

Ministry of Finance
BRIEFING DOCUMENT

To: Honourable Carole James
Minister of Finance
and Deputy Premier

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TITLE: Federal/Provincial Implications of Expert Panel on Money Laundering in
Real Estate recommendations

PURPOSE:

(X) FOR INFORMATION

Executive Director approval: _____

ADM approval: _____

DM approval: _____

DATE PREPARED: June 3, 2019

TITLE: Federal/Provincial Implications of Expert Panel on Money Laundering in Real Estate recommendations

ISSUE: Analysis of Expert Panel recommendations with federal and provincial impacts

BACKGROUND:

On May 9, 2019, the BC government released the Expert Panel's report (the report) entitled, Combating Money Laundering in BC Real Estate. Although the Expert Panel's primary focus was on making recommendations to address regulatory gaps in the provincial regulatory framework, the report emphasizes that money laundering is a national issue that requires a combined federal and provincial response. For this reason, many of the 29 recommendations in the report target regulatory changes that would fall under the federal government's responsibility, or the responsibility of our provincial and territorial counterparts.

This note provides a high-level analysis of the recommendations included in the Expert Panel's report, specifically with respect to recommendations that the Minister may wish to raise during the upcoming Federal/Provincial/Territorial (FPT) meeting.

DISCUSSION:

Provincial Regulatory Improvements

The first 12 recommendations of the report focus on provincial regulatory improvements. While most of these recommendations are specific to BC (e.g., implementing the *Land Owner Transparency Act* as quickly as possible and implementing the recommendations of the *Real Estate Regulatory Structure Review* report), some of the recommendations would have implications for our provincial and territorial counterparts and could be raised at the upcoming FPT meeting.

These include:

Recommendation 2: The BC Minister of Finance should encourage other provincial finance ministers across the country to implement beneficial ownership of land registries that are consistent with best practices.

- The Expert Panel highlights disclosure of beneficial ownership as the "single most important measure that can be taken to combat money laundering." For

this reason, all recommendations relating to beneficial ownership should be raised at the FPT meeting.

Recommendation 4: The BC Minister of Finance should encourage other finance ministers across the country to implement the Agreement to Strengthen Beneficial Ownership Transparency and enhance the disclosure of beneficial ownership for corporations, as soon as possible.

- So far, BC is the only province that has passed legislation to implement the December 2017 Agreement to Strengthen Beneficial Ownership Transparency (the federal government has also passed amendments to the *Canada Business Corporations Act*).

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*.

- Although this recommendation does not specifically address federal or provincial legislation, the Minister may wish to emphasize BC's commitment to improving the reporting of beneficial ownership information and the need for a combined federal and provincial response to money laundering.

National anti-money laundering legislation and practice

Recommendations 13 – 22 relate to national strategies that would require the participation of the federal government. Although any of these recommendations could be raised during the FPT meeting, some of the national recommendations may require some additional policy analysis before pursuing the recommendations with the federal government. These include:

Recommendation 13: The BC Minister of Finance should recommend to her federal counterpart that the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) be amended to add mortgage lenders and mortgage intermediaries to the list of reporting entities, in addition to the entities recommended by the Standing Committee on Finance.

- Although the report suggests that mortgage lenders and intermediaries (brokers) should be added to the PCMLTFA, it does not include a thorough analysis of the impact that this would have on mortgage lenders or of the benefit to be gained by creating this requirement. This recommendation could be considered more carefully as part of the review of the *Mortgage Brokers Act* (recommendation 9).

Recommendation 14: The BC Minister of Finance should suggest that her federal counterpart consider incorporating legal professionals in the anti-money laundering framework by requiring them to report suspicious transactions to the appropriate law society under the PCMLTFA.

- The fact that the PCMLTFA does not apply to legal professionals is a gap that is frequently raised both by the Expert Panel's report and by the media. However, this gap resulted from a decision by the Supreme Court. Solicitor Client Privilege

Solicitor Client Privilege

Recommendation 15: The BC Minister of Finance should suggest to her federal counterpart that the PCMLTFA be amended to require reporting entities in the real estate sector to conduct know-your-customer due diligence on beneficial ownership, as required for several other types of reporting entities, and that the disclosure of beneficial interest held by an individual be reduced from 25 per cent to 10 per cent.

- This recommendation would have a significant impact on licensees under the *Real Estate Services Act*. For that reason, the ministry may wish to conduct further analysis, including consultation with licensees before recommending these changes to the federal legislation.

Although some of the national recommendations may require further analysis, as indicated above, several of the recommendations in this section of the report could be pursued immediately. These include:

Recommendation 16: The BC Minister of Finance should recommend to her federal counterpart that the PCMLTFA be amended to authorize FINTRAC to provide information to specified provincial regulators and anti-money laundering investigative entities.

- Currently, FINTRAC has a very limited ability to share information any information that it collects. Expanding FINTRAC's ability to share information with specified regulators, such as the BC Securities Commission or the BC Financial Services Authority, would provide these agencies with additional investigative tools.

Recommendations 17, 18, 19, and 20:

- These recommendations deal with expanding the information and feedback that is provided to reporting entities and with providing improved training and education for reporting entities.

- Reporting entities report that the feedback they currently receive from FINTRAC is not useful for helping them to identify money laundering. Providing additional information to these reporting entities may help them to identify suspicious activity. Furthermore, many reporting entities do not understand their current requirements. Additional education and feedback on the quality of reporting may result on more consistent reporting of suspicious activity.

Recommendation 21: The BC Minister of Finance should recommend to her federal counterpart that FINTRAC collect information in suspicious transaction reports sufficient to analyze the geographic location of those transactions, including both the location within Canada where the transaction occurred and, where suspicious transactions have a foreign component, the countries involved.

- Currently, FINTRAC does not track any information about the geographic location of suspicious activity. If this information were collected, it could be used for statistical analysis that may be useful in identifying geographical trends in suspicious activity.

Data-sharing framework

Recommendations 23 – 25 deal with the creation of a data-sharing framework that can be shared with provincial and federal agencies. These recommendations will require significant work, including extensive review of privacy concerns before a data sharing framework can be implemented. However, the Minister may wish to highlight BC's commitment building a strong data-sharing framework, while emphasizing the need to work collaboratively with our provincial and federal counterparts to ensure a framework that facilitates analysis and investigation.

Investigation and collaboration

Recommendations 26 – 28 deal with the creation of a specialized financial investigations unit. These recommendations are not targeted towards our federal or provincial counterparts; therefore, the Minister may wish to focus on other key messages (e.g. the need to collaborate with our federal and provincial partners and the importance of creating effective beneficial ownership registries) rather than highlighting these recommendations.

Involvement of other provinces

Recommendation 29: The BC Minister of Finance should make every effort to convince her provincial colleagues of the importance of making combatting money laundering a provincial priority and using provincial finance and real estate-related regulatory changes in coordination with the federal and other provincial agencies to combat money laundering, consistent with the panel's recommendation.

- The final recommendation emphasizes the need to work across governments to effectively combat money laundering. This should be highlighted as a key message during the FPT meeting.

CONCLUSION:**Key messages for the FPT meeting**

- **Money-laundering is not just a BC problem – it is a national issue that requires collaboration and coordination with our federal and provincial counterparts.**
- **The Expert Panel’s report emphasizes the importance of creating effective registries of beneficial ownership in accordance with best practices. I encourage my provincial and territorial colleagues to table their own legislation for beneficial ownership of land and continue to work towards the Finance Ministers’ Agreement to Strengthen Beneficial Ownership Transparency.**
- **The federal Minister should initiate a review the PCMLTFA to improve the sharing of FINTRAC information. Additionally, it is important for FINTRAC and the federal government to improve education and feedback for FINTRAC reporting entities.**
- **BC is committed to conducting a comprehensive review of data-sharing and confidentiality to ensure the creation of an effective data-sharing framework.**