

BRITISH COLUMBIA'S NEW BENEFICIAL OWNERSHIP REGISTRY

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Background

In May 2019, the Minister of Finance released a final report relating to the Expert Panel on [Money Laundering in B.C.'s Real Estate](#). This report concluded, among other things, that the “disclosure of beneficial ownership is the single most important measure than can be taken to combat money laundering” and prevent hidden land ownership in B.C. To address issues highlighted in the report, the B.C. government passed its previously announced legislation, the [Land Owner Transparency Act \(Bill 23-2019\)\[1\]](#) on May 16, 2019 (the “**Act**”). As discussed in our *August 2018 bulletin*, the overarching purpose of the Act is to end anonymous land ownership in B.C. The Act purports to do so through, among other things, the creation of a beneficial ownership registry for real estate in B.C. (the “**New Registry**”).

This article:

- describes the current disclosure regime for land ownership in B.C.;
- highlights changes to the disclosure regime for land ownership in B.C that are affected through the Act and the New Registry;
- showcases when additional disclosure is required for the New Registry; and
- notes the level of disclosure that is required for the New Registry.

The Current Land Title System

Currently, the land title system in B.C. requires only the legal owner of land to be registered on title to a property. As only legal/registered owner's information is disclosed to the land title office, beneficial ownership in real estate can be held without disclosure or registration of any sort.

Additionally, under the modified “Torrens System” of land title registration in B.C., land registry information is conclusive that only a person registered on title as the owner of a property has the right to transfer or otherwise deal with legal title of such property. In order to determine if legal and beneficial title to a property has been split among two or more parties, requests for information must be made directly to the registered owner.

The New Registry

The purpose of the New Registry is to make beneficial owners' information available to the public and to support tax authorities, law enforcement agencies, and relevant regulators to target fraud, money laundering, and tax evasion. The Ministry of Finance will be responsible for enforcement, while Canada Revenue Agency will have access to information and may use it to police tax evasion.

The New Registry will be administered by the Land Title and Survey Authority of B.C. (the "**LTSA**"). The LTSA currently administers the land title and survey system in B.C. and it is anticipated that the New Registry will be operational in 2020.

Under the Act, upon application to register an interest in land, a transferee is required to file a "*transparency declaration*", which discloses whether or not the transferee is a "*reporting body*". Additionally, the Act will require reporting bodies to file a transparency declaration if they are, at the time of implementation of the Act, already registered as owners of an interest in land. Reporting bodies include "*relevant corporations*", trustees of a "*relevant trust*", and partners of a "*relevant partnership*", which currently own or buy land. These concepts are further described below.

Similar to the current regime of disclosure of legal ownership of real estate in B.C., the beneficial ownership information reported to the New Registry will be available to the public. However, such publicly available information related to beneficial ownership is limited to primary identification for reporting bodies and "*interest holders*". These concepts are further described below.

Reporting Bodies

The Act defines a reporting body, as a "*relevant corporation*", a trustee of a "*relevant trust*", or a partner of a "*relevant partnership*" that is required to file a transparency report in accordance with the Act. The definition^[2] of each is as follows:

- A relevant corporation – corporations and limited liability companies, other than certain excluded entities, such as government bodies, municipal corporations, statutory authorities, financial institutions, insurance companies, strata corporations, public companies and corporations owned by Indigenous nations, and wholly owned subsidiaries of excluded entities.
- A trustee of a relevant trust – trustees, including under express trust and bare trusts or a similar legal relationship created in another jurisdiction, excluding charitable trusts, testamentary trusts, alter ego trusts or joint spousal or common-law partner trusts within the meaning of the *Income Tax Act* (Canada), pension trusts, bankruptcy trustees, mutual funds trusts, REITs, and exceptions to be prescribed by regulation.

- A partner of a relevant partnership – partners, including under general partnerships, limited partnerships, limited liability partnerships, professional partnerships, and foreign partnerships, subject to exceptions to be added in the regulations.

If the interest in land will be registered in the name of a reporting body, the transferee will also need to file a “*transparency report*” in addition to its transparency declaration. The transparency report will include certain information about the reporting body itself, and individual “*interest holders*”. This information includes the primary identification information, date of birth, address, and social insurance number of each interest holder. Further particulars of the disclosure required in a transparency report are discussed below.

Disclosure Obligation

The Act creates the following disclosure obligations:

1. On any application to register an interest in land

Upon application to register a transfer or other registrable interest in land (including freehold interests, life interests, leasehold interests with a term of more than 10 years, and contractual rights to either occupy land or require a transfer of a freehold interest), the corresponding transferee must file with the LTSA a transparency declaration, stating a) whether or not the transferee is a reporting body; and b) if so, the type of reporting body. [3]

2. Any time there is a change of interest holders or beneficial owners, even when this does not result in a transfer of legal title to the land

The Act requires a reporting body to file a new transparency report within 2 months after a reporting body becomes aware, or reasonably ought to have become aware, that (a) a previous transparency report no longer discloses the current interest holders, or b) a determination of incapacity has been made in respect of an interest holder. [4]

By way of example, if the ownership structure of a relevant corporation changes and a new corporate shareholder becomes a “corporate interest holder” of land under the Act, then the relevant corporation would have two months to file a transparency report disclosing the new corporate shareholder’s information as a corporate interest holder of the land.

3. Retroactive disclosure for all those holding an interest in land (i.e. nominees) for a beneficial owner

The Act is intended to be retroactive, requiring disclosure from all existing beneficial owners within a certain historical timeframe. This timeframe will be established by regulation. All reporting bodies who are registered owners of an interest in land would be required to file a transparency report within a prescribed period of

time.^[5] The purpose is to collect information of all individuals with an unregistered interest in real estate in B.C., including through corporations, partnerships, and trusts. Consequently, all reporting bodies will need to review their interest holdings to identify the interest holders who will have to be disclosed.

Disclosure Required in a Transparency Report

The transparency report is a certified declaration that will require disclosure of information relating to interest holders who hold a beneficial interest in land, being:

- **Corporate interest holders** – individuals who directly or indirectly, through beneficial ownership or indirect control of a significant number of shares, own or control 10% or more of the issued shares or 10% or more of the voting rights of the relevant corporation. If an interest or right in a relevant corporation are held jointly by two or more individual, each individual is a corporate interest holder.
- **Beneficial owners** – individuals who have a beneficial interest in land, have the power to revoke the relevant trust and receive the interest in land, or are a corporate interest holder of a corporation that has a beneficial interest in land or the power to revoke a relevant trust in respect of an interest in land.
- **Partnership interest holders** – an individual who is a partner in a relevant partnership or a corporate interest holder in a corporation that is a partner of a relevant partnership. If it can be established that an individual or the relevant corporation has no interest, right or ability as a partner, in respect of the interest in land, then the presumption of being a partnership interest holder does not apply.

When the Act was originally proposed pursuant to the B.C. government's white paper in June 2018, the threshold for qualifying as a corporate interest holder was 25%, which is in line with the ownership threshold for triggering disclosure in Property Transfer Tax Returns, in accordance with the [Information Collection Regulations](#). However, as noted above, the threshold has been reduced to 10%, effectively increasing the scope of disclosure originally proposed under the Act.

The LTSA will have the authority to refuse to register an interest in land if the transparency declaration, and, if required, a transparency report, is not filed concurrently with the application to register an interest in land.^[6]

In practice, these documents will need to be filed together with a Form A Freehold Transfer and a Property Tax Return required for a transaction involving purchase of real estate.

Required Disclosure of Reporting Bodies

The level of disclosure required depends on the type of reporting body.

With respect to relevant corporations, the information that must be disclosed includes:

- identification information about the corporation itself (including name, head office and business or

incorporation number);

- identification information about each individual (including name, citizenship and place of residence) who directly or indirectly owns or controls 10% or more of the issue shares or otherwise falls under the definition of a “corporate interest holder” under the Act;
- each corporate interest holder’s date of birth, social insurance number or individual tax number, residency status pursuant to the *Income Tax Act* (Canada), the date on which they became and interest holder, and the nature of the interest in the reporting corporation.

It is worth noting that though the Act states clearly the ownership threshold for becoming a corporate interest holder includes indirect ownership, the level of disclosure that is required for indirect ownership is unclear. Particularly, in situations involving layered corporate ownership structures, there is uncertainty regarding whether only disclosure of the ultimate individual ownership is required, or whether disclosure of each layer of corporate ownership is required. We are hopeful the enabling regulations to be enacted under the Act will provide further direction on this issue.

Where the legal owner of the land is a trustee, the information that must be disclosed includes:

- identification information about the individual or corporate trustee, beneficial owner(s) and settlor(s);
- date of birth and social insurance number or individual tax number of beneficial owner(s) and settlor(s); and
- reference number of registered trust instrument (if any).

For relevant partnerships, the information that must be disclosed includes:

- the partnership’s business name, type of partnership, registered address and head office address, address of principal business premises, jurisdiction of organization governing the partnership and the partnership agreement and business number.

In the case of each individual interest holder:

- the individual’s name, date of birth, social insurance number, tax number, location of principal residence and last known address;
- the date on which each individual became or ceased to be an interest holder and the nature of the individual’s interest in the reporting body; and
- the individual’s immigration status.

The Act has imposed a duty to reporting bodies to take reasonable steps to obtain and confirm the accuracy of the information they provide in a transparency declaration. If a reporting body is unable to obtain or confirm

the accuracy of the information, the reporting body must still complete a transparency report outlining the steps taken to obtain or confirm the information and the information it was able to obtain.

Administrative Penalties and Offences

A reporting body that fails to file a transparency declaration or provides false or misleading information in a transparency report may be subject to administrative penalties no more than the greater of (i) \$50,000 for corporations or other entities or \$25,000 for individuals and (ii) 5% of the assessed value of the property.^[7] Certain factors will be analyzed by an enforcement officer under the Act to determine if a person is subject to an administrative penalty or not.

Failure to file a transparency report or provide false information may be found to be an offence under the Act subject to a penalty no more than the greater of \$25,000 to \$50,000 for individuals or \$50,000 to \$100,000 for corporations or other entities and 15% of the assessed value of the property to which the transparency declaration or transparency report relates. ^[8]

Property Transfer Tax and Transfer of Shares of Corporate Interest Holder

Currently, Property Transfer Tax ("**PTT**") is not payable on a transfer of beneficial interest. It is common in real estate transactions for buyers to purchase shares of a company owning land and to facilitate an unregistered transfer of beneficial interest rather than acquiring legal title to the property. This provides an advantage to buyers, as no transfer of legal title is required, and therefore, no PTT is payable.

It is expected that the B.C. government will, at some point in the future, attend to an amendment to the *Property Transfer Tax Act* that will render PTT payable on the transfer of beneficial interests in land. However, uncertainty remains with respect to the timing of such an amendment – specifically, whether or not this will occur prior to the implementation of any regulations under the Act.

Privacy Concerns

Basic information disclosed under the Act will be made public, and members of the public may search for beneficial ownership interest for a prescribed fee through the New Registry. However, sensitive information, such as social insurance and dates of birth will only be available to law enforcement agencies and government entities such as Canada Revenue Agency.

Interest holders or settlors' personal information will not be publicly accessible until at least 90 days after the transparency report has been accepted for filing by the registrar (the "Privacy Period").^[9] The purpose of this Privacy Period is to provide individuals with an opportunity to request that some or all of the individual's primary identification be omitted or obscured from the public record if the health, safety or mental health of

the individual is at risk.^[10] Additionally, the LTSA must remove, or obscure from the public, information about individuals under 19 years of age and those incapable of managing their financial affairs.

Amendments to Business Corporations Act

As part of B.C. government's measures to establish the New Registry under the Act, amendments to the British Columbia Corporations Act were passed to keep and maintain records regarding beneficial owners of shares of corporations.

On May 17, 2019, the *British Columbia Business Corporations Amendment Act (Bill 24-2019)* (the "**Amendment Act**") was passed by the B.C. legislature requiring private companies to keep and maintain a "transparency register" of information about all "*significant individuals*", in addition to the central securities register, that:

- directly or indirectly own, or indirectly control:
 1. 25% or more of the issued shares of a company; or
 2. shares that carry 25% or more of voting rights of the company; or
- are able to exercise rights or influence, directly or indirectly that would result in the election, appointment or removal of the majority of the company's directors.

The private company's "*transparency register*" must include information about registered owners, beneficial owners and owners that have indirect control (such as through an intermediary corporation).

The Amendment Act will come into force by regulations. It is uncertain when the implementation of the Amendment Act will be established; however, it is likely that establishment of the Amendment Act will occur concurrently with the implementation of the Act.

In addition, as of June 13, 2019, the *Canada Business Corporations Act (Bill C-86)* (the "CBCA") also requires federally incorporated corporations registered under the CBCA to create and maintain a new type of register, in addition to the central securities register, that list all individuals with "*significant control*" over the corporation, with the exception reporting issuers and corporations listed under a designated stock exchange as defined by the *Income Tax Act (Canada)*.

It is worth noting that the Amendment Act and the CBCA amendments align with the new legislation introduced under the Act to track beneficial ownership of real property.

Parallel Register

The New Registry is Canada's first publicly searchable registry of its kind. However, it is unclear how the New Registry will affect B.C.'s current land title system under the "Torrens System", which provides conclusive

evidence of ownership based on the indefeasibility of title. Currently, lawyers often provide opinions of good and marketable title in which they rely on a State of Title Certificate issued by the LTSA. As the New Registry will be maintained as a parallel registry of beneficial interests in addition to the current land title registry, it is uncertain how the interplay of the New Registry and B.C.'s current land title system under the "Torrens System" will affect the ability of third parties to rely on the disclosure that has been made – particularly accounting for the possibility of inaccurate disclosure resulting from either a failure to appropriately update the New Registry records or through imperfect reporting despite "reasonable steps" to obtain and confirm the accuracy of the information with respect to interest holders.

Takeaways

The new disclosure obligations under the Act will increase costs to the real estate industry in B.C. Particularly, parties will now have to account for additional transaction costs necessitated by having to provide increased disclosure, and will have to account for the cost of attending to and providing the retroactive disclosure that required under the Act.

While the Act became law on May 16, 2019, the required regulations to bring the Act into force have not yet been implemented.

If you wish to obtain further particulars of the Act and its proposed implications, we recommend seeking legal advice.

by Damon Chisholm, Dharam Dhillon and Douglas Zorrilla, Articled Student

[1] Land Owner Transparency Act (Bill 23- 2019)

[2] Ibid at part 1

[3] Ibid at section 10

[4] Ibid at section 16

[5] Ibid at section 15

[6] Ibid at section 11

[7] Ibid at section 61

[8] Ibid at section 92

[9] Ibid at section 30(3)

[10] Ibid at section 40

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

The logo for mcmillan, featuring the word in a lowercase, sans-serif font. The 'm' and 'c' are in a dark red color, while the 'm', 'i', 'l', 'l', 'a', and 'n' are in a light blue color. The logo is positioned in the upper left corner of a banner image.

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