

**Ministry of Finance****BRIEFING DOCUMENT**

**To:** Honourable Carole James  
Minister of Finance  
and Deputy Premier

**Date Requested:** November 22, 2019  
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**TITLE:** Exemptions to the Corporate Transparency Register Requirement in the  
*Business Corporations Act*

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**PURPOSE:**

**(X) DECISION REQUIRED**

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**COMMENTS:** Exemptions to the transparency requirement for classes of companies and intermediaries that are: at low or no risk of being used to obscure ownership or control; already regulated or subject to disclosure requirements under other legislation; and/or unlikely to meet control or ownership thresholds.

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**DATE PREPARED:** November 28, 2019

**TITLE:** Exemptions to the Corporate Transparency Register Requirement in the *Business Corporations Act*

**ISSUE:** Regulation to exempt classes of companies and intermediaries that are not the targets of the corporate transparency register

**BACKGROUND:**

On May 16, 2019, B.C. passed the *Business Corporations Amendment Act, 2019* ("BCA Amendment") establishing a corporate transparency register for companies. This is aimed at capturing information about significant individuals, i.e., individuals who have ownership or control over private B.C. companies, whether directly or indirectly (also known as beneficial owners).

When the amendments come into force on May 1, 2020, all private companies will be required to create and maintain a transparency register of significant individuals in their corporate records. Public companies are exempt from the transparency register requirement. Legal entities not governed by the *Business Corporations Act* ("BCA"), including extra-provincial and federal corporations, non-profit corporations and cooperatives, are also excluded.

No other class of companies has yet been exempted from the transparency register requirement under the regulatory power of the BCA Amendment.

Stakeholders have suggested that additional exemptions may be appropriate. Notably, members of the private bar are asking whether wholly-owned subsidiaries of public companies will be exempt from the transparency register requirement.

**DISCUSSION:**

As of May 1, 2020, all private B.C. companies will be required to create and maintain a transparency register. The main objective of a corporate transparency register is to prevent the use of companies or intermediaries to hide the identity of the natural persons ultimately owning or controlling the companies.

The BCA Amendment provides, however, that the Lieutenant Governor in Council may make regulations to exclude a class of companies from the definition "private company," or a class of individuals from being a significant individual for the purposes of the transparency register.

Exemptions may be appropriate so as not to impose administrative inconvenience on a class of companies or intermediaries that is not the target of the corporate transparency register because:

1. There is no or low risk that the class of companies or intermediaries can be used to obscure ownership or control, e.g., government corporations are controlled by public officers and cannot be exploited by private interests for money laundering;
2. The class of companies or intermediaries is already regulated or subject to beneficial ownership disclosure requirements under other legislation, e.g., professional trust companies are already regulated and subject to disclosure requirements under financial institution law;
3. The thresholds set in the legislation or regulation with respect to ownership or control are not likely to be met, e.g., public companies are broadly held and unlikely to have shareholders or rightsholders meeting the control threshold for intermediaries (ownership of more than 50% of the shares or votes).

These criteria are good indications that a class of companies or intermediaries can be exempt without frustrating the objective of the transparency register. Similar criteria were used to establish exemptions to the land owner transparency register under the *Land Owner Transparency Act* (“LOTA”) also passed on May 16, 2019.

Two categories of exemptions to the corporate transparency register are discussed below: (1) classes of companies from the definition of “private company;” and (2) classes of intermediaries from the definition of “intermediary.” For consistency, the same three criteria are used for both categories of exemptions.

### ***Classes of companies from the definition of “private company”***

The first category of exemptions relates to private B.C. companies that are required to create and maintain a transparency register. This first category is narrower as it only looks at companies governed by the BCA that will be required to have a transparency register on May 1, 2020 unless exempt from the requirement.

The BCA Amendment allows government to exempt classes of B.C. private companies from the transparency register requirements by excluding them from the definition of “private company”.

Based on the three above criteria, it is suggested that not all private B.C. companies are the targets of the corporate transparency register; private B.C. companies that are not

targets should be exempt from the requirement to create and maintain a transparency register.

The suggested exclusions from the definition of "private company" in Table A meet at least two of the three criteria for exemption.

**Table A**

Class of Company*	No or Low Risk	Already Regulated	Unlikely to Meet Thresholds
Wholly-owned Subsidiary of Public Company	✓	✓	✓
Trust Company as defined in <i>Financial Institution Act</i>	✓	✓	
Insurance Company as defined in <i>Financial Institution Act</i>	✓	✓	
Government Corporation as defined in <i>Financial Administration Act</i>	✓	✓	✓
Subsidiary of Corporation Created or Continued by Act	✓		✓
Corporation Incorporated by Regional District	✓	✓	✓
Corporation Incorporated by Municipality	✓	✓	✓
Corporation Wholly-owned by Indigenous Nation	✓		✓

Already  
exempt  
under  
LOTA

***Classes of intermediaries from the definition of "intermediary"***

The second category of exemptions relates to situations where an individual has indirect control of a private B.C. company. Indirect control refers to situations in which there is at least one intermediary between the private company and the significant individual at the top. An individual with indirect control of the private company must be listed as significant individual in the company's transparency register.

This second category is broader as it looks at various types of intermediaries, which include companies but also other types of legal entities or persons such as trusts and partnerships. Just like with classes of companies that are not targets of the

\* All the classes of companies listed in Table A are also exempt from the land owner transparency registry under the LOTA.

transparency register provisions, there are also classes of intermediaries that by their nature are also not targets of the transparency register provisions.

Based on the same three criteria, it is suggested that not all classes of intermediaries are the targets of the corporate transparency register; individuals controlling intermediaries that are not targets should be exempt from the requirement to be listed in private companies' transparency registers. Practically, this means that when the company is looking through the intermediaries to determine whether there are any significant individuals, the company will be entitled to stop searching once it encounters one of these intermediaries.

Table B

Class of Intermediary	No or Low Risk	Already Regulated	Unlikely to Meet Thresholds
✓ Public Company†	✓	✓	✓
✓ Wholly-owned Subsidiary of Public Company	✓	✓	✓
✓ Trust Company as defined in <i>Financial Institution Act</i>	✓	✓	
✓ Insurance Company as defined in the <i>Financial Institution Act</i>	✓	✓	
✓ Credit Union as defined in <i>Credit Union Act</i>	✓	✓	
✓ Government Corporation as defined in <i>Financial Administration Act</i>	✓	✓	✓
✓ Corporation Created or Continued by Act	✓		✓
✓ Corporation Incorporated by Municipality	✓	✓	✓
✓ Corporation Incorporated by Regional District	✓	✓	✓
✓ School District Business Company as defined in <i>School Act</i>	✓	✓	✓
✓ Corporation Wholly-owned by Indigenous Nation	✓		✓
✓ Testamentary Trust‡	✓		✓

† Excluding a public company from the definition of “intermediary” for the purposes of determining indirect control would be consistent with the exemption for a company that is: (a) a reporting issuer, (b) a reporting issuer equivalent, (c) a company listed on a stock exchange under the BCA Amendment (ss 119.1 and 119.2).

‡ Excluding a testamentary trust from the definition of “intermediary” for the purposes of determining indirect control would be consistent with the exemption for a beneficial interest that is contingent on the death of another individual under the BCA Amendment (s 119.11(2)(a)(ii)).

**OPTIONS:****Option 1 – Approve all exemptions**

- Exemptions would be welcome by the public sector as it would ease the compliance burden for government corporations and the like, and by the private bar as it would ease the compliance burden for public companies and their wholly-owned subsidiaries.
- Exemptions are in line with those in the LOTA to create a beneficial ownership registry of land in B.C.<sup>§</sup>
- Exemptions may have to be monitored for abuse.
- Will require an amendment to the *Business Corporations Regulation*.

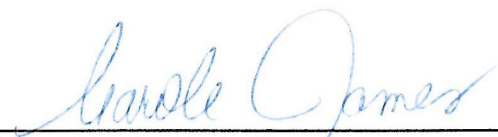
**Option 2 – Reject all exemptions**

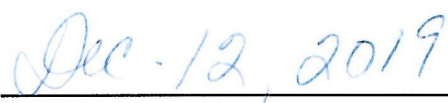
- No exemption means that the rule that all private companies keep a record of beneficial ownership information remains intact.
- Not having exemptions may cause some administrative inconvenience for classes of companies or intermediaries that are not the targets of the transparency register.

**RECOMMENDATION:**

Option 1 – Approve all exemptions

**APPROVED / NOT APPROVED**

  
 Honourable Carole James  
 Minister of Finance and Deputy Premier

  
 Date

<sup>§</sup>Some corporations listed in Schedule 1 of the LOTA, including crown corporations, strata corporations, credit unions and corporations created or continued by act, are not governed by the BCA and, consequently, not required to create and maintain a corporate transparency register under the BCA Amendment.