

Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements

The purpose of this country-specific guide is to provide assistance to investigators on the type of information that is available on the natural persons who control legal persons and arrangements, such as companies and trusts, or otherwise play an important role in a legal person and arrangement in **Canada**, and the conditions that need to be met to be able to access such information. For ease of reference, the Contents of the guide are listed below.

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I. Definitions and Company Formation Process

1. What is the definition of legal ownership in Canada?

There is no definition of legal ownership in corporate law. In general, a corporation, as a separate legal entity, has responsibilities to its shareholders who are the owners of the corporation. As owners, shareholders have the right to elect directors. As a separate legal entity, a corporation's cash and other assets belong to the corporation and not to its shareholders. Shareholders can receive dividends if the directors decide to distribute the profits of a corporation. Only when the corporation is dissolved and all debts are paid, do shareholders have a right to a share of the remaining assets.

2. What does “beneficial ownership” mean in Canada?

Under the *Canada Business Corporations Act (CBCA)*, beneficial ownership is defined as including ownership through any trustee, legal representative, agent or mandatary, or other intermediary.

In accordance with the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations (PCMLTFR)*, beneficial ownership information collected includes:

- In the case of a corporation, the names of all directors of the corporation and the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation.
- In the case of a trust, the names and addresses of all trustees and all known beneficiaries and settlors of the trust.
- In the case of an entity other than a corporation or trust, the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the entity.

3. How are legal entities (companies, partnerships, foundations, etc.) formed in Canada?

Corporations may be established at the federal level under the CBCA; the *Canada Not-for-Profit Corporations Act (NFP Act)*, or the *Canada Cooperatives Act (CCA)*.

Under the CBCA, the incorporation process requires the following to be filed with Corporations Canada, the company registry:

- Articles of Incorporation (*i.e.*, corporation name; province where the corporation's registered office will be situated; description of the categories of shares and any maximum number of shares that the corporations is authorized to issue; restrictions on share transfers; minimum and maximum numbers of directors; restrictions on business activities, and any other provisions).
- Initial Registered Office Address, First Board of Directors form and the required fees.

This process can be made online or by sending all required documents to the competent registrar via email, or mail.

4. What is the role of the Company Registries in Canada?

The role of the Company Registry is to verify and register the articles of incorporation and information submitted, and to make companies' information (*i.e.*, corporation's name, status, corporation number, registered office address in Canada, name and address of all directors, and governing legislation) available in to the public.

5. How is basic information on legal entities obtained and recorded in Canada?

Under the CBCA, corporations must maintain basic information, including:

- company articles and by-laws (and any amendments to these)
- minutes of shareholder meetings and resolutions
- shareholder registers. The shareholder register includes the name and address of each shareholder, the number and class of securities held, and the date and particulars of the issue and transfer of each security
- accounting records
- minutes of director meetings and resolutions.

These records must either be maintained in Canada, or accessible from Canada (via a computer terminal or other technology, and provided the company supplies the technical assistance to do so).

6. How is beneficial ownership information on legal entities obtained and recorded in Canada?

Under the PCMLTFR, financial entities, securities dealers, life insurance brokers and companies and money service businesses (MSBs) are required to collect information establishing the ownership, control and structure of the entity and identify the beneficial owner(s) through the collection of the following information:

- In the case of a corporation, the names of all directors of the corporation and the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation
- In the case of a trust, the names and addresses of all trustees and all known beneficiaries and settlors of the trust
- In the case of an entity other than a corporation or trust, the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the entity.

Financial institutions are required to take reasonable measures to confirm the accuracy of this information. If financial institutions are not able to obtain the abovementioned information or confirm its accuracy, they have to "take reasonable measures to ascertain the identity of the most senior managing officer of the entity" and treat the entity as high risk and apply enhanced CDD measures.

The PCMLTFR also requires that beneficial ownership information be kept up-to-date through ongoing monitoring provisions.

7. How are legal arrangements (express trusts and trust-like agreements) formed in Canada?

Canada allows for the establishment of common law trusts as well as civil law *fiducie* (in the province of Quebec).

There is no general registration requirement for trusts.

8. How is information on legal arrangements obtained and recorded in Canada?

Information on trusts is available by competent authorities through various channels:

- Under section 70 of the PCMLTFR, financial institutions and intermediaries must ensure that all records, required to be kept under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA), can be provided to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC, the Canadian FIU) within 30 days. This includes information on the beneficial owner, settlor and trustee of trust arrangements.
- The Office of the Superintendent of Financial Institutions (OSFI) has broad powers to obtain information that is necessary to ensure compliance with the legislation and regulations for all banks, and federally regulated trust and loan companies and life insurance companies.
- The Canada Revenue Agency (CRA) collects information on the ownership and financial activities of trusts in Canada, and has statutory powers to conduct audits of trusts, inspect compliance with tax requirements and access appropriate records.

II. Types of Legal Entities

There are many types of legal entities able to be formed in **Canada**. This Guide will provide information on Federally Incorporated Corporations:

Federally-incorporated corporations pursuant to the *Canada Business Corporations Act (CBCA Corps)*.

Type of legal entity	CBCA Corps	
What is the minimum number of natural persons required for formation?	One director or three directors for distributing corporations	
	Yes	No
Is there a requirement to register with the company registry?	X	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)		X
Is there a residency requirement for directors?	X	
Are bearer shares/share warrants permitted?	X*	
Is a Trust and Company Service Provider required to form?		X
Is a registered agent in the jurisdiction of formation required?		X
Is the entity required to hold financial account(s) in jurisdiction of formation?	X	
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?	X	
Does the jurisdiction allow for nominee directors?		X
If so, are they required to disclose their status as nominee directors?		
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		
Does the jurisdiction allow for nominee shareholders?	X	
If so, are they required to disclose their status as nominee shareholders?	X	
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	X	

* Bearer shares and share warrants are not required to be disclosed to federal registration agency.

III. How to Access Information

This guide will address the ability to access information on entities formed in **Canada** available in 1) registries and 2) other channels.

Registries

The registry in **Canada** is called Corporations Canada.

Contact information for the registry is provided here:

Name: Virginia Ethier (Director)

Agency: Corporations Canada

Address: 235 Queen Street

Ottawa, Canada

Phone: 1-866-333-5556

Contact:

http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07026.html#type=visit&from=Corporations&pageid=E770-Hcs00000

Website: www.corporationscanada.ic.gc.ca

In general, the following information is publicly available online (free or for a nominal fee, with no log-in requirements):

1. Name of Legal Entity
2. Entity Number (if any)
3. Type of Legal Entity
4. Date of Incorporation
5. Current Status (active, etc.)
6. Principal Address of Business
7. Officer/Director Information

In general, the following information is not available online, but may be available through another form of public access (*i.e.*, in person only or via a pre-registration requirement) or to law enforcement, through specific procedures listed in further detail below:

1. Articles of Incorporation
2. Annual/Biennial Reports
3. Application / Certificate of Formation
4. Register of Charges
5. Historical Documents

Registry update

CBCA corporations are required to update information regarding directors and the registered office within 15 days of any change. Corporations are also required to file an Annual Return. Corporations Canada has the power to dissolve any corporation that defaults for a period of one year in sending any fee, notice or document required by the CBCA.

	Online Access (free or for nominal fee, no log-in requirements)	Other Public Access (available in person only or via pre-registration requirement)	Law Enforcement Access only	For Information/ documents accessible only by Law Enforcement, please describe how an investigator may access information
Name of Legal Entity	X			
Entity Number (if any)	X			
Type of Legal Entity	X			
Date of Incorporation	X			
Current Status (active, etc.)	X			
Principal Address of Business	X			
Principal Purpose of Business				
Registered Capital				
Registered Agent Information				
Officer/ Director Information (incl. power of representation)	X			
Shareholder/ Member Information				
Memorandum				
Articles of Incorporation		X		
Application/ Certificate of Formation		X		
Annual/ Biennial Reports		X		
Shareholder Register				
Register of Charges		X		
Bank Account Information				
Payment Records				
Historical Documents (example: past annual filings)		X		

Other Channels

The explanation below outlines the channels by which foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons from different sources in **Canada**.

Channels through which foreign authorities may obtain information

**Legal entities/ Relevant Individuals
(directors, shareholders, managers, associates, family members, etc.)**

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals						
Records/ documents						

**Legal arrangements/ relevant individuals
(trustees [nonprofessional], settlers, beneficiaries, protectors, etc.)**

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals						
Records/document s						

Financial Institutions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel						
Accounts records/ documents						

Trust and Company Service Providers

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel						
Accounts records/ documents						

Other Designated Non-Financial Businesses and Professions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel						
Accounts records/ documents						

IV. Other Useful Sources of Information

Resource Name	Web Link
Corporations Canada	www.corporationscanada.ic.gc.ca
Corporations Canada is the federal agency who administers the CBCA.	