

Ministry of Finance**BRIEFING DOCUMENT**

To: Lori Wanamaker, FCPA, FCA **Date Requested:** September 11, 2019
Deputy Minister **Date Required:** September 18, 2019

Initiated by: Joseph Primeau **Date Prepared:** September 18, 2019
Executive Director
Financial and Corporate Sector
Policy Branch

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Financial and Corporate Sector
Policy Branch

Cliff #: 384919

TITLE: Consultation for a publicly accessible, government-maintained
transparency registry of the significant individuals of BC private companies

PURPOSE:

(X) DECISION REQUIRED

Executive Director approval: _____

ADM approval: _____

DATE PREPARED: September 18, 2019

TITLE: Consultation for a publicly accessible, government-maintained transparency registry of the significant individuals of BC private companies.

ISSUE: Approval to initiate the process for a public consultation for a centralized transparency registry of significant individuals of BC private companies

BACKGROUND:

The Expert Panel on Money Laundering in BC Real Estate (“Expert Panel”) recommended that BC issue a discussion paper concerning the implementation of a full corporate beneficial ownership registry covering all legal persons similar to the registry established under the *Land Owner Transparency Act* (“LOTA”). See Appendix A for the full recommendation with Expert Panel’s rationale.

In May 2019, BC passed the LOTA, establishing the framework for a publicly accessible, government-maintained registry of beneficial owners of property in BC. At the same time, BC also passed the *Business Corporations Amendment Act* requiring all private BC companies to create and maintain a transparency register of significant individuals¹ in their records office where it can be accessed by law enforcement, tax authorities and other regulators. This difference in location of the information and access to it is one of the key differences between these two statutes.²

The *Business Corporations Amendment Act* did not create a government-maintained transparency registry as it represented phase I of a pan-Canadian approach to increase beneficial ownership information of corporations across the country. In particular, the federal-provincial-territorial working group on beneficial ownership agreed to the following two phases:

Phase I – require private companies in all Canadian jurisdictions to create and maintain beneficial ownership information in their corporate records (completion date July 2019).

¹ “significant individuals” is the legal term in the Act for who must be listed in the transparency register. It is effectively the ultimate/beneficial owners of the company.

² Other differences include that fact that LOTA is concerned with the beneficial owners of land only, whether the land is held by a company, trust or partnership.

Phase II – require the information collected in Phase I to be stored in a government-maintained registry; the registry may or may not be public (work to begin fall 2019 or winter 2020).

Unlike the beneficial ownership of land in BC, which is a provincial matter, the beneficial ownership of corporations is a shared endeavour as all 14 Canadian jurisdictions must make the same legislative changes for the goal to be effective across Canada.

The work of federal-provincial-territorial working group on beneficial ownership continues but the focus now is on phase II. The federal government has indicated that it will launch a public consultation on a government-maintained registry of corporate beneficial ownership in winter 2020.

DISCUSSION:

The Expert Panel's recommendation is essentially to follow the same approach taken during the development of LOTA by issuing a consultation paper with draft legislation. Finance staff believe effective consultation can be done without draft legislation as the *Business Corporations Amendment Act* already established the most important aspect of the project: who must be listed as a significant individual. At this point, consultation will be focused on the design of the corporate beneficial owner registry itself. In particular, the issues for discussion include:

- Whether a government-maintained registry would benefit the province.
- Whether such a registry should be accessible by the public.
- Whether a fee is required for access.
- The degree to which the information is publicly limited.
- Whether the registry should include non-corporate entities, such as partnerships and trusts.
- The steps of government to ensure compliance and authenticity.

Most importantly, there is currently no draft legislation developed by legislative counsel and creating one would significantly delay the start of the consultation process. Finance staff would like to launch the consultation in October 2019 to allow for legislative amendments to be ready for introduction in spring 2021 should the government choose to do so.

Appendix B contains a listing of organizations that will be targeted specifically. Otherwise, the consultation paper will be available on the government website for participation by all constituents.

RECOMMENDATION:

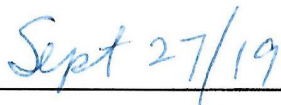
It is proposed that the Ministry issue a brief high-level policy paper seeking stakeholder comments. The consultation paper can be limited to target key policy areas and can be issued quickly. A follow-up briefing note will come shortly setting out the scope of consultation. This is consistent with the approach taken for the review of the *Financial Institution Act*.

Attachments

APPROVED / NOT APPROVED



Lori Wanamaker, FCPA, FCA
Deputy Minister



Date

Appendix A: Expert Panel Excerpt

Recommendation 5

The BC government should develop a discussion paper with draft legislation for consultation about the implementation of a full corporate beneficial ownership registry covering all legal persons that is consistent with best practices and that integrates with the *Land Owner Transparency Act*.

Beneficial Ownership of Corporations and Trusts

It is widely recognized, including in FATF recommendations and directives issued by the European Union, that all jurisdictions that allow legal persons to own property should ensure accurate and timely disclosure of beneficial ownership. Unfortunately, that approach will only be effective if most jurisdictions participate, and at present most do not.

Canada and all of the provinces have committed to increasing beneficial ownership disclosure, as set out in the Agreement to Strengthen Beneficial Ownership Transparency announced by federal, provincial and territorial finance ministers in December 2017. Under the agreement, as a first step, corporations will be required to maintain beneficial ownership records, and bearer shares will be eliminated, with implementation targeted for July 1, 2019. The federal government has introduced legislation to implement the agreement, and BC has committed publicly to proceeding. Alberta has indicated that it does not intend to proceed.

The next step in achieving transparency would be to create searchable, public corporate beneficial ownership registries meeting the same best practices as LOTA does and including all legal persons, particularly trusts and partnerships. Creating and maintaining such a database is not a trivial matter and requires careful consideration of the legal and public policy implications, fiscal resource implications, compliance costs and potential competitiveness implications if the approach is not adopted by other jurisdictions.

New Tool: Full corporate beneficial corporate ownership registry needed.

Appendix B: Targeted List of Stakeholders for Consultation

Financial Industry Groups:

- Canadian Bankers Association
- Canadian Life and Health Insurance Association
- BC Gaming Industry Association
- Canadian Gaming Association
- Canadian Money Services Business Association

Government Bodies:

- Canada Revenue Agency
- Department of Finance Canada
- Financial Transaction Reporting and Analysis Centre
- The Corporate Registry
- Real Estate Council of BC
- Office of the Superintendent of Real Estate

Professional Bodies:

- Canadian Bar Association
- Law Society of BC
- Canadian Professional Accountants
- Society of Notaries Public of BC

Civic Groups:

- Canadian Coalition for Good Governance
- Canadians for Tax Fairness
- Transparency International Canada
- OpenOwnership
- Canadian Tax Foundation

Law Enforcement:

- RCMP
- Public Prosecution Service of Canada
- British Columbian Police Departments.
- BC Prosecution Service

Business Interest Groups:

- Business Council of Canada
- Canadian Federal of Independent Business
- Business Council of BC
- Chambers of Commerce – notably the BC Chamber of Commerce and other local ones including the Greater Victoria Chamber of Commerce.
- Local Boards of Trade
- Small Business BC