

Ministry of Finance**BRIEFING DOCUMENT**

To: Honourable John Horgan
Premier

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Minister of Finance and
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TITLE: Summary of Land Owner Transparency Act (LOTA) legislation and registry

PURPOSE:

(X) FOR INFORMATION

Executive Director approval: _____

ADM approval: _____

DM approval: _____

DATE PREPARED: March 13, 2019

TITLE: Summary of LOTA legislation and registry

ISSUE: The Premier's Office has requested an overview of the LOTA legislation and registry.

BACKGROUND:

The proposed Land Ownership Transparency Act creates a framework for disclosure requirements to identify the actual owners of properties in BC. Currently, entities such as trusts, partnerships and corporations that own land can be used to disguise the underlying beneficial owners of property. The information collected under LOTA will be used to inform taxation and regulatory agencies to prevent tax evasion and non-compliance with regulations. In addition, the public will have access to information about the beneficial ownership of property, subject to certain limitations.

Registry Operations

The disclosure requirements under the LOTA will apply to trusts, corporations and partnerships (reporting bodies) and will be required in the following three circumstances:

- on any application to register an interest in land in the name of a reporting body;
- any time there is a change of interest holders or beneficial owners, even if this does not result in a legal transfer of title (e.g. sale of shares in a corporation that owns land); and
- for reporting bodies that are pre-existing owners at the time the legislation comes into force, a disclosure will be required within a prescribed period to ensure that there are no gaps in the information.

To ensure that reporting bodies file the appropriate transparency reports, when the legislation comes into force, **all** applications to register an interest in land will need to be accompanied by a form referred to as a transparency declaration. This applies to all property, residential and commercial, unless specifically excluded (e.g. treaty lands). This form will act as a signal to alert the applicant that he or she could be a reporting body and satisfy the registry that the applicant had turned his or her attention to the possibility. If the declaration indicates that the transferee is **not** a reporting body, the transfer will proceed as normal. No information about the transferee will appear on the transparency register; although, information about individual owners will still be collected and will be searchable through the land title office, as it is today.

If the transparency declaration indicates that the transferee *is* a reporting body, the registrar of land titles will be restricted from processing the application to register an interest in land unless it is accompanied by a second form called a transparency report that sets out information about the interest holders and beneficial owners.

The legislation also requires reporting bodies to submit a new disclosure report if they become aware of a change to the interest holders/beneficial owners. Compliance with and enforcement of this requirement for reporting bodies to self-report will be much more difficult, as these changes in status will not trigger a transparency declaration as the transfers are not tied to transfer of legal title.

For example, if ABC Company is the registered owner of the property, and Joe Smith was identified in the transparency report as a corporate interest holder, ABC Company would need to file a new transparency report if Joe Smith sells all his shares to Greg Brown, or if he decides to hold his shares in trust for Jane Smith. This will be required even though "ABC Company" will remain the registered owner on title throughout all these transactions.

Public education will be important to ensure that reporting bodies are aware of their self-reporting obligations. The Land Title Survey Authority (LTSA), as the administrator of the registry, will be responsible for communicating with registered owners about the disclosure requirements under LOTA. Some strategies that could be used include a letter to all property owners with annual assessment notices, or a notice to all land-owning corporations and registered trustees to advise them that they may be required to file a transparency report under LOTA.

Enforcement Operations

In addition to anticipated use of public education to encourage compliance, the proposed legislation includes significant administrative and offence penalties to enforce compliance.

The penalty structure in the proposed legislation is as follows:

- Maximum administrative penalties:
 - For corporations: the greater of \$50,000 or 5% of the assessed value of the relevant property;
 - For individuals: the greater of \$25,000 or 5% of the assessed value of the relevant property.

- Maximum penalties for offences involving a person directly linked to a property (e.g. providing misleading information regarding a relevant property):
 - For corporations: the greater of \$50,000 or 15% of the assessed value of the relevant property;
 - For individuals: the greater of \$25,000 or 15% of the assessed value of the relevant property.

- Maximum penalties for offences involving a person not directly linked to a property (e.g. improper use of searched information):
 - For corporations: \$100,000;
 - For individuals: \$50,000.

Despite these significant penalties, enforcing compliance for pre-existing owners will be challenging. Although the LTSA, while administering the registry, will be able to flag any interest in land registered in the name of a corporation, it is not possible for the LTSA to know if the registered owner is a corporation that is required to file a transparency report. Furthermore, the LTSA is not able to identify all registered owners who are trustees or partners.

It will fall on the Ministry of Finance to develop an appropriate enforcement program to mitigate the risk of low compliance in these sorts of circumstances.

Reporting Bodies in Detail

As described above, the LOTA will require transparency reports from corporations, trusts and partnerships. These reporting bodies are carefully defined in the proposed legislation to ensure only reporting bodies that have relevance to the policy objectives of improving transparency in land ownership is achieved.

For example, exclusions under schedules in the legislation are provided in cases where there is little risk that the legal entity would be used as a mechanism to hide or ownership (e.g. where there are already public reporting requirements for ownership), or, in the case of corporations, where there is a low likelihood that any person would need to report beneficial ownership (i.e. unlikely that anyone would own more than 10% of the shares).

The reporting bodies are specifically described in LOTA as follows:

Corporations

- A company “however and wherever incorporated” (i.e. not only BC companies) and includes societies, cooperative associations, and limited liability companies.

- Examples of corporations that are excluded are:
 - a corporation that is listed on a designated stock exchange;
 - a government body;
 - a savings institution;
 - a pension fund society.

Trusts

- “An express trust, including a bare trust.”
- Examples of trusts that are excluded are:
 - a charitable trust;
 - a trust of which the trustee is the Public Guardian and Trustee;
 - a real estate investment trust in respect of which each beneficiary is an Indigenous nation or citizen.

Partnerships

- A general partnership, limited partnership, limited liability partnership or foreign partnership, within the meaning of the *Partnership Act*, but does not include a prescribed partnership or legal relationship.
- There are no exclusions from the definition; if any specific concerns arise after the legislation is passed regarding specific types of partnership, some exemptions may be provided in the regulations.
- Under the proposed legislation, the only exception for partnerships arises in cases where every partner is listed on title. In this situation, a transparency report is not required, because information about the partners be available through the land title office in the same way that it is listed for any other individual owner.

Public Searches of the Registry

The LTSA, as the administrator of the registry, will develop the registry system. Although, development of the system is still in very early stages, it is expected that the search process will closely follow the existing process for searches of the land title system. Members of the public will be able search the information in the register by name, parcel identifier, or any other search criteria prescribed by regulation, through a web-based application.

As the LTSA develops the system, working with the Ministry of Finance, the LTSA will determine the systems costs for implementing and maintaining the register. The intention of the legislation is for filing/search fees to cover the costs of administering the

register. Once the system is fully costed, a fee schedule for searches (and filing) will be developed.

Accessibility to Information

Members of the public will be able to access primary identification information. This includes:

- For corporations:
 - name of the corporation;
 - registered office and head office addresses;
 - jurisdiction of incorporation;
 - any information respecting a continuation or transfer into another jurisdiction; and
 - any prescribed information.
- For individuals:
 - full name;
 - whether or not the individual is a Canadian citizen or permanent resident;
 - any country of which the individual is a citizen (if not a Canadian or permanent resident);
 - city and province of principal residence (or city and country, if the primary residence is not in Canada); and
 - any prescribed information.
- For partnerships:
 - business name, if applicable;
 - type of partnership;
 - address of the partnership's principal business premises;
 - jurisdiction the laws of which govern the partnership or the interpretation of the partnership agreement; and
 - any prescribed information.

Vulnerable individuals, such as victims of domestic abuse, will be able to apply to the registry administrator to omit their personal information from the publicly accessible register. Transparency reports filed with the registry will be automatically held from the public register for 90 days to allow vulnerable individuals an opportunity to apply to the administrator to omit or obscure information.

In addition, information about minors and individuals who have been found to be incapable of managing their affairs will not be made publicly accessible.

Law enforcement, tax authorities, and regulators, as defined in LOTA will have full access to all information in the transparency reports (including information about vulnerable individuals, minors, and individuals incapable of managing their affairs). In addition to the primary identification information, this includes:

- date of birth;
- last known address;
- social insurance number;
- individual tax number, if any;
- whether or not the person is a resident in Canada for income tax purposes;
- the date on which the individual became or ceased to be an interest holder;
- a description of how the individual is an interest holder;
- where applicable, the fact that a determination of incapacity has been made; and
- any prescribed information.

If a reporting body is unable to obtain or confirm information about beneficial owners, this must be indicated in the transparency report and this information will be available to law enforcement, taxing authorities and regulators. Finally, these agencies will have access to additional information about the reporting bodies (corporations, trusts and partnerships) themselves, including business numbers and information about the settlors of a trust.

Relationship with Business Corporation Act (BCA) Amendments

Amendments to the BCA are planned to be introduced at or around the same time as the LOTA. These amendments will require BC companies to hold accurate and up to date information on beneficial owners in their records offices. The amendments are part of a Federal-Provincial-Territorial (FPT) initiative to improve beneficial ownership transparency and will be a first step towards meeting international standards regarding beneficial ownership transparency.

Unlike LOTA, the BCA amendments will not require reporting of beneficial ownership to a central registry. Also, unlike the LOTA, trusts or partnerships will not be affected, but all private companies will be, despite whether they own land. As well, whereas the LOTA registry will include publicly accessible information, under the BCA amendments,

the information to be kept in the corporate records offices will not be available to the public and will only be accessible by tax authorities, police and certain regulators.

Despite the differences, the two proposals have been aligned as much as possible, as many companies will be required to collect beneficial ownership information under both statutes.

The major difference between the two is in respect of the ownership thresholds that require the person to be listed in the respective registry. The LOTA has a smaller threshold of beneficial ownership (10 per cent) versus the BCA (25 per cent). The LOTA threshold was based on advice received from the Expert Panel on Anti-Money Laundering and the BCA threshold was reached through a consensus amongst all the FPT partners.

Anticipated Launch

The creation of the LOTA registry will result in significant new business and operational requirements for the LTSA. Based on Ministry of Finance staff current discussions with the LTSA, it is expected that LOTA will be brought into force in Spring 2020.

Key Messages

- Today in our province, the true ownership of real estate can be hidden behind numbered companies and offshore or domestic trusts. Establishing a registry of beneficial ownership is a long overdue policy change in B.C. that will help bring fairness back to our housing market. It will provide valuable information about the true ownership of real estate in B.C., helping tax authorities and law enforcement crack down on tax evasion, and identify tax fraud and money laundering.
- For the first time in Canada, the Land Owner Transparency Act will end hidden ownership of real estate by creating a publicly accessible registry on beneficial ownership.
- It will reveal the true owners behind numbered companies, offshore or domestic trusts, and partnerships.
- This information will help tax authorities and law enforcement crack down on tax evasion and identify tax fraud and money laundering.
- This registry will help return fairness and transparency to B.C.'s real estate market as part of our 30-point Housing Plan to bring homes back within reach for people in B.C.