



Identification Requirements For Corporations

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Agenda

- Basics Legislative Scheme
- Quick Hits: When to Identify
- Identifying a Corporation
- Efforts to Identify
- Exemptions
- Practical Matters – Other Legislative Schemes
- Q&A

Disclaimer

- Presentation will provide a summary only of the identification requirements for corporations under PCMLTFA
- Obtain independent legal advice on compliance procedures and thresholds
- Exemptions (including reliance on other persons identification verification) and irregular or specific situations may not be covered in presentation
- Topical and Ever-Changing Field – substantial changes made effective June 1, 2021, and federal parties (PCMLTFA is a federal act) have made varying promises that may affect future obligations under act

The Basics - *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

- *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) is a Canadian federal act that sets out rules for money laundering for the real estate brokers and agents, real estate developers, casinos, banks, credit unions and certain insurance companies, among others
- Objective of PCMLTFA is to, among other things:
 - “*detect and deter money laundering and the financing of terrorist activities and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences*” (Section 3(a) of PCMLTFA)
- PCMLTFA creates regime through which clients and transactions are to be identified and, in certain situations, reported to the Financial Transactions and Reports Analysis Centre of Canada

The Basics – When to Identify

- Receipt of Funds (including for a deposit)
 - \$10,000 or more in cash
 - \$10,000 or more in a “virtual currency”
- 24-hour rule
- Business Relationship

“a relationship that is established with a client by a person or entity to which section 5 of the Act applies and that involves financial transactions or the provision of services related to those transactions”

- Ongoing Relationship Requirements
- Unrepresented Parties

Identification of Corporations

- Corporations - Summary
- Directors
- Shareholders and Beneficial Owners

Corporations - Summary

- Canadian corporations formed under provincial or federal statutes

Examples:

- *Business Corporations Act* (British Columbia) (“**BCBCA**”)
- *Canada Business Corporations Act* (Canada)

- All corporations formed under these statutes have a publically-accessible filing, which differs depending on statute

Example: BCBCA Companies have a “Notice of Articles” which contains certain information about the company, including the name and addresses of all directors and the share capital

Corporation Identification Under PCMLTFA

- Section 109(1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (the “**Regulations**”):

***109 (1)** A person or entity that is required to verify a corporation’s identity shall do so by referring to its certificate of incorporation, to a record that it is required to file annually under applicable provincial securities legislation or to the most recent version of any other record that confirms its existence as a corporation and contains its name and address and the names of its directors.*

Corporate Identity – Corporate Documentation

- Certificate of Incorporation (Certificate of Change of Name, Certificate of Amalgamation, Certificate of Continuation)
- Certificate of Good Standing / Certificate of Status
- Notice of Articles (BCBCA Term)
- Articles or Bylaws
- Shareholders agreements
- Minute Books and Director and Shareholder Resolutions
- Director's Register
- Central Securities Register
- Beneficial Ownership Register (BCBCA and CBCA Requirements)

Corporate Identity – *Authentic, Valid and Current*

- Records used to verify identity must be “*authentic, valid and current*” (Section 109(2) of the Regulations)

Issued by Corporate Registry

- Certificate of Incorporation (or amalgamation or change of name)
- Certificate of Status
- Notice of Articles (BCBCA only)
- Annual Reports

Corporate Responsibility (Registered Records Office)

- Articles
- Minute Book
- Registers

Corporate Identity – Public Documents

“190(5) If a person or entity that is required to verify a corporation’s identity does so by referring to an electronic version of a record that is contained in a database that is accessible to the public, they shall keep a record that sets out the corporation’s registration number, the type of record referred to and the source of the electronic version of the record. In any other case, they shall keep the record or a copy of it.”

Corporate Identity – Directors

Names of each director of a corporation required to be recorded (Section 109(1) of the Regulations)

Each corporation must have at least one director

Documents to Review

- Notice of Articles
- Director's Register
- Shareholders Resolutions (Minute Book)

Corporate Identity – Shareholders and Beneficial Holders

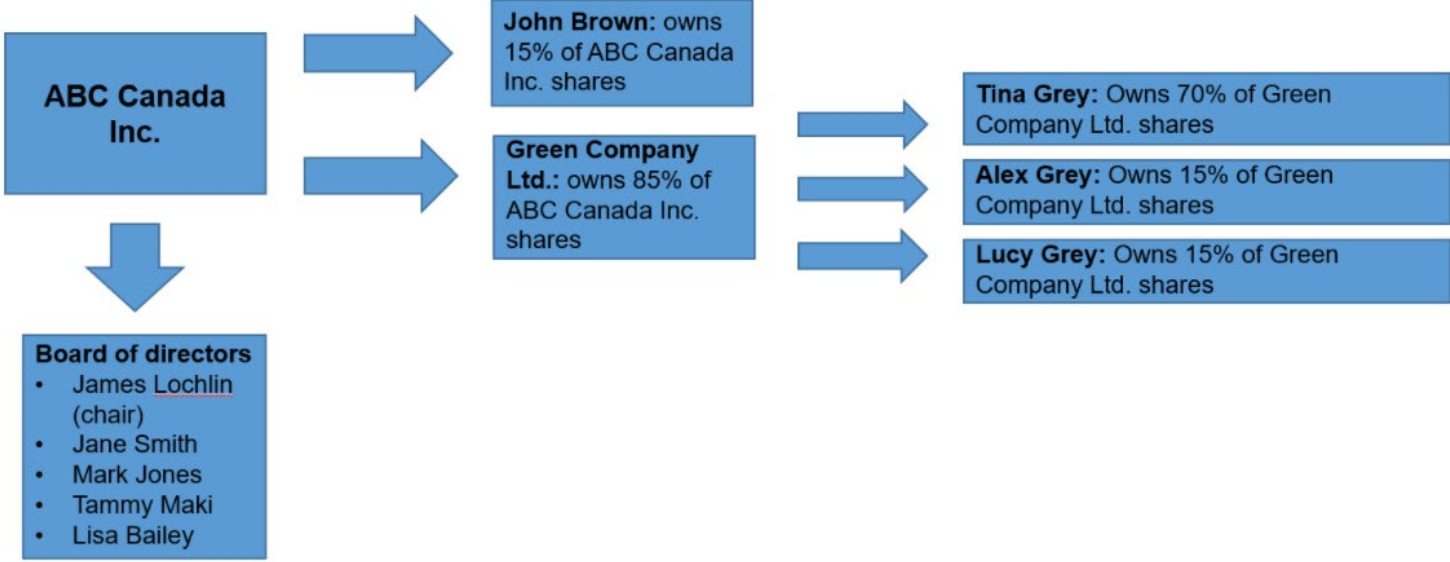
The following information must be obtained:

1. the names and addresses of all persons who own or control, directly or indirectly, 25% or more of the shares of the corporation
2. information establishing the ownership, control and structure of the entity

Documents to Review

- Shareholder Register
- Transparency or Control Register
- Articles or Bylaws
- Shareholders Agreement
- Shareholders Resolutions
- Directors Resolutions Issuing Shares (Minute Book)

Corporate Identity – Directors and Shareholders



Source: Diagram 1 – Beneficial ownership information for a corporation published as part of the “Beneficial ownership requirements” by the Financial Transactions and Reports Analysis Centre of Canada (<https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/bor-eng#fn20211>)

Efforts to Identify

“138(2) Every person and entity that is subject to subsection (1) shall take reasonable measures to confirm the accuracy of the information when it is first obtained under that subsection and in the course of ongoing monitoring of business relationships.

(3) The person or entity shall keep a record that sets out the information and the measures taken to confirm the accuracy of the information.”

Efforts to Identify

“138(4) If the person or entity is not able to obtain the information, to keep it up to date in the course of ongoing monitoring of business relationships or to confirm its accuracy, the person or entity shall take

(a) reasonable measures to verify the identity of the entity’s chief executive officer or the person who performs that function; and

(b) the special measures referred to in section 157.” [special measures for high-risk clients]

Exemptions

You are not required to identify an entity's if they are a:

- a public body
 - Includes a municipal or provincial governmental body
- a corporation or trust that has minimum net assets of \$75 million on its last audited balance sheet, whose shares or units are traded on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the *Income Tax Act* and that operates in a country that is a member of the Financial Action Task Force
 - Includes large publically traded companies
- a subsidiary of a public body referred to in paragraph (m) or a corporation or trust referred to in paragraph (n) whose financial statements are consolidated with the financial statements of that public body, corporation or trust

(See Section 154(2)(m), (n) and (o))

Records of Identification Efforts

- You must keep a record of your efforts to identify, and why/how you determined an entity does not need to be identified, or what steps you took if you were not able to establish certain information
- You must keep records for at least 5 years from the day the last business transaction is conducted

Practical Matters

While information may seem invasive, it is consistent with beneficial information required to be kept under other statutes

- BCBCA and CBCA require a corporations record's office to maintain a Transparency / Control Register, which requires all “significant individuals” (or similar individuals’ – with 25% trigger) names, addresses, DOB and citizenship to be recorded (for the BCBCA)
- *Property Transfer Tax Act* requires the above information plus SIN numbers (for Canadians) to be included on Property Transfer Tax Returns for all “Corporate Interest Holders” (25% trigger)
- *Land Owner Transparency Act* has trigger at 10% of any class of shares (regardless of whether they allow the holder to exercise control or not)

Ryan McCracken

ASSOCIATE



Real Estate and Corporate/Commercial Law

rmccracken@farris.com

(604) 661-2170

Q&A

THANK YOU