



OneFSR Legislative Summary

Presentation to the Financial
Services Authority

February 19, 2021



Ministry of
Finance

Agenda

- Background
- Overview of Legislation
- Consultation
- Summary of Changes
 - Discipline, Appeals, Rule-making, Fees, Governance, Board Appointments
- Statutory Immunity
- Implementation
- Transition Issues

Background

- Announcement: November 2019
- Recommended by:
 - *Perrin Report*
 - *Expert Panel on Money Laundering In Real Estate Report*
- Current co-regulatory structure:
 - Unclear roles create inefficiency.
 - Risk of market manipulation and abuse.

Overview of Legislation

- The proposed legislation:
 - Creates a single regulator
 - Responsible for matters currently under OSRE and RECBC
 - Brings real estate regulation into the BCFSA.
 - Greater opportunity for efficiencies in regulating the financial market
 - Vests most regulatory functions currently with the BCFSA Board in the Superintendent of Financial Institutions
 - Amends FIA and CUIA

Consultation

- Legislation:
 - Input from FSA, RECBC and OSRE staff.
- Other working groups (e.g. HR, Finance):
 - Representation from FSA, RECBC, and OSRE staff.
- Board Appointments: Ministry staff met with:
 - Real Estate Errors and Omissions Insurance Corporation.
 - Compensation Fund Corporation.

Consultation (cont'd)

- BC Real Estate Association:
 - Met with Ministry staff
 - Made written submissions/recommendations for single regulator
 - Will likely request BCFSA form industry advisory committee
 - Neither required nor precluded by the legislation

Summary of Changes

Major areas of legislative change:

- Discipline Model
- Appeals
- Rule-Making
- Fees
- Board Appointments to Statutory Corporations
- Governance

Discipline Model

Three levels of discipline:

- Letters of advisement (a warning);
- Administrative penalties;
- Discipline hearings.

Most substantive change – administrative penalties:

- More efficient for straight-forward discipline matters
- Reduce the backlog of discipline cases

Discipline Model (cont'd)

Administrative Penalty Regime

- Expanded: includes contraventions of the Act and the regulations (not limited to designated rules)
- Maximum penalty raised to \$100,000
- Ability to impose education requirements
- The right to request hearing no longer limited to a “due diligence” defence
- “Discounted” penalty amount to incentivize early payment

Discipline Model (cont'd)

Discipline Hearings

- Superintendent of Real Estate:
 - Statutory authority over all disciplinary matters
 - Can delegate

- Hearings:
 - For the most serious/contentious matters
 - Individuals with an Admin penalty may request a hearing
 - No longer a requirement for a “hearing committee”

- Consent orders:
 - “Deadline” for negotiating a consent order eliminated

Appeals

Appeals to the FST

- No automatic stay of an order
 - Public protection while discipline matter is resolved.
 - Consistent with the *Financial Institutions Act*.
 - On application, the hearing member may grant a stay.

- No increase in appeals expected:
 - Expanded admin penalty regime provides opportunity to be heard
 - Does not allow for an appeal to the FST

Rule-Making

- Authority transferred from Superintendent to FSA
- Approval required from the Minister of Finance
- Subject to the *Regulations Act*
 - Drafted by legislative counsel (Ministry of the Attorney General)
- Existing rules will be transitioned
 - Superintendent rules “deemed” to be FSA rules
 - 3 year grace period; if not material, rules can change without public consultation

Fees

- License fees:
 - Set by regulation
 - Will require Treasury Board Approval
- Education fees – set by the Superintendent
- REEOIC and the CFC – continue to set assessments
- BCFSA will collect fees at time of licensing
 - BCFSA may set a fee to reimburse it for incurred expenses

Governance

- Proposed amendments to the *Financial Institutions Act* (FIA) and the *Credit Union Incorporation Act* (CUIA):
 - will vest most regulatory functions currently with the BCFSA Board in the Superintendent of Financial Institutions.
 - will shift the focus of the BCFSA Board to a corporate oversight model.
 - allows the BCFSA to operate more effectively as it acquires a new major set of responsibilities under real estate.

Governance (cont'd)

- Amendments - allow transfer to Superintendent:
 - Other regulatory functions, primarily respecting the incorporation, amalgamation and winding up
 - By Ministerial regulation
- Certain core powers will be retained by the Authority
 - Cannot be transferred to the Superintendent
- One other substantive change:
 - More principles-based approach to appeals

Board Appointments

- Real Estate Errors and Omissions Insurance Corporation
 - 3 members appointed by the BC Real Estate Association
 - 3 members appointed by the REEOIC board
 - 1 member appointed by government

- Compensation Fund Corporation
 - 3 members appointed by the BCFSA
 - 2 members appointed by the BC Real Estate Association

Statutory Immunity

- Consistent with government policy and direction of Statutory Immunity Committee:
 - Directors and CEO – immunity under the FSAA and the FIA maintained
 - Directors and CEO – no explicit immunity under the RESA
 - Superintendent and individuals (including directors) acting on behalf of BCFSA – immunity under the RESA
 - Directors – availability of the province's Directors' Indemnity Program
 - CEO – Board should consider indemnity

Implementation

- Legislation:
 - Brought into force by Order in Council
 - Future date (to be determined)
- BCFSA's mandate letter and service plan:
 - Will reflect that the Authority will take on responsibility for the real estate sector within the next fiscal year

Transition Issues

RECBC Bylaws

- Current RECBC bylaws will no longer exist
 - Some of the provisions are in the legislation
 - Others may be in the rules
- Bylaws relating to the governance of the Council will no longer be required

Transition Issues (cont'd)

Human Resources

- RECBC and OSRE employees to transition to the BCFSFA
 - Proper notification period after the legislation passes
 - Seamless transition of employee pensions and benefits

Assets and Liabilities

- Transitional provisions provide for transfer of assets and liabilities from RECBC to the Authority