

Ministry of Finance
BRIEFING DOCUMENT

To: Honourable Carole James
Minister of Finance
and Deputy Premier

Date Requested:
Date Required:

Initiated by: Shauna Brouwer
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Policy and Legislation Division

Date Prepared: November 27, 2018

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Cliff #: 376762

TITLE: Proposed Changes to the Land Owner Transparency Act (LOTA)

PURPOSE:

(X) FOR DECISION

Executive Director approval: _____

ADM approval: _____

DM approval: _____

FD-1403 FCSF

DATE PREPARED: November 27, 2018

TITLE: Proposed Changes to the Land Owner Transparency Act (LOTA)

ISSUE: Several decisions are required to finalize drafting of LOTAs.

BACKGROUND:

On June 20, 2018, the government released a white paper including the draft Land Owner Transparency Act (LOTA) for public consultation. Feedback has been received and analyzed by staff. Staff are working to finalize the draft legislation in December.

The projected timelines for the project are:

- December 3: Final decisions needed to complete drafting
- December 17: Release of summary report from consultation
- December 31: Draft of legislation complete
- Early 2019: Final approval process (SSP, LRC)
- Spring 2019: Introduction
- Summer 2019: Public education process initiated
- Spring 2020: Launch of registry

DISCUSSION:

Issue for clarification: The consultation feedback suggests that confusion exists about the purpose of the registry. The registry established under LOTAs will collect information about the beneficial owners of property in British Columbia and will be used to inform future policy. It will also be used by tax and law enforcement officials during their investigations into breaches of other statutes.

Owning property through a corporation, trust or partnership is a legal activity (apart from deliberately doing so to avoid the foreign buyers' tax). The public consultation process suggested that this fact is poorly understood and that many in the public believe that the disclosure of beneficial owners of property will contribute directly to a reduction in money laundering and tax fraud. The purpose of LOTAs may require careful public communication when the legislation is finalized and introduced.

Issues for decision: Staff have reviewed LOTA in light of feedback from both the public consultation and other internal consultations and have identified three sets of policy issues that will require Minister direction. These issues are treated individually below (with three separate blocks for decisions).

The three sets of policy issues requiring direction are:

1. Public access to information on the beneficiaries of trusts;
2. Enforcement and compliance measures; and
3. Possible phased implementation of the registry.

Issue 1: Public access to information on the beneficiaries of trusts

One of the significant concerns raised during the consultation process is that the feature of the draft legislation that allows the public to access information on the beneficiaries of trusts represents a significant departure from the current treatment of trusts and raises considerable privacy concerns.

Individuals may create trusts for valid financial and estate planning purposes – for example, parents may hold a house in trust for their children but may wish to withhold that information from their children until the house becomes part of their estate. Allowing the public to search for the beneficiaries of trusts would allow the public (including, in this example, neighbours and the children themselves) to understand the financial arrangements of the parents.

Another issue that was raised through the public consultation is the potential impact on vulnerable individuals (e.g., victims of domestic violence). Although LOTA creates an application process by which information relating to vulnerable people can be removed from the publicly accessible data, the process requires a formal application and is subject to the discretion of the registrar. Not allowing the public to search for information on the beneficiaries of trusts could reduce the public's concerns about the safety of vulnerable individuals.

The UK and France have registries of beneficial owners but generally only allow tax and law enforcement officials to search for information about the beneficiaries of trusts. This restriction is based on privacy concerns.

Not allowing public access to information on beneficial owners of trusts would:

- Be inconsistent with the goal of maximizing transparency of real estate ownership;
- Potentially undermine the effectiveness or perceived effectiveness of the registry (although tax and law enforcement officials would be able to access the information);
- Be inconsistent with the Request for Legislation that initiated the draft LOTA;
- Reduce criticisms that the registry represents a significant violation of privacy;
- Be consistent with the treatment of trust beneficiaries in other jurisdictions; and
- Would provide an additional mechanism for protecting vulnerable individuals.

Option 1: Do not allow the public to search information on the beneficiaries of trusts – restrict access to information about beneficiaries of trusts to tax and law enforcement officials.

Option 2: Allow the public to search information on the beneficiaries of trusts.

Recommendation: Option 1.

– lengthed review period to 90 days

DECISION: Option 1 / Option 2

Issue 2: Enforcement and compliance measures

The LTSA and the public have raised concerns that the legislation, as drafted, may not provide sufficient incentive for property owners to comply with the legislation. The following measures are proposed as enhancements for enforcement and compliance:

- **Allow the administrator to require affidavits** from property owners that may have beneficial owners. This measure would give the administrators a significant tool to compel property owners to provide information.
- **Increase the maximum penalties for offences.** The current draft of LOTA allows for a maximum penalty for an offence of \$50K for an individual and \$100K for a corporation. However, for large corporations and others, this amount may be considered a cost of doing business.

The proposal is to add a criterion based on the value of the property so that the new maximum penalty for an offence would be the greater of \$50K for an individual and \$100K for a corporation; or 15 per cent of the property value.

Furthermore, the proposal is also to include the possibility of a prison term of up to two years for an offence. In practice, offences are unlikely to be prosecuted but even the remote the possibility of a prison sentence may incent compliance.

- **Allow a lien to be imposed against the property for unpaid penalties.** LOTA imposes penalties for both administrative violations and offences. While the possibility of a prison term may act as a deterrent to committing an offence under the Act, LOTA does not currently have a mechanism to enforce the collection of financial penalties. Under the current structure of LOTA, the possibility of financial penalties is unlikely to incent offshore property owners to comply with the Act.

The proposal is to allow a lien to be levied against the property for unpaid penalties. The lien would have to be discharged before the property could be sold. This measure would incent compliance and would facilitate the collection of penalties.

Introducing stronger enforcement and compliance measures would:

- Increase compliance with LOTA;
- Improve the quality of the data in the LOTA registry;
- Allow greater collection of penalties;
- Raise concerns that imprisonment or liens against property may be too severe consequences for failing to comply with a statute that is essentially a data collection statute.

Option 3: Allow the administrator to require affidavits; increase the maximum penalties for offences; allow the imposition of a lien against the property for penalties.

Option 4: Allow the following enforcement and compliance measures (please check):

- Allow the administrator to require affidavits;
- Increase the maximum financial penalties for offences to include the reference to property value;
- ~~Impose the potential for imprisonment as a penalty for offences;~~
- Allow the imposition of a lien against the property for penalties.

Option 5: Do not increase enforcement and compliance measures.

Recommendation: Option 3.

DECISION: Option 3 / Option 4 / Option 5

Issue 3: Possible phased implementation of registry

The LTSA has indicated that timelines are extremely tight for launching a full LOTA registry in Spring 2020. The LTSA has asked that the possibility be considered that the implementation of the registry be phased.

The registry will require disclosure information about beneficial owners under three circumstances.

- Stock – disclosure of the initial stock of beneficial owners. This exercise would require almost all corporations, trusts or partnerships that own land in British Columbia to make a disclosure about their beneficial owners. This represents a very large amount of information that the LTSA will have to process;
- Transfer of title – disclosure of beneficial owners when title to a property transfers. This information is already collected for purposes of the property transfer tax and requiring it for purposes of the LOTA registry would be a lesser exercise than collecting information on the stock of property; and
- Transfer of beneficial owners – disclosure of changes in beneficial owners without transfer of title (for example, when shares of a corporation that owns land are bought and sold). This information can only be collected if the ownership data is already in the LOTA registry.

One possibility for phasing the implementation of the LOTA registry would be to have the registry only apply upon transfers of title starting in Spring 2020, and have the full application of the LOTA registry apply beginning at a later date.

Allowing a phased implementation of the registry would:

- Give the LTSA adequate time to implement the LOTA registry;
- Increase the time that could be dedicated to public education about compliance with the Act; and

- Meet the commitment to launch a registry in Spring 2020 (but may be subject to criticism about delays in implementation of the full registry).


Option 6: Ensure that the legislation allows for the possibility of a phased implementation of the LOTA registry by regulation.

Option 7: Require full launch of the registry in Spring 2020.

Recommendation: Option 6.

DECISION: Option 6 / Option 7

report back on timing options



Carole James
Minister and Deputy Premier

Dec. 13, 2018

Date