

UPDATE: BRITISH COLUMBIA'S NEW REGISTRY OF BENEFICIAL OWNERSHIP

Posted on October 6, 2020

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Background

On May 16, 2019, the government of British Columbia passed the *Land Owner Transparency Act* (Bill 23-2019)^[1] (the “**Act**”). The Act introduces mandatory disclosure about beneficial ownership of land with the purpose of ending anonymous land ownership in B.C. As discussed in our previous [bulletin](#) of October 2019, the Act creates and governs the Land Owner Transparency Registry^[2] (the “**LOTR**”), which will be maintained as a parallel registry of beneficial interest in land in addition to the current land title registry (the “**LTO**”). The intention of the Act and the LOTR is to make beneficial owners' information available to the public, certain government authorities and relevant regulators in order to combat fraud, money laundering and tax evasion.

On September 20, 2020, the Province of British Columbia approved *Order in Council No. 549*^[3] (the “**Order**”), which brings most of the provisions of the Act into force effective November 30, 2020. The Order also released the *Land Owner Transparency Regulation* (the “**Regulation**”), which also comes into force on the same date, together with the Act. The Regulation contains, among others, important definitions for the purpose of the Act, provides additional requirements for transparency declarations and transparency reports, and establishes certain provisions with respect to accessing transparency records, reported information and publicly accessible information. In our previous [bulletin](#), we addressed the current disclosure regime for land ownership in B.C., highlighted the changes to the disclosure regime for land ownership in B.C. through filing of “transparency declarations” and “transparency reports”, described who is considered a “reporting body” and when disclosure is required for LOTR purposes, and how these would affect companies, and individuals seeking to acquire an interest in land in B.C. We recommend you refer to that [bulletin](#) for more detailed information. This bulletin will outline the key provisions under the Regulation, which clarify some of the uncertainties created since the introduction of the Act.

The LOTR and Required Disclosure

The LOTR is a searchable public registry, which provides information about individuals who are deemed to have an indirect ownership interest in land in B.C., pursuant to the Act and Regulation. As of November 30,

2020, anyone who applies to the LTO to register an “interest in land”, must also file a “transparency declaration” that will be stored in the LOTR, disclosing whether or not the transferee is a “reporting body”.^[4] Under the Act, an “interest in land” includes:

- fee simple estates;
- life estate;
- any lease with a term greater than 10 years;
- right to occupy or require transfer under agreement for sale; and
- certain other real property interests.^[5]

If the person who filed a transparency declaration is considered a “reporting body”, pursuant to the Act, then that person will also be required to file a “transparency report”. Under the Act, a “reporting body” is described as a “relevant corporation”, “trustee of a relevant trust”, or a “partner of a relevant partnership”.^[6] The transparency report requires a “reporting body” to disclose information about themselves and their beneficial or indirect owners, referred to in the Act as “interest holders”.^[7] These categories are meant to capture individuals or entities that may hold land as a “relevant intermediary” (now defined in the Regulation) for a beneficial owner or an indirect owner, subject to certain exceptions such as public companies, government bodies, savings institutions and many others that are excluded from the definition of a “relevant corporation” under the Act.

The LOTR has announced that on application to register a legal interest in land, a two-tiered obligation is triggered:

1. each transferee must file a transparency declaration indicating if they are a reporting body and, if so, which type; and
2. a reporting body must also file a transparency report disclosing specified information about each interest holder.^[8]

In practice, these documents will need to be filed concurrently with a LTO application, that is with a Form A Freehold Transfer and a Property Transfer Tax Return required for a transaction involving an acquisition of real estate. The LOTR has clarified that while they do not need to be in the same package, the two sets of documents must be submitted concurrently.^[9]

It is worth noting that the disclosure obligations of “reporting bodies” are ongoing, which means that a reporting body must file an updated transparency report at the LOTR each time its interest holders change, even if there is no change in the legal/registered ownership of the land. In addition, if a registered owner ceases to be a “reporting body”, a notice to administrator must be filed if a corporation, trust or partnership ceases to

be a relevant corporation, relevant trust or relevant partnership. Reporting bodies may also file a new transparency report at any other time to complete or correct information in a previously filed transparency report.^[10]

Delay on LOTR Searches

The Order delays Part 4 of the Regulation and sections 30 to 38 of the Act until **April 30, 2021**. These provisions refer to public access to transparency reports and searches of the LOTR, which will not be in force on November 30, 2020. Therefore, the LOTR will not be accessible to the public for searches and available for inspections by members of the public, government entities or law enforcement until that time; even though, the mandatory requirement to file a transparency declaration and, if applicable, a transparency report commences on November 30, 2020.

Pre-Existing Owners - Retroactive Disclosure of interest in land prior to November 30, 2020

The Regulation provides that “reporting bodies” that own an interest in land when the Act comes into force must file a transparency report by November 30, 2021. This will certainly affect most of the corporate “interest holders” who own a beneficial or indirect interest in land through a corporate ownership structure. However, if a pre-existing beneficial owner transfers their interest in land prior to **November 30, 2021**, that person will be exempt from such requirement. This exemption is due to the fact that if such transfer also involves a transfer of the registered ownership, then the purchaser must file, as discussed above, a transparency declaration and, if the purchaser is a reporting body, a transparency report as well. If the new purchaser only acquires a beneficial ownership before November 30, 2021, then they must file a transparency report by such prescribed date as a one-time obligation.

It is worth noting that issues may arise for transfers late in that period for which a vendor did not previously file a transparency report. If a purchase of real estate occurs before November 30, 2021, the owner of the interest in land, who is considered a reporting body, would need to provide evidence to the purchaser that a transparency report has been filed, pursuant to the Act and Regulation before November 30, 2021. This could be verified by conducting a search through the LOTR after April 30, 2021.

It is important to note that this requirement does not apply to individuals who hold an interest in land as a legal and beneficial owner.

Accordingly, if a party is considered a “reporting body”, that is a relevant corporation, relevant trust or relevant partnership, they will be required to file a transparency report in the LOTR effective November 30, 2020, unless they already owned an interest in land, under which case such reporting body must file a transparency report by November 30, 2021.

Notable Definitions under the Regulation

Under the Act, a “corporate interest holder” is an individual 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. In a standard corporate structure, it would be a simple task to determine who controls the shares or the voting rights of a relevant corporation; however, in other instances, when a complex corporate structure has been established as a vehicle to own the legal and beneficial interest of land in B.C., with intermediaries involved, the disclosure requirements will be an onerous task.

The Regulation provides two definitions that will help land owners and professionals determine who has “indirect control” of a relevant corporation, trust, or relevant partnership for the purpose of establishing the beneficial interest in land. The definitions are as follows:

- **Relevant intermediary** – means a person that is one or more of the following and is controlled by another person:
 - i. a relevant corporation;
 - ii. a relevant partnership;
 - iii. an individual, relevant corporation or relevant partnership that is a trustee of a relevant trust;
 - iv. an individual, relevant corporation or trustee of a relevant trust that is an agent; and
 - v. an individual, relevant corporation, relevant partnership or trustee or a relevant trust that is a personal or other legal representative.

- **Chain of relevant intermediaries** – means a group of 2 or more relevant intermediaries having a hierarchical relationship to each other in which:
 - i. the first relevant intermediary in the chain is controlled by an individual who is not a relevant intermediary; and
 - ii. each relevant intermediary in the chain, controls the relevant intermediary below it.[\[11\]](#)

The above definitions clarify the requirements with respect to the level of disclosure that is required for indirect ownership. In situations involving layered corporate ownership structures where an individual, who is not a relevant intermediary, has indirect control over a share of a relevant corporation, the Regulation indicates that disclosure of the first relevant intermediary in a chain of relevant intermediaries and the last relevant intermediary in the chain, who is the registered owner of the share, is required.

In addition, the Regulation introduced a definition of “control”. As indicated in our previous [bulletin](#), a

transparency report will require disclosure of information relating to the interest holders who have control of relevant corporations, relevant partnerships or trust.

- **Relevant Corporations** - a person controls a relevant corporation if the person has the right to elect the majority of the directors of the relevant corporation.[\[12\]](#)
- **Relevant Trusts** – a person controls a trustee of a relevant trust if the person, in the case of a trustee that is the registered owner of a share of a relevant corporation, the person has the power to direct how the trustee is to exercise any of the rights attached to the share. If the trustee controls a relevant intermediary below the trustee, the person has the power to direct how that trustee is to exercise control over that relevant intermediary.[\[13\]](#)
- **Relevant Partnerships** – a person controls a relevant partnership:
 - i. if a person is a partner, other than a limited partner, in the relevant partnership; or
 - ii. if the person is a limited partner in the relevant partnership and:
 - a. is entitled to at least 25% of the profits of the partnership assets;
 - b. is entitled on wind up to at least 25% of the assets of the partnership;
 - c. has at least 25% of the votes in the partnership management; or
 - d. has the right to appoint or remove the majority of the partnership's management.[\[14\]](#)

Notably, the definition of control of a relevant partnership under the Regulation will alleviate the disclosure of minority-limited partners below 25%; however, in a complex ownership structure with various layers of ownership, establishing which persons fall under the definitions and obtaining a transparency report will increase cost to the real estate industry and may delay transactions.

Registrants of Certain Leases are Exempt from Filing Transparency Reports

As previously indicated, any lease with a term greater than 10 years is considered an interest of land under the Act.

The Regulation has clarified that the “remaining term” of a lease for the purposes of the Act does not include any extension or renewal term[\[15\]](#), and that a relevant corporation, trustee of a relevant partner or partner of a relevant partnership is not required to file a transparency report if the interest in lands to be acquired is a lease that, on the date of the application is made, has a remaining term of 10 years or less.

In addition, reporting bodies who are registered owners of a lease as of November 30, 2020, are not required to file a transparency report if the remaining term of their registered lease at the LTO is 10 years or less when the Act comes into force.

Furthermore, a registered owner of a lease who becomes a reporting body after the Act comes into force is not required to file a transparency report if its lease had a remaining term of 10 years or less.^[16]

The above provisions are particularly important to tenants, as the regime of disclosure of beneficial leasehold interests has been relaxed and are not applicable for those reporting bodies (tenants) holding leasehold interest with a remaining term of 10 years or less on November 30, 2020, or if the interest in land to be acquired is a registered lease with a remaining term of 10 years or less.

Administrative Penalties and Offences

As indicated in our October 2019 [bulletin](#), if a reporting body fails to file a transparency report, they may be subject to administrative penalties and may be found guilty of an offence under the Act.

An individual or corporation who falls under the definition of a reporting body should be aware of these offences, which will come into force on November 30, 2020. A reporting body will have one year from the time the provisions take effect to comply with the Act, or they may be subject to these penalties.

Property Transfer Tax (“PTT”)

The B.C. government has not amended the *Property Transfer Tax Act* yet with respect to payment of PTT on the transfer of beneficial interest. It was uncertain whether the government would introduce amendments making a transfer of beneficial interest subject to PTT. However, it is likely that at some point in the future such an amendment may occur.

Amendment to Business Corporation Act

On May 17, 2019, the British Columbia *Business Corporations Amendment Act* (Bill 24-2019)^[17] (the “Amendment of the BC Corporations Act”) was passed requiring private companies to keep and maintain a “transparency register”. The register must contain information about all “significant individuals”, in addition to the central securities register, who directly or indirectly own, or indirectly control (i) 25% or more of the issued shares of the company; or ii) shares that carry 25% or more of voting rights of the company; or iii) are able to exercise rights or influence in the election, removal or appointment of the majority of the company’s directors.^[18]

Effective October 1, 2020, the Amendment of the BC Corporations Act takes effect requiring all private companies to maintain a transparency register listing certain personal information of those significant individuals who directly or indirectly control 25% or more of the shares or votes of a company. It is worth noting that the Amendment of the BC Corporations Act aligns with the Act and Regulation to track beneficial ownership of real property.

Key Takeaways

With confirmation from the government of B.C. that the LOTR will be up and running, and that certain provisions of the Act will begin to take effect on November 30, 2020, any reporting body involved in a real estate transaction will need to take greater care in their disclosure processes when registering land, or else risk penalties.

In addition, reporting bodies will have to account for the cost of attending and providing the retroactive disclosure by November 30, 2021, unless they transfer their interest in land before such date. Furthermore, reporting bodies will have to review their registered leases to confirm whether the remaining term of their lease is 10 years or less as of November 30, 2020; otherwise, a transparency report must be filed with the LOTR.

As a result, individuals and corporations should start preparing now for the additional costs and time that will be required for any real estate transaction in B.C., in order to comply with the Act and its Regulation.

If you wish to obtain further particulars of the Act and its Regulation and their proposed implications, please do not hesitate to contact us.

by Douglas Zorrilla, Damon Chisholm and Stephen Lewis, Articled Student

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

[2] [Land Owner Transparency Registry](#).

[3] [Order of the Lieutenant Governor in Council No. 549, approved and ordered September 20, 2020](#).

[4] *Supra* note 1 at s. 1.

[5] *Supra* note 1.

[6] *Ibid* at s. 2-4.

[7] *Ibid* at s. 1.

[8] [Land Owner Transparency Registry](#).

[9] *Ibid* at page 9.

[10] *Ibid* at page 8.

[11] *Supra* note 3 at s. 2.

[12] *Ibid* at s. 7(2).

[13] *Ibid* at s. 8(2).

[14] *Ibid* at s. 7(3).

[15] *Ibid* at s. 21(1).

[16] *Ibid* at s. 21(4).

[17] [British Columbia Business Corporations Amendment Act \(Bill 24-2019\)](#).

[18] *Ibid* at s. 119.11(1).

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.

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