



November 26, 2018

VIA EMAIL: [REDACTED]

Shauna Brouwer
Assistant Deputy Minister
Policy and Legislation Division
Ministry of Finance

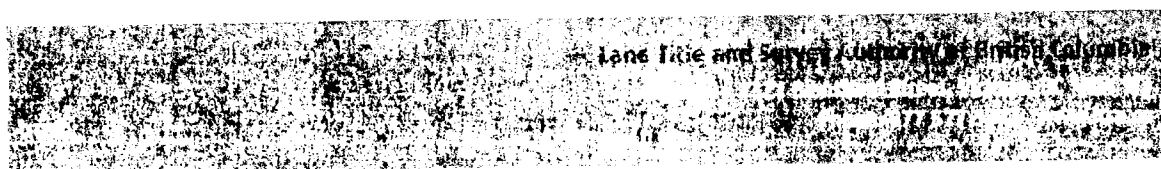
Dear Shauna,

The purpose of this memorandum is to follow-up on our November 16, 2018 Steering Committee meeting with a clear description of the challenges we discussed in implementing the *Land Ownership Transparency Act* as it is currently written. Specifically, the Land Title and Survey Authority (LTSA) is concerned about its ability to implement the compliance and enforcement provisions and we have some suggestions for changes that leverage our strengths as well as achieve the intent of the legislation.

We understand from the discussion at the Steering Committee you will be briefing Minister James in the near future and are sharing the information in this memorandum to help you clearly communicate what we believe is our "best-fit to role" administrative strategy. This will help us all as we continue to add precision to our understanding of how the legislation will operate in practice.

As with any major project, continually increasing the precision of thinking will be of increasing importance as we move towards finalizing the legislation, preparing government for debate in the legislature, communicating the purpose of the registry to the public and moving forward with system development and delivery.

The LTSA's "best-fit-to role" administrative strategy, as set out in this document, is based on the understanding that this is a registry of beneficial ownership information which will form one part - but only one part - of the government's dual strategies of combatting money laundering and moderating housing price increases. As such, the LTSA will administer the registry but does not have the core competence to take on such compliance and enforcement tasks as the gathering of evidence, the imposition of financial penalties or the collection of such penalties. It is our view that these actions are best performed by authorities equipped and experienced with broader investigative powers and suitable informational and technical resources at their disposal.



What the LTSA Can Do

1. LTSA can create the electronic and administrative systems that are required to enable corporations, partnerships and trusts to file the transparency declaration and disclosure documents contemplated by the Act. This will require the initiation of a significant systems development program. As with all substantive systems development programs, the time and funding required to complete this project will only be clear once we are further advanced with systems planning and procurement. It is expected that both cost and timing will be impacted by the availability of the appropriate professional resources.
2. Once required system work is completed, LTSA will provide the means by which designated professionals can file transparency reports and disclosure statements on behalf of their clients.
3. LTSA will build into its system the means to determine where reports have not been filed and to undertake compliance activities with those corporations, partnerships and trusts to advise them that such reports need to be filed. LTSA also expects that it will be possible to enforce sanctions for non-filing, providing that LTSA is given the capacity to collect such fines at the time of any subsequent land transfer.
4. It may also be possible for LTSA to use automated audit procedures to flag files that appear suspicious or questionable and provide this information to the relevant regulator. However, it will take further analysis and systems development to determine the meaningfulness and ultimately, the usefulness of such checks.

What the LTSA Cannot Do

1. Our expertise is in building and operating registries with an emphasis on automation. What the LTSA would struggle to do is hire dedicated enforcement and compliance staff, where we have no experience or expertise, and undertake active investigations. This means the LTSA does not expect to:
 - create the capacity to cross-reference data bases that are beyond the control of the LTSA;
 - create the capacity to check the accuracy of submitted information, beyond what can be done from within the Land Title Registry or other information that can be made available to us;
 - create the capacity to gather evidence regarding non-compliance;
 - create the capacity to enforce administrative penalties for the submission of incorrect information; or,
 - collect fines through court action.
2. LTSA also recognizes that its status as an independent not-for-profit corporation means that other regulatory agents will be unlikely to share substantial information regarding their investigations with LTSA and that, as a result, it will be the responsibility of such organizations to fold LOTA non-compliance with the requirements of the registry into their own investigations.

Why This is a Reasonable Approach for the LTSA

The LTSA, as a self-financing independent not-for-profit corporation reporting to an independent Board of Directors, must operate within its primary legislative mandate to provide a system of secure land title and survey information for British Columbians.

Given this context:

1. In many cases of deliberate non-compliance, if not most, it will be very difficult to gather sufficient evidence to successfully pursue an administrative penalty; for example, in the case of companies registered in another country. As a result, a credible effort to enforce the statute will involve substantial costs while having relatively little effect.
2. LTSA is a self-financing organization that relies on registration and search fees to finance its operation. Our financial modelling suggests that fees upwards of four times the level of current land registry fees (without exemptions for government) may be required to fund a moderately active investigatory unit. It is unlikely fees at that level are acceptable to either government or the public.
3. LTSA as a land registry organization will face substantive organizational challenges if it proceeds to recruit investigatory resources and integrate such resources into our core operation. We are particularly concerned with respect to this point as LTSA has no previous background or experience in this line of business. Our expertise is in operating and automating high volume transaction businesses.
4. LTSA as an independent not-for-profit corporation will find it challenging to create the necessary information sharing arrangements with other corporate and tax regulators.

As a result, we are convinced that a substantive effort by LTSA to create and operate an investigatory unit to gather sufficient evidence to sustain administrative penalties for the submission of incorrect beneficial ownership to the registry will be both expensive and likely unsuccessful.

What This Means for the Operation of the Beneficial Ownership Registry

1. **Expectations need to clear** - While the LTSA won't have investigatory "reach" over foreign-based corporations, partnerships and trusts choosing to misrepresent their beneficial ownership, the LTSA can "flag" suspect filings. This information can be shared with financial system regulators and tax authorities regarding potential non-compliance with other statutes and registrants could be forewarned that this will be the case.
2. **Timing needs to be flexible.** There is substantive systems development work to be done in terms of building the required system. This will require the procurement of outside resources. A fixed date has the potential drive up cost and increase risk. As a result, we believe the government's purposes are best served by a phased implementation approach where learnings from earlier, more straightforward legal entities such as companies, can be built into system development for addressing more complex structures such as partnerships and trusts.

3. **Modest legislative changes need to be considered.** This will provide for the submission of the best possible quality of initial submission and for a reasonable basic level of compliance enforcement. These changes could include:
- requiring affidavits to be submitted with respect to the accuracy of transparency declarations and disclosure statements;
 - providing the administrator (appointed by LTSA under the Act) with the authority to require the submission of additional documents where there are substantial concerns as to the accuracy of information;
 - providing the administrator with the ability to put a hold on land transfers in the absence of such information;
 - providing that where an administrative penalty has been imposed (usually for non-submission of information) it can be collected at the time of land transfer and that a land transfer cannot proceed until the fine is paid;
 - ensuring that exemptions from the public registry are broad enough and provide the administrator with sufficient discretion to ensure that the safety of an individual is not placed at risk as a result of providing the required information;
 - providing LTSA with the ability to advise other regulators where they have reason to suspect non-compliance;
 - providing the Act comes into force by regulation and that there be sufficient regulatory flexibility to support a phased implementation approach; and,
 - providing that fee exemptions are moved into the regulations and significantly reduced from the current scope to reduce the system cost burden on reporting entities. For example, both the Canada Revenue Agency and RCMP are frequent users of the land title registry and pay the same fees as other users.
4. An increasingly clear sense of expectations will be required as we move through the legislative stage and advance towards systems development and implementation.

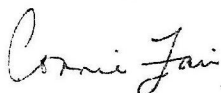
Conclusion

I hope you find these comments helpful. I am sharing them at this time so that you will have a clear and realistic understanding how LTSA believes it can best support this initiative, as you continue work with elected government officials to finalize the enabling legislation.

If you believe our expectations differ substantively from those of the government, it is important for us to quickly begin work to develop practical strategies to address those differences.

The LTSA will continue to prepare for the implementation of this important government initiative. I am confident that by working together to address the matters set out in this memorandum we can help ensure it is a successful implementation.

Sincerely,



Connie Fair
President & CEO

cc: LOTA Steering Committee

Jordan Goss, Assistant Deputy Minister, Revenue Division, MOF

Duncan Williams, Executive Director, Crown Land Opportunities, FLNRORD

Christina Dawkins, Executive Director, MOF

Al-Karim Kara, VP Business Innovation and Chief Information Officer, LTSA

Greg Pedersen, VP and Chief Financial Officer, LTSA

Dale Wall, Circle Square Solutions

Bob Faye, Circle Square Solutions

Wong, Gina G FIN:EX

From: Brouwer, Shauna FIN:EX
Sent: January 25, 2019 9:27 AM
To: Therrien, Lucie FIN:EX
Subject: Please cliff and assign to Chris Dawkins to draft a response thx FW: request in time LOTA (see attached letter)
Attachments: CEO to S Brouwers re LOTA 26 Nov 2018.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

From: Brouwer, Shauna FIN:EX
Sent: November 26, 2018 10:35 AM
To: Dawkins, Christina FIN:EX [REDACTED]
Cc: Brouwer, Shauna FIN:EX [REDACTED]
Subject: request in time LOTA (see attached letter)

Once we meet with the Minister I should formally respond to Connie.
 Thx
 Shauna

From: Ethier, Jayne [REDACTED] **On Behalf Of** Fair, Connie
Sent: Monday, November 26, 2018 8:31 AM
To: Brouwer, Shauna FIN:EX
Cc: Williams, Duncan FLNR:EX; Goss, Jordan T FIN:EX; Dawkins, Christina FIN:EX; Kara, Al-Karim; Pedersen, Gregory X; 'Dale Wall'; Bob de Faye
Subject: LOTA (see attached letter)

Good morning,

As follow up to the November 16, 2018 Steering Committee meeting, please see the attached letter.

Regards,
 Connie

Connie Fair
 President and Chief Executive Officer
 Land Title and Survey Authority of British Columbia
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