedural requirements,
 - amendment to the *Act respecting the legal publicity of enterprises* in order to allow the REQ to ask for information or documents to verify the accuracy of the declarations provided in the register, which will increase the reliability of the register's data,
 - greater promotion of the Québec enterprise register through presentations and training, which will allow enterprises, departments and agencies, as well as the public to become more familiar with the register and the way to access it.
- in *Information Bulletin 2019-5* published on May 17, 2019, the Ministère des Finances announced:
 - new measures to counter sham transactions,
 - the introduction of a requirement to disclose any transaction involving a nominee to Revenu Québec,
 - the expansion of the existing mandatory disclosure mechanism to specify the types of transactions or series of transactions that will be subject to disclosure.

2. CORPORATE TRANSPARENCY AROUND THE WORLD

In addition to the Organisation for Economic Co-operation and Development (OECD), several international governmental and non-governmental bodies such as the Financial Action Task Force (FATF), the Tax Justice Network and Transparency International have made recommendations regarding corporate transparency and the importance of identifying ultimate beneficiaries.

2.1 The G20's ten principles

In November 2014, G20 leaders made transparency a top priority and adopted ten key principles¹³ relating to ultimate beneficiaries.

Principle 1: Definition of “ultimate beneficiaries”

Principle 2: Risk assessment and mitigation

Principle 3: Information on ultimate beneficiaries

Principle 4: Accessibility of information on ultimate beneficiaries

Principle 5: Information on the ultimate beneficiaries of trusts

Principle 6: Accessibility of information on the ultimate beneficiaries of trusts

Principle 7: Role and responsibilities of financial institutions and designated non-financial businesses and professions

Principle 8: Domestic and international cooperation

Principle 9: Information on ultimate beneficiaries and tax evasion

Principle 10: Bearer shares and nominees

2.2 Transparency International's ranking system

Founded in 1993, Transparency International is an international non-governmental organization whose main mission is to fight corruption in governments and government institutions around the world.

In 2015 and 2017, Transparency International conducted an assessment¹⁴ of several countries and ranked them according to the ten principles adopted by the G20.

❑ Canada's rank

According to Transparency International, Canada did not fully comply with any of the G20 principles. It was one of only two G20 countries with a weak regulatory framework for ultimate beneficiaries.

¹³ G20, “G20 High-Level Principles on Beneficial Ownership Transparency”, 2014, <http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf>, accessed on September 30, 2019.

¹⁴ Transparency International, “G20 Leaders or Laggards? - Reviewing G20 promises on ending anonymous companies”, April 19, 2018, <https://transparency-france.org/wp-content/uploads/2018/04/TI_G20-Leaders-or-Laggards.pdf>, accessed on September 30, 2019.

ILLUSTRATION 1

Transparency International's 2017 ranking according to the G20's ten principles

Very weak framework	Weak framework	Average framework	Strong framework	Very strong framework
—	Canada	Australia	Argentina	France
	South Korea	China	Brazil	Italy
		India	Germany	United Kingdom
		Indonesia	Japan	Spain (Guest)
		Russia	Mexico	
		Saudi Arabia	Norway (Guest)	
		South Africa	Switzerland (Guest)	
		Turkey		
		United States		
		Netherlands (Guest)		

Source: Transparency International.

2.3 Recommendations of the Tax Justice Network concerning a register of ultimate beneficiaries

The Tax Justice Network is an independent network founded in 2003 that conducts research and analysis and provides advice on international tax and financial regulation, as well as on the fight against tax evasion and the use of tax havens.

In an article¹⁵ published in 2017, the Tax Justice Network sets out criteria that should guide all countries so that their central registers enable them to effectively combat tax evasion, money laundering and other crimes. Among other things, it recommends 77 characteristics that should be part of an ideal register.

These characteristics can be classified into four categories in terms of parameters:

- accessibility of the register;
- type of research possible;
- information on directors and officers;
- other types of information.

¹⁵ Tax Justice Network, "What should be included in Corporate Registries? A Data Checklist", April 13, 2017, <https://www.taxjustice.net/wp-content/uploads/2017/04/TJN2017_BO-Registry-ChecklistGuidelines-Apr.pdf>, accessed on September 30, 2019.

2.4 Financial Action Task Force's evaluation report

The FATF is an intergovernmental organization created to establish and enforce global standards to counter the laundering of the proceeds of crime and the financing of terrorist activities, and to improve corporate transparency. Canada is a founding member of the FATF.

Canada's mutual evaluation report¹⁶ includes several recommendations to the effect that Canada should implement measures to, among other things, improve its collection and verification of information on ultimate beneficiaries and to prevent the misuse of bearer shares. The report indicates that entities and legal structures in Canada present a high risk of being used in activities related to the laundering of the proceeds of crime and the financing of terrorist activities.

Since then, Canada has taken several steps to address this situation. In particular, the federal government:

- implemented a national plan to strengthen corporate transparency and improve the availability of information on ultimate beneficiaries;
- established the federal-provincial-territorial agreement to strengthen beneficial ownership transparency;
 - This agreement concerns, in particular, legislative amendments to the various corporate laws or other relevant statutes.
- enhanced trust income tax reporting requirements;
- amended the *Canada Business Corporations Act* (Bill C-86, Budget Implementation Act, No. 2).¹⁷

¹⁶ FATF, "Canada's measures to combat money laundering and terrorist financing", September 15, 2016, <<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html>>, accessed on September 30, 2019.

¹⁷ Parliament of Canada, "A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures", December 13, 2018, <<https://www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent>>, accessed on September 30, 2019.

3. CONTEXT IN QUÉBEC AND THE REST OF CANADA

3.1 The Québec enterprise register

The Québec enterprise register ensures the legal publicity of enterprises operating in Québec. It is also a bank of information that is available to the public. Since January 1, 1994, all enterprises operating in Québec are required to register.

This public register, constituted under the *Act respecting the legal publicity of enterprises*, is intended to protect the public and enterprises in their socio-economic and business dealings.

The register is administered by the Registraire des entreprises du Québec (REQ), a public officer appointed by the Minister of Labour, Employment and Social Solidarity.

The purpose of the enterprise register is therefore to provide information on enterprises subject to the law in order to protect third parties doing business with them, and not to know whether a natural person is linked to one or more enterprises, with a few exceptions.

As such, the REQ enters into the register the information required in accordance with the Act and information relating to associations and enterprises constituted or operating in Québec. Most of this information is of a legal nature and opposable against third parties.

It also ensures the protection of the public and enterprises by administering the legislation governing the constitution, registration, organization, operation, liquidation and dissolution of the vast majority of legal persons in Québec, and by providing any person, including investors, with compilations of information contained in the enterprise register.

The REQ also supports the government's administrative efficiency and facilitates communication between the government and associations and enterprises by:

- assigning a Québec enterprise number to registered enterprises;
- sending information to departments and agencies of the Québec government that administer public programs for the benefit of enterprises.

3.1.1 Information available in the enterprise register

The enterprise register contains information concerning an enterprise or an association registered in Québec. The following enterprise-related information is available in the register:

- Québec enterprise number;
- name and any other names used in Québec;
- addresses and establishments;
- legal form;
- last update of their information in the register;
- main fields of activity;
- shareholders, directors and partners;
 - This includes the name and address of the persons linked to the enterprise (shareholders, directors, chief officers, attorneys, administrators of the property of others, partners, general and limited partners).
- index of documents that they have filed and that have been deposited in the register;
- statement to the effect that an enterprise is bankrupt within the meaning of the *Bankruptcy and Insolvency Act*, since a business subject to the *Act respecting the legal publicity of enterprises* that becomes bankrupt must file a declaration to that effect with the REQ without delay.

The Québec register meets many, but not all, of the criteria set out by the Tax Justice Network. As far as accessibility is concerned, the register complies with the recommendations of the Tax Justice Network. However, a lot of the information relating to directors, officers and ultimate beneficiaries is lacking.

TABLE 1

Summary of the checklist established by the Tax Justice Network

Parameters	Compliance of the Québec enterprise register
Accessibility	
Public	Yes
Online	Yes
Free	Yes
Central	Yes
Search	
By an entity's name and number	Yes
By a physical person's name and address	No
Information on directors and officers	
Name	Yes / Public
Address	Yes / Public
Date of birth	No
Nationality	No
Local and foreign Tax Identification Number	No
Other information	
List of ultimate beneficiaries	No
All legal structures or nominees in the chain of ownership	No
List of all other legal entities where a director or senior manager has an equivalent position	No
Directors' executive role	Yes / Public
Manager other than general manager	Yes / Public

Sources: Tax Justice Network and Ministère des Finances du Québec.

3.2 Enterprise registers in Canada

With the exception of Alberta and Manitoba, the provinces and territories as well as the federal government have an enterprise register that they make available to the public through a website.

The amount of information and the ways in which it is accessed differ from one register to another. Indeed, several websites are not free and the amount of information available is sometimes limited.

The Québec enterprise register is the only register that offers free access to public research on enterprises as well as a wide range of information on enterprises.

3.3 Coordinated federal-provincial-territorial approach to improving beneficial ownership in Canada

3.3.1 Federal-provincial-territorial discussions

For the past two years, a federal-provincial-territorial committee on beneficial ownership transparency in Canada has been committed to facilitating the fight against tax evasion, tax avoidance, money laundering, terrorism and corruption, which allows bodies responsible for the sanctioning of crimes and law-breaking activities to have access to the identities of physical persons who control business corporations.

The federal register contains information about enterprises incorporated under the *Canada Business Corporations Act*. However, the register does not currently contain any information concerning these enterprises' shareholders.¹⁸ The only information provided in the register is the list of directors and the address of a corporation's head office.

In June 2019, the Canadian Minister of Finance and his provincial and territorial counterparts agreed to:¹⁹

- facilitate the identification of owners and property owned by improving beneficial ownership transparency;
- assist governments in investigating and prosecuting financial criminals;
- ensure collaboration across all government sectors to develop best practices against money laundering and to report back to ministers by January 2020.

3.3.2 Federal and provincial legislative proposals

As part of Bill C-86, Budget Implementation Act, No. 2, assented to on December 13, 2018, the federal government amended the *Canada Business Corporations Act* to require unlisted business corporations incorporated under federal legislation to maintain a register of their ultimate beneficiaries.

This internal register will include information concerning ultimate beneficiaries, i.e. individuals exercising significant control over a corporation. Significant control is defined as:

- direct or indirect ownership or administration of 25% or more of the corporation's share in terms of value or voting rights;
- being a party to a shareholder agreement representing more than 25% of the shares;
- exercising influence, directly or indirectly, resulting in de facto control of the corporation.

¹⁸ The director of Corporations Canada may still require a corporation to submit the securities register it must maintain or provide an updated list of its shareholders.

¹⁹ Department of Finance Canada, "Government of Canada Leads National Response to Money Laundering and Terrorist Financing", June 13, 2019, <<https://www.fin.gc.ca/n19/19-063-eng.asp>>, accessed on September 30, 2019.

The following is information concerning ultimate beneficiaries which is included in the register:

- name, address and date of birth;
- place of residence for tax purposes;
- date on which a significant control was obtained and, if applicable, date on which this significant control ended;
- description of how the individual is considered to exercise significant control;
- any other regulatory information that may be required under future regulations.

Fines are provided for in the event of offences and are aimed at legal persons as well as at directors and shareholders.

British Columbia recently sanctioned *Bill 24 – Business Corporations Amendment Act, 2019*, which requires its enterprises to maintain a register of individuals with significant control.

3.4 British Columbia's new real property initiative

In recent years, British Columbia has experienced a housing affordability crisis that is exacerbated by money laundering schemes in the real estate sector. Indeed, independent experts estimated in a report that \$5.3 billion had been laundered in the real estate sector of the province in 2018.²⁰ That is why, in its 2018-2019 budget, the government of British Columbia announced measures to address the housing crisis and foster a more equitable housing market.

In May 2019, Bill 23: Land Owner Transparency Act,²¹ received Royal Assent. This bill provides for the establishment, in British Columbia, of a registry of the ultimate beneficiaries of real property, the first of its kind in Canada.

²⁰ Expert Panel on Money Laundering in BC Real Estate, "Combatting Money Laundering in BC Real Estate", March 31, 2019, <https://news.gov.bc.ca/files/Combating_Money_Laundering_Report.pdf>, accessed on September 30, 2019.

²¹ Legislative Assembly of British Columbia, "Bill 23 – 2019: Land Owner Transparency Act", May 16, 2019, <<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/third-reading/gov23-3>>, accessed on September 30, 2019.

4. OBLIGATION TO DISCLOSE INFORMATION ON ULTIMATE BENEFICIARIES TO THE REGISTRAIRE DES ENTREPRISES DU QUÉBEC

4.1 Background

The identification of ultimate beneficiaries is essential to counter the use of complex shell companies and corporate structures for illicit purposes.

Like several countries, including Canada, as well as some Canadian provinces, Québec is considering the implementation of a requirement for enterprises to disclose information on their ultimate beneficiaries.

4.2 The concept of “ultimate beneficiaries” in Québec

To collect information on ultimate beneficiaries, Québec needs to develop appropriate definitions.

To this end, Québec is considering using the same concepts as those put forward by the federal government.²² In short, an ultimate beneficiary will refer to:

- an individual holding, directly or indirectly, at least 25% of voting shares;
- an individual holding, directly or indirectly, at least 25% of shares measured by fair market value;
- an individual who exercises control or direction, directly or indirectly, over at least 25% of voting shares or all shares measured by fair market value;
- an individual who has direct or indirect influence that, if exercised, would result in de facto control of the corporation;
- two or more individuals who jointly hold an interest referred to in the previous four points or who have entered into an agreement to jointly exercise these rights.

This definition is appropriate given Québec’s objectives in terms of corporate transparency. In addition, this approach would standardize the requirements imposed on enterprises with respect to how they identify their ultimate beneficiaries.

Moreover, British Columbia’s definition is similar to the definition adopted by the federal government.

²² *Canada Business Corporations Act*, RSC 1985, c C-44, subsection 2.1(1).

4.3 Potential approach

The government would require Québec business corporations, as well as other legal forms of enterprises registered in the Québec register, to transmit information on their ultimate beneficiaries to the REQ so that it can be published in the enterprise register.

4.3.1 **Requiring all enterprises subject to the obligation to be registered in the enterprise register to transmit information on their ultimate beneficiaries to the Registraire des entreprises du Québec, who makes it accessible to the public**

Registers that make the identification of ultimate beneficiaries mandatory often do so for different legal forms of organization, both within their own State and those established in foreign states.

- In the United Kingdom, several enterprises and corporations must identify their ultimate beneficiaries by registering themselves in the aforementioned register, even if they do not come from the United Kingdom.
- In France, only certain legal forms of organization are required to submit to the *Registre du Commerce et des Sociétés* (trade and companies register) information on their ultimate beneficiaries as well as on the means by which they exercise control over the enterprise.

In addition to requiring Québec business corporations to identify their ultimate beneficiaries, Québec is examining the possibility of extending this requirement to other forms of legal organization registered in the Québec register, even those incorporated outside Québec.

The main advantage of this approach would be the acquisition of comprehensive data on enterprises listed in the register, which would support activities carried out by relevant authorities to counter tax evasion, while subjecting all enterprises operating in Québec to the same obligations.

The main drawback of this approach would be the imposition of a new obligation for enterprises. However, this new obligation would not affect the vast majority of enterprises (and virtually all SMBs), as the shareholders or partners already registered in the register and the ultimate beneficiaries are, in most cases, the same individuals.

Nevertheless, for some enterprises, the obligation to disclose the identity of their ultimate beneficiaries will represent an additional task. In some cases, it will be difficult to identify ultimate beneficiaries.

- This difficulty in identifying ultimate beneficiaries could arise in the case of a Québec corporation owned by a foreign corporation.

Questions
<ol style="list-style-type: none">1. In your opinion, is the federal definition appropriate for Québec and, if not, what other model or definition should Québec take into consideration, and why?2. In your opinion, what personal information about ultimate beneficiaries should be collected?3. Should certain legal forms of organization be exempted from the obligation to transmit information on their ultimate beneficiaries?4. In your opinion, are there other potential approaches that Québec should consider?

4.4 Other considerations

The Act respecting the legal publicity of enterprises

The *Act respecting the legal publicity of enterprises* requires business corporations to disclose the identity of their three main shareholders. The information is published in the enterprise register. This number could increase from three to four depending on the definition of “ultimate beneficiary” that will be adopted.

Corporate transparency for these corporations would therefore be improved.

Nominees

Under sections 1451 and 1452 of the *Civil Code of Québec*, individuals may express their true intent in a secret contract, also called a “counter letter”. Counter letters are not illegal or unlawful in themselves, as long as they are not aimed at breaking the law or contravening public order. Individuals can use counter letters to hide the identity of a person linked to an enterprise.

However, certain laws, such as the *Building Act*, prohibit a person from lending his name to another person. The requirement to identify ultimate beneficiaries will not prohibit the use of nominees, but will make identification of the enterprises’ real beneficiaries mandatory.

Another possibility is to not make public the information contained in the enterprise register and relating to nominees.

Impact on Québec’s competitiveness

Some people may decide against registering their enterprise in Québec because they prefer not to be listed in the enterprise register and would rather remain anonymous.

They would therefore refrain from doing business in Québec.

It should also be borne in mind that the obligation to identify ultimate beneficiaries in the REQ will be complicated for certain enterprises, but would make business relations between enterprises more transparent. In addition, compliance with this obligation would increase these enterprises’ credibility.

Moreover, this measure would promote tax fairness and healthy competition between enterprises.

Information quality

The enterprise register is a declaratory register. This means that it is the responsibility of the enterprise to ensure that the information provided in the register is true.

That being said, various a priori and a posteriori mechanisms, such as inspections and investigations, are used to ensure the accuracy of the information provided by enterprises.

In practice, it may prove difficult to demonstrate that an enterprise has failed to disclose its true owner, whose identity remains hidden.

Ultimate beneficiaries may be expected to share responsibility for disclosing their role in their enterprises.

Penalties

The federal government provides for higher penalties than those set out in the *Act respecting the legal publicity of enterprises*, that is, penalties reaching \$200 000, as well as six months’ imprisonment.

For Québec, sanctions will have to be provided for depending on the new obligations put in place.

Impact on privacy

The enterprise register is a public register, in the sense that anyone can consult it. However, since information on ultimate beneficiaries is of a personal nature, making it publicly available may raise issues.

Consequently, the REQ must take privacy into consideration when bringing the proposed initiative in line with constitutional law principles, i.e., the existence of a reasonable expectation of privacy and the proportionality between the restriction on privacy and the public interest.

In addition, section 100 of the *Act respecting the legal publicity of enterprises* provides that “[t]he Registrar may, for the period determined by the Registrar, prevent access to personal information in the register concerning a registrant if the registrar has reasonable grounds to believe that making that information accessible represents a serious threat to the registrant’s safety”. This non-application provision would also apply to information collected on ultimate beneficiaries.

Information security

Since some of the information contained in the register would not be made public, information security is a major concern. Information must be protected throughout the process, whether in the transmission, conservation and consultation phases.

The REQ must ensure that the infrastructures, processes, control measures and human resources guarantee the security of the information it holds.

The REQ must control and limit access to sensitive data to authorized personnel and to the relevant authorities.

This issue may have consequences on the registrants’ level of confidence in the REQ.

Questions
1. Among the other considerations discussed above, which ones do you think are most relevant? Why?
2. Which measures should the Québec government put in place to facilitate the implementation of this requirement?
3. In addition to information on ultimate beneficiaries, should the REQ collect and publish other types of information in the register?

5. ALLOWING THE SEARCH BY NAME AND ADDRESS OF A NATURAL PERSON IN THE ENTERPRISE REGISTER

As government efforts to improve the fight against fraud and corruption converge, the Minister of Finance announced, on November 10, 2017, the possibility of implementing new measures within the organization of the Registraire des entreprises du Québec (REQ). In order to increase the transparency of the economic community and the accessibility and reliability of the register's data, it is proposed to allow the public to search the register by an individual's name.

This would allow for better use of the information contained in the register and increase public protection. Indeed, the register lists the names and addresses of the persons linked to registered enterprises, in particular their directors, shareholders, partners and managers. This information makes it possible to identify the persons exercising control over these enterprises or making decisions about them.

Under the current framework, the *Act respecting the legal publicity of enterprises* restricts research by name of individuals to the persons and organizations concerned and for the purposes set out in the Act. These restrictions are intended to protect the personal information contained in the register.

5.1 Background

The REQ is responsible for maintaining the enterprise register and publicizing it. It is the only body authorized to communicate in an official manner the information included in the enterprise register, in accordance with the Act.

The REQ allows the register to be searched through its online service called "Find an enterprise", available on its website. This service makes it possible to identify the persons who have an interest in an enterprise by searching the enterprise's name or number.

It is possible to search using an individual's surname or first name, but the results will only target natural persons operating a business under a name that includes this surname and first name.

Any person who comes in contact with an enterprise can access certain personal information by consulting the enterprise's information statements, and thereby know the names of the persons involved in the administration and operation of the enterprise (e.g., name and home address of its managers).

Some entities may do a search by name and address of a natural person, either through a compilation of information or a mass dissemination agreement. However, this type of search must meet certain conditions to be authorized. These entities include bodies that have investigative powers for the purposes of prosecuting a crime or offence.

The information contained in the register must currently be used only for the purposes for which it was collected in order to protect third parties who enter into a relationship with an enterprise operating in Québec. The purpose of the Act is not to establish other kinds of relationships or to satisfy the curiosity of third parties.

5.2 Compilation of information contained in information statements

The REQ may provide any person with a compilation of information contained in an enterprise's information statements, that is, specific extractions, in return for the payment of the applicable fees.

- A compilation of information consists in identifying the enterprises for which information has been reported. For example, one grouping may allow the identification of enterprise records that contain a particular industry code.

However, it is not possible to compile information based on the name or address of a natural person, except in cases expressly provided for in the *Act respecting the legal publicity of enterprises*. Indeed, the Act imposes restrictions to ensure the protection of personal information, even though the register is available to the public.

5.3 Mass dissemination agreement

Under section 121 of the *Act respecting the legal publicity of enterprises*, the Minister of Labour, Employment and Social Solidarity may enter into an agreement with a government department, body or enterprise to provide it with all or part of the information contained in the register and any subsequent updates, if the communication of the information is necessary for the exercise of the powers and duties of the department, body or enterprise.

In concrete terms, the conclusion of a mass dissemination agreement allows departments and agencies to obtain all the information contained in the enterprise register and to be informed when an enterprise modifies its information. This makes it easier for departments and agencies to carry out their missions.

As part of a mass dissemination agreement, it is possible to compile information containing the name and address of a natural person, particularly when the information is necessary to prevent or punish a violation of a law in Québec.

The register of enterprises ineligible for public contracts
In Québec, members of the public can search the name of a natural person linked to an enterprise in the register of enterprises ineligible for public contracts (RENA). This allows the public to know if a person is the subject of a conviction for which an enterprise has been registered in the RENA.

5.4 International context

In 2017, the Tax Justice Network published an article listing 77 characteristics of an ideal register, including the possibility to search by name and address of a natural person.

In the United Kingdom, it is possible for everyone to search by name in the country's enterprise register. While some information is only accessible by investigative bodies, other types of information, such as an enterprise's mailing address and the way in which ultimate beneficiaries exercise control over the enterprise, are public.

In France, it is also possible to search by name in the country's *Registre du Commerce et des Sociétés*. However, some information is not available in the online register. To obtain this information, clients must submit a request for a copy of the document in question.

5.5 Potential approach

Québec is considering allowing the public to make searches using an individual's name.

5.5.1 Expanding access to searches by a person's name to the public

In the interest of increased transparency in the economic sector, allowing the public to make searches using an individual's name would have the following advantages:

- this initiative would enhance transparency in the economic sector and support the fight against fraud and corruption;
 - It would increase the enterprise register's accessibility and transparency.
- searches using the name of an individual would have an impact on the protection of the public since they would allow a person to know whether a natural person is related to one or more enterprises with which he or she enters into a business relationship;
- the public or enterprises, such as financial institutions and credit companies, could use certain pieces of information in the course of their activities;
- searches using an individual's name would support journalistic investigations related to fraud and corruption.

However, individuals do have a right to privacy under different charters. Increased transparency will have to be achieved in a manner that is in keeping with this right.

Questions
<ol style="list-style-type: none">1. Given the potential impact on privacy, is it appropriate to extend the right to search by an individual's name in the enterprise register to the public?2. Should certain conditions apply to searches using an individual's name? Should there be any exceptions?

6. REQUIREMENT FOR ALL LANDOWNERS TO DISCLOSE INFORMATION ON ULTIMATE BENEFICIARIES

6.1 Background

In their recommendations on corporate transparency, various agencies and bodies, such as the Organisation for Economic Co-operation and Development (OECD) and Transparency International, advise countries to include information on ultimate beneficiaries in titles of ownership.

Following the announcement concerning the upcoming implementation of the registry of beneficial property ownership in British Columbia, the Gouvernement du Québec is studying the possibility of implementing a similar measure to increase transparency for ultimate beneficiaries.

6.2 Land register of Québec

The Land register of Québec is a public, legal and authentic register created by the legislator, and defined and regulated by the *Civil Code of Québec* and subjected to it. It is administered by a duly sworn public officer appointed by the Minister of Energy and Natural Resources and the Minister of Justice.

The mission of the Land register of Québec is to help protect the real property rights of citizens and enterprises by making public the rights arising out of an agreement between the parties and concerning immovables located in Québec. Its purpose is to make the rights effective against third parties, to rank the rights against each other and to give effect to certain specific rights provided for in the law.

The publication of rights is achieved by presenting to the registry office a document containing at least one property right (sale, mortgage, etc.). The document must be accompanied by an application for registration. Subsequently, the deputy registrar specifies in the land register the nature of the document and indicates the number assigned to it when it was submitted. The document is kept and made available to the public for consultation purposes, in accordance with the rules set out in the *Civil Code of Québec*. Since the land registry system in Québec is a reference system, consultation of the documents submitted for registration is necessary to gain a clear understanding of the scope of the rights that apply to a property.

This means that real estate transactions carried out in Québec are listed in the Land register of Québec and are available for consultation.

Land surveyors, notaries and lawyers are the people who submit the majority of documents to the Land register of Québec.

In addition, the law stipulates that the registrar may not use the registers and other documents he keeps for purposes other than to ensure, in accordance with the law, the publication of the rights recorded or mentioned in them, in particular to render them effective against third parties, to rank them against each other or to give them effect. No search based on an individual's name is allowed in these registers and documents for privacy reasons.

The minimum information²³ to be provided in the course of a transfer is the following:

- the names of the transferor and of the transferee;
- the address of the principal residence of the transferor;
- the address of the principal residence of the transferee;
- the name of the municipality in which the immovable is situated;
- the amount of the consideration for the transfer of the immovable;
- the amount constituting the basis of imposition of the transfer duties and the amount of the transfer duties.

6.3 Legislative amendments

In June 2018, as part of Bill 150, the National Assembly made amendments to the *Act respecting duties on transfers of immovables* and to the *Act respecting the Ministère des Ressources naturelles et de la Faune*.

These amendments allow the Minister of Energy and Natural Resources to collect, compile and transmit to the Ministère des Finances citizenship information on transferors and transferees in connection with the transfer of an immovable.

In February 2019, a draft regulation respecting the form for presenting an application for registration of a transfer of an immovable was published in the *Gazette officielle du Québec* and which provides for the following:

- that a natural person, when registering the transfer of an immovable, must indicate their citizenship and their intention or the intention of a member of their family to occupy a dwelling in the immovable as a principal residence;
- that a legal person will have to indicate the place where it was constituted and whether it is resident in Canada within the meaning of the *Income Tax Act*;
- that a trust or partnership must specify the State where the contract establishing the trust or forming the partnership was entered into, the composition of its members if they are foreign nationals and if it is resident in Canada within the meaning of the *Income Tax Act*.

The regulation is expected to enter into force on October 1, 2020.

²³ This is the information required under the *Act respecting duties on transfers of immovables*. The rules governing land registration provided for in the *Civil Code of Québec* and the *Regulation respecting land registration* require that other information also be included in the deed, in particular the designation of the parties (buyer and seller, creditor and debtor, etc.) and the property concerned (lot number).

6.4 Potential approaches

The dramatic rise in British Columbia's housing prices was exacerbated by money laundering schemes carried out by criminal groups. British Columbia has recently taken measures to curb this phenomenon.

The Québec real estate market is not protected from such schemes. In order to reduce the risk of money laundering schemes having an impact on the real estate market, three approaches are being examined:

- creating a new register to collect information on the ultimate beneficiaries of real property assets;
- giving the Registraire des entreprises du Québec the mandate to collect information on the ultimate beneficiaries of real property assets;
- giving the Land register of Québec the mandate to collect information on the ultimate beneficiaries of real property assets.

The availability of information on the ultimate beneficiaries of real property would allow Québec to:

- fight money laundering more effectively;
- maintain an affordable real estate market.

Questions
<ol style="list-style-type: none">1. Which of these approaches should be chosen?2. What should be the definition of “ultimate beneficiary of real property assets”?3. What information on the ultimate beneficiaries of real property assets should be collected?4. What information on the ultimate beneficiaries of real property assets should be made available to the public?

7. CONSULTATION PROCESS

Through the Consultation Paper on Corporate Transparency, the Ministère des Finances invites members of the tax community, relevant associations and professional groups, as well as any individuals interested in the subject, to submit their comments, opinions and suggestions by filing a brief by December 15, 2019.

Unless otherwise requested by the author, all comments submitted will be published on the Ministère's website.

Briefs may be sent by e-mail or mail to:

Bureau du sous-ministre adjoint au droit fiscal,
à l'optimisation des revenus et aux politiques locales et autochtones
Ministère des Finances
12, rue Saint-Louis
Québec (Québec) G1R 5L3
E-mail: transparence-corporative@finances.gouv.qc.ca

APPENDIX: ENTERPRISE REGISTERS IN OTHER PARTS OF THE WORLD

United Kingdom

In the United Kingdom, the Companies House administers an enterprise register and collects and publishes information on enterprises.

On March 26, 2015, the *Small Business, Enterprise and Employment Act 2015* introduced amendments to the *Companies Act 2006*, which allowed the Companies House to create the Registers of beneficial ownership, a register of ultimate beneficiaries.

On June 22, 2015, the Companies House launched a new data access service. This service provides, among other things, free access to all corporate documents, information on an enterprise's expenses and monitoring of changes brought to an enterprise (since March 9, 2017).

In addition, since the implementation of this service, it has been possible to search by name for any natural person linked to an enterprise.

<https://www.gov.uk/government/organisations/companies-house>

France

The *Registre du Commerce et des Sociétés* is the service managed by the registry of the Tribunal de commerce (commercial courts) and which lists all enterprises registered in France. It compiles data on legal persons (identification number, share capital, corporate form and name, and date of creation) as well as on natural persons engaged in commercial activities.

Since August 1, 2017, legal persons who register with the *Registre du Commerce et des Sociétés* must identify the natural persons who hold, directly or indirectly, more than 25% of the capital or voting rights of an enterprise or, alternatively, the person exercising control over the management or administrative bodies within an enterprise.

Anyone wishing to do so can search the register by name of an individual. The information can be accessed online, free of charge.

However, France does not make available the address of persons linked to an enterprise in its online register. To obtain this information, clients must submit a request for a copy of the document and pay the associated fees.

<https://www.infogreffe.com/>

Spain

Since March 21, 2018, the Spanish authorities have required private corporations to identify their ultimate beneficiaries in a register. This is done at the same time as their tax return.

The definition of “ultimate beneficiary” is the same for all Member States of the European Union. This definition is set out in Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015. For greater clarity, an ultimate beneficiary is any person who:

- controls or owns, directly or indirectly, more than 25% of an enterprise’s shares;
- controls or owns, directly or indirectly, more than 25% of an enterprise’s voting rights;
- uses methods to control, directly or indirectly, the management of an enterprise.

In addition, enterprises with an indirect ultimate beneficiary must disclose information on legal persons involved in the Spanish enterprise’s chain of control.

If the corporation has no direct or indirect ultimate beneficiaries, it must identify in the relevant form the members of the enterprise’s board of directors.

<https://www.infoempresa.com/en-in/es/>

Slovenia

Since November 19, 2016, the Slovenian authorities have required enterprises to identify their ultimate beneficiaries in a register. The definition of “ultimate beneficiary” is the same as that provided for in Spain and in the other Member States of the European Union.

Many types of information are available to the public free of charge, subject to proof of the existence of a legitimate interest. In addition, the relevant authorities have access to sensitive information such as date of birth and nationality.

<https://www.ajpes.si/?language=english>

United States

In the United States, none of the states’ enterprise registers collects information on ultimate beneficiaries.

However, the *Customer Due Diligence Requirements for Financial Institutions Rule*, which came into force on May 11, 2018, amends the *Bank Secrecy Act* by requiring banks to collect information on ultimate beneficiaries from their customers.

According to this Act, an ultimate beneficiary is an individual who holds, directly or indirectly, 25% or more of the interests of an enterprise. In addition, a bank may reduce this ratio, set at 25%, in order to ask for the names of ultimate beneficiaries holding less than 25% of an enterprise’s interests.

Searching for an enterprise using the names and addresses of a person linked to an enterprise is not permitted in any of the registers established in the United States.

