

Intelligence MEMOS



From: Denis Meunier
To: Financial Entities, Securities Dealers, Life Insurance Sector and Money Services Businesses
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Re: **CANADA BUSINESS CORPORATION ACT CHANGES TO BENEFICIAL OWNERSHIP: HALF-MEASURES TO COMBAT MONEY LAUNDERING AND TERRORIST FINANCING**

Ottawa moved too cautiously on ownership declarations from business entities in its recent changes to the act that governs Canadian companies.

And if, as envisaged, the revised *Canada Business Corporations Act* (CBCA) is to be the model for the provincial and territorial business corporations acts, then the prognosis for the fight against money laundering is not good. Federal half-measures to unmask the secretive owners of private corporations deprive it of the full benefits of the single most important measure that can be taken to combat money laundering – full disclosure of beneficial ownership.

While the legislation is better than nothing, it is inadequate for a serious effort at combating money laundering and terrorist financing as four significant loopholes have been created.

The first and most serious vulnerability is the absence of any verification of the identities of Individuals with Significant Control, ISCs in the jargon, with government-approved identification documents, or their numbers at least, when registering with Corporations Canada. Since criminals lie and cheat, why would they not provide fake or stolen identities when registering?

The second is the 25 percent threshold for ‘significant control’ for an ISC. This is an easy threshold to pass for professional money launderers and is both weaker and inconsistent with the 10 percent that determines who is an “insider” under securities legislation across the country.

The third issue with the legislation is its feeble sanctions. Even if a shell company director, likely a patsy nominee, fails to provide proof of identity of the beneficial owner of the private corporation (likely years into an audit by Corporations Canada, and presuming the company has not folded) the strictest CBCA penalty for knowingly providing false or misleading ISC information is a \$200,000 fine or six months in jail. When facilitating the laundering of millions of dollars, this is a small price to pay.

The fourth shortcoming is the restriction of organizations with access to a corporations’ registry, particularly in obtaining any beneficial ownership information. Police, the Canada Revenue Agency, provincial revenue agencies and other prescribed enforcement agencies alone may have access to a corporate registry and they need to make a service request to the corporation for that information. That request can only be made if the investigative body has reasonable grounds that the information would be relevant to an investigation of a scheduled offence and also suspects the corporation of wrongdoing or of being used for such a nefarious purpose.

Requests are to be made on site or by registered mail. If you were conspiring with a criminal organization to hide the beneficial ownership of the corporation, would you respond quickly, or at all, to such a request when you now know the investigative body might be on your trail?

Especially since you’ll only be facing a maximum \$5,000 fine for failure to comply with a request by an investigative body. This is not much an incentive to comply, especially when the target now knows that an investigative body’s curiosity has been piqued about the beneficial ownership of its corporation.

If these changes to the CBCA on beneficial ownership are meant to guide provinces and territories on harmonizing and strengthening their own business corporation legislation, and adopted without revision to address the loopholes, it will be a happy day for criminals and professional money launderers across the country. Instead of facilitating money laundering, let’s combat it.

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