

March 6, 2014

Mr. Paul Halucha  
Director General  
Marketplace Framework Policy Branch  
Industry Canada  
235 Queen Street, 10th Floor  
Ottawa, Ontario  
K1A 0H5

Dear Mr. Halucha,

**Re: GOPAC's Submission to Ministry of Industry Consultations on  
the Canadian Business Corporations Act**

The Global Organization of Parliamentarians Against Corruption (GOPAC) is pleased that Industry Canada is seeking stakeholder views on the *Canada Business Corporations Act*. Working with Global Financial Integrity, and its President, Raymond Baker, GOPAC has been actively advocating for beneficial ownership transparency at the national and international levels. We would like to draw your attention to the attached position paper we launched last fall in advance of the G20 meetings entitled - Transparency Through Beneficial Ownership Declarations - a position that has been formally endorsed by Transparency International.

Money launderers seek out countries with the weakest anti-money laundering regimes. Canada's current policies do not provide for transparent beneficial ownership information. Canada is "a major money laundering country" according to the 2013 International Narcotics Control Strategy Report published by the US Department of State. Canada is not in compliance with respect to the beneficial ownership obligations enunciated in the Financial Action Task Force recommendations.

In its G8 action plan on transparency of corporations and trusts Canada has committed to implementing amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (PCMLTFR)* that will improve customer due diligence measures, including those related to corporate and trust beneficial ownership information. The Government of Canada and Canada's Parliament have recently enacted certain measures to address a number of these issues.

To further strengthen the transparency and accountability of beneficial ownership declarations and bolster anti-money laundering laws, GOPAC is advocating for the requirement that all financial institutions and intermediaries demand a binding legal declaration of beneficial

ownership and other financial transactions, with sanctions for non-compliance. This information should be added to existing registry lists, so that it is available to the public and compliance is simple.

A lack of transparency of company ownership and control helps those looking to hide their identity and launder corrupt money through the international financial system. In Canada, investigations are frequently frustrated by the inability of financial intelligence units (FIU's) and law enforcement to identify the true owner of a company being used to hide or conceal criminal activity, particularly where this information is held offshore by companies incorporated outside Canada.

Companies are already required to disclose information on their beneficial ownership when, for example, they seek to open a bank account. Similarly, financial institutions and other professional organisations are required to verify beneficial ownership information through their customer due diligence requirements (Know Your Customer). This is a costly and difficult requirement to fulfill as financial institutions and other intermediaries are heavily reliant on the information provided by the company. An explicit requirement on companies to make a binding and accountable declaration, and to obtain and hold information on their beneficial owners should make it easier for financial institutions and others to carry out this due diligence.

Requiring all legal entities incorporated and trading in Canada to provide this information to a central registry offers additional benefits to tax authorities, FIU's, and law enforcement agencies in time-saving efficiencies; and being able to investigate the ownership structure of a company without alerting the company that they are under investigation. More transparent public registries and declarations make it more possible for third parties such as the media, non-governmental agencies, and whistle-blowers to challenge beneficial ownership information.

The United Kingdom has taken significant steps this past year and is the first major economy that has committed to create a public registry of beneficial company ownership. At this juncture, we would be pleased to support the Government of Canada in developing and launching a *Made-in-Canada* approach to this complex and challenging problem. Making this information publicly available has advantages in terms of public scrutiny, public trust and by giving confidence to investors, the market and other companies about whom they are doing business with. However, we also recognize that there may be legitimate concerns to doing so including privacy protection, anti-competitive behavior, and abuse of information. Canada can play a leadership role in reviewing best practices globally and developing a tailor-made system for companies registered at national and provincial levels.

Another approach would be to task an independent agency to conduct surprise audits of financial institutions and review whether customer due diligence for large deposits or new

accounts was conducted in a complete and comprehensive manner - with severe sanctions if not.

Beneficial ownership is fundamentally about being transparent. The time for Canada to act on this issue is now. GOPAC's global alliance of parliamentarians is prepared to work with the Government to strengthen legislation in this area.

We would like to take this opportunity to thank the Government of Canada for opening up consultations on this important issue.



Hon. Darryl Kramp  
Member of Parliament, GOC  
Chair, GOPAC Canada



Hon. Roy Cullen, P.C., C.A.  
Member, GOPAC Global Task Force-AML



## Transparency Through Beneficial Ownership Declarations

Corruption stunts economic growth. It damages social cohesion, political stability and citizen trust in governance. It lowers the quality of life of those most marginalized. The United Nations Office on Drugs and Crime (UNODC) estimates that in 2009, criminal proceeds amounted to 3.6 per cent of global GDP. Of these proceeds, a whopping \$1.6 trillion were laundered.

Take a moment to imagine what impact \$1.6 trillion could have on people living on less than \$1 a day.

Now, imagine that we have the power to change this.

Money launderers seek out countries with the weakest anti-money laundering regimes. Part of a strong anti-money laundering regime is greater transparency of financial transactions – and part of this transparency can be achieved through Beneficial Ownership Declarations.

By requiring financial institutions to demand a binding legal declaration of beneficial ownership by depositors and parties to financial transactions, we can ensure that the flow of illicit money, in particular the gains from corrupt activities, is hindered from entering the financial system.

GOPAC urges parliamentarians and our global leaders to require financial institutions to demand a binding legal declaration of beneficial ownership for all financial transactions as declared by our members at our Fifth Global conference Against Corruption held in February 2013 in Manila, Philippines.

## “Declaration of Beneficial Ownership” - What it means and why it is important

A Declaration of Beneficial Ownership is a legally binding instrument which requires any person, about to enter into a transaction with any financial institution, to declare and disclose the beneficial owners of the asset, fund or property involved. Beneficial owners are persons/groups that enjoy the economic benefits of ownership of a property, fund, or asset, even though another person appears as the registered owner.

By requiring a Declaration of Beneficial Ownership, financial institutions and the State create one more mechanism to track the source, movement, and destination of illicit funds. Over the years, money launderers have developed various schemes – which have become sophisticated and creative over time - to launder illicit funds. These individuals use legal dummies (lawyers, accountants, family or friends) to distance themselves from transactions by concealing the true source of funds. Declarations of Beneficial Ownership would make it harder for criminal elements to mask their identities and their connection to ill-gotten funds.

The requirement of a binding Declaration of Beneficial Ownership must carry sanctions in case of false declarations. This may include freezing of accounts and the ultimate forfeiture of account balances, funds, properties, or assets. Additionally, by calling on depositors to develop the affidavits and beneficial ownership documentation, the burden of financial institutions to diligently know their customers is shared with the parties transacting with them. As it discourages the concealment of the true beneficiaries of illicit funds, properties, or assets, the requirement for a Declaration of Beneficial Ownership also encourages financial institutions to strengthen their due diligence mechanisms to ensure that legitimate avenues are not used to launder illegitimate assets.

## Know your Customer and Diligence Reviews

The Know Your Customer (KYC) principle requires clients to be identified and to verify the source of funds for accounts. It refers to due diligence activities that financial institutions and other regulated companies must perform to ascertain relevant information from their clients for the purpose of doing business with them. These policies need to be enacted when a high-risk client, such as a politically important person or high-net worth person, is looking to become a client of a financial institution. “Know your customer” is becoming an increasingly important global issue to prevent money laundering, terrorist financing and financial fraud.

## Money Laundering Facts and Figures

- Estimated amount of money laundered globally in one year is 2 - 5% of global GDP, or \$800 billion - \$2 trillion in current US dollars.
- Approximately \$1 trillion USD in funds that are illegally earned, transferred or utilized are spirited out of developing countries annually.
- Banks in the US and the Caribbean Islands are the two major destinations for laundered money.
- To expose beneficial owners, FATF has launched a campaign known as “Know Your Customer” to encourage financial institutions to confirm the veracity of their customer’s identity.

### Links

<http://www.fatf-gafi.org/pages/faq/moneylaundering>

<http://www.globalwitness.org/>

<http://www.fatf-gafi.org/>

<http://www.unodc.org/unodc/en/money-laundering/index.html>

<http://www.worldbank.org/finance>

## What can Parliamentarians do?

The international community has improved its capacity, enhanced its expertise and strengthened laws to better follow camouflaged trails of laundered assets. Despite these improvements, countries have been slow to implement and enforce Financial Action Task Force (FATF) recommendations.

### I. Advocate for a Declaration of Beneficial Ownership

Parliamentarians can mitigate the proliferation of money laundering by strengthening laws, policies, and processes in relation to their anti-money laundering regimes. Parliamentarians have the power to pressure their governments to ensure that information on the beneficial ownership and control of companies, trusts and foundations is available on public record to facilitate effective due diligence; and explicitly require that financial institutions identify the ultimate beneficial owners or controllers of any company, trust or foundation, that is their client.

GOPAC asks parliamentarians to go one step further and ensure their Governments are placing the onus on depositors to make a binding declaration of beneficial ownership - with sanctions for those who fail to comply. This would reduce transaction costs for financial institutions by calling on depositors to develop the affidavits and beneficial ownership documentation, and shift the responsibility to depositors - the “user pays” concept. Uncovered false declarations would result in frozen, and potentially confiscated, funds. This would also motivate financial institutions to carry out thorough due diligence on new depositors. These rules would be made clear to depositors who would understand the risks associated with false declarations of beneficial ownership. This step would act as a deterrent to hiding the identity of the real owners - i.e. those who derive the real economic benefits from these assets. This requirement would ensure that the flow of illicit money, in particular the gains from corrupt activities, is hindered from entering the financial system.

### II. Advocate for strict compliance with KYC

In addition to binding self-declarations by depositors, parliamentarians should ensure that anti-money laundering laws and regulations in their country require financial institutions and intermediaries to strictly perform KYC. Parliamentarians should legislate on a uniform set of KYC steps:

1. The identification of the beneficial owner should be conducted employing all appropriate means and mechanisms. It involves collecting the names of all the people/organizations involved, and any other information that may help establish their identity.
2. The verification of the identifiers is made by retrieving all the supporting documents required, according to the risks of money involved. This verification must be completed using official documents, data and information.
3. The financial institutions should be able to prove that they have conducted the investigation with due diligence. In the situation of proving due diligence:
  - Financial institutions may have to collect other documents to identify the client, in particular where the customer is a beneficial owner governed by foreign law.
  - If the identified beneficial owner has a history of involvement in any corrupt or other criminal activity, their accounts should be given very close scrutiny, and be actively monitored.
4. Financial institutions must keep a close watch on the events and operations liable to affect the risk level of the client, failing which the latter may get involved in a money laundering scheme. However, in cases of doubt, for instance, when the transactions conducted by a client change substantially and in a way that is inconsistent with the client’s business, in particular with the sums usually involved, further identification is required.
5. Other instances when the client would be required to provide further identification to their financial institution would be when they are considered politically exposed persons (PEPs), or when they have a record of involvement in corruption, money laundering or organized crime.

## How can GOPAC Help

1. GOPAC national chapters are the foundation and the local mechanism that can ensure that anti-corruption efforts are maximized, and at the top of the national political agenda. A national chapter can strengthen beneficial ownership rules by bringing together legislators to develop a detailed action plan that would include working with local partners to draft legislation and promote its adoption and enforcement.
2. The GOPAC Global Secretariat, by means of its Anti-Money Laundering Global Task Force (GTF-AML), can provide tools, information and guidance to improve the anti-money laundering efforts of parliamentarians. The *GOPAC AML Action Guide for Parliamentarians* is one such tool (<http://gopac.ac/XQhgFK>).
3. In order to ensure that strict beneficial ownership rules are implemented and abided by parliamentarians should be guided by the resolution that was adopted by GOPAC at its 5th Global Conference in Manila, Philippines in February, 2013 (<http://gopac.ac/13QxmRb>). This resolution calls on parliamentarians to:

“Advocate for the requirement that all financial institutions and intermediaries demand a binding legal declaration of beneficial ownership for all deposits and other financial transactions, with sanctions for non-compliance” .

This position paper was written by Hon Roy Cullen and Sen Teofisto Guingona III, with support from Priya Sood, Program Advisor for the Anti-Money Laundering Global Task Force (GTF-AML) and members of the GTF-AML.

For more information on this position paper or the GTF-AML, please contact: [priya.sood@gopacnetwork.org](mailto:priya.sood@gopacnetwork.org)

The following is a list of our GTF-AML members:

**Teofisto Guingona III**  
Chair GTF-AML  
Senator, Philippines

**Roy Cullen**  
Former Parliamentarian, Canada

**Ricardo García Cervantes**  
Former senator, Mexico

**Mary King**  
Former Minister, Trinidad and Tobago

**Given Lubinda**  
Member of Parliament, Zambia

**Fernando Pérez Noriega**  
Former parliamentarian, Mexico

**Robert Masitara**  
Member of Parliament, Botswana

*“We are extremely pleased to see GOPAC advocating for greater transparency with respect to who owns and controls corporations. Anonymous shell corporations are the primary vehicle used to launder money internationally, and we join GOPAC in urging all parliamentarians around the globe to ensure that banks are required to know who they are opening accounts for and that ownership and control of companies is a matter of public record.”*

**Raymond Baker**  
President, Global Financial Integrity

*“GOPAC’s commitment to securing greater transparency through beneficial ownership declarations is to be applauded. Opaque corporate structures are a favoured tool of those who wish to profit from corruption, allowing them to hide their ill-gotten gain. In our globalised world, a unified response is needed to bring more transparency to financial flows. GOPAC is in a unique position to rally parliamentarians around the growing momentum for such a response.”*

**Huguette Labelle**  
Chair, Transparency International

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GOPAC is a worldwide alliance of parliamentarians working together to combat corruption, strengthen good government, and uphold the rule of law. Based in Ottawa, Canada, GOPAC has 53 national chapters on 6 continents. GOPAC supports its members’ efforts through original research, global anti-corruption capacity building, and international peer support.

