

Ministry of Finance**BRIEFING DOCUMENT**

To: Honourable Carole James
Minister of Finance
and Deputy Premier

Date Requested: May 28, 2019
Date Required:

Initiated by: Chris Dawkins
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Date Prepared: May 31, 2019

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TITLE: Effective Date of Beneficial Owner Transparency Register

PURPOSE:

(X) DECISION REQUIRED

COMMENTS: The transparency register provisions of the *Business Corporations Act* (BCA) need to be brought into force by regulation. This note seeks direction on that timing.

Executive Director approval: _____

ADM approval: _____

DM approval: _____

DATE PREPARED: May 31, 2019

TITLE: Effective Date Beneficial Owner Transparency Register

ISSUE: The date of implementation for the requirement of BC private companies to establish a transparency register must be determined.

BACKGROUND:

The *Business Corporations Amendment Act, 2019* (Bill 24), received Royal Assent on May 16, 2019. It contains two main changes: (1) it creates a requirement to exchange outstanding bearer shares in BC companies, and (2) it creates the requirement for private companies to create and maintain a transparency register of beneficial owners. The bearer share provisions took effect on Royal Assent. The transparency register provisions do not take effect until they are brought into force by regulation.

In particular, the transparency register provisions require every private BC company to list every beneficial owner¹ of the company in the company's transparency register stored at its records office. Police, tax authorities and certain regulators will be able to access the transparency register at the company's records office.

Bill 24 accomplishes one of the government's goals outlined in the 30-Point Plan for Housing Affordability in British Columbia.² It also satisfies BC's requirement under the Finance Ministers' Agreement to Strengthen Beneficial Ownership Transparency (Agreement). The Agreement ensures companies and other legal entities cannot be used as vehicles for money laundering, tax evasion, and other criminal purposes. The Agreement committed Finance Ministers to make best efforts to implement corporate statute changes by July 1, 2019.

DISCUSSION:

BC is the first province to pass legislation establishing a requirement to create and maintain a transparency register of beneficial owners as agreed to by Canadian Finance Ministers in December 2017. The Federal government has completed its work and will be implementing its legislation before July 1, 2019.

¹ Defined as an individual who owns, directly or indirectly, at least 25% of the company or can otherwise replace a majority of the directors.

² Point 9 – taking action to end hidden ownership.

It is important to note that no jurisdiction, other than the Federal Government, will be able to comply with the July 1, 2019 deadline, and with 14 corporate statutes across Canada, there is a risk full compliance will never be achieved. See Appendix A for the status of other jurisdictions' measures. This poses a risk that if BC implements its legislation ahead of other jurisdictions, some BC companies may move to other jurisdictions that do not require companies to hold transparency registers. Similarly, new companies may choose to incorporate in other jurisdictions. This may result in a decrease of revenue that the Corporate Registry receives in filing fees (e.g., fees for filing incorporation, annual reports, changes in directors and address, corporate reorganizations, etc.).

During Committee stage of Bill 24, Minister James answered that there would be a minimum of 6 months before the implementation of the transparency register legislation to allow time for private companies to comply with the requirements. This will give time for government outreach to help private companies understand and comply with the requirements.

Most importantly, despite the Bill 24 passing on May 16, there remains the need to define "indirect control" by regulation to capture beneficial owners who hold their interest in a company through other intermediaries. Until this term is defined, private companies will not be able to fully comply with their transparency register requirements. Drafting for this definition is currently underway but will not be completed by July 1, 2019. Finance staff are aiming to have the regulation before Cabinet in fall 2019. The federal government did not define "indirect control" in its legislation, which will come into effect on July 1.³

Recommendation 3 to the Province in the Expert Panel on Money Laundering in BC Real Estate's report recommends that BC enact this legislation within a "specified, reasonable time frame."

OPTIONS:

Option 1: Implement the transparency register requirements on July 1, 2019.

- Would fully meet the commitments of the Finance Ministers' agreement to strengthen beneficial ownership transparency.

Solicitor/Client Privilege

- Companies leaving BC for other jurisdictions could be a signal to inspecting officials that those companies may be engaged in criminal activities.
- As no other jurisdiction, other than the federal government, will likely meet the July 1, 2019 target, this option could result in companies leaving BC for other jurisdictions, affecting Corporate Registry revenue and BC's economy.
- Private BC companies would have very little time to create their transparency registers by July 1, 2019; many would be non-compliant.
- The definition of indirect control will not be in place by this time, which will lead to uncertainty for the public and could result in inconsistent court decisions.

Option 2: Implement the transparency register legislation six months after indirect control definition is established in regulation (target effective date of April 1, 2020).

- Would meet Minister James' commitment in committee to give private companies time to comply with transparency register requirements.
- Defining indirect control will provide companies the proper tools to comply with the requirements of the legislation.
- Would provide government with time to develop information materials and conduct outreach with the public and the legal community prior to the requirements coming into force.
- The implementation OIC could be combined with the indirect control OIC.
- Would not meet the Finance Ministers' agreement to strengthen beneficial ownership transparency by target date of July 1, 2019.

Option 3: Do not implement the transparency register until other jurisdictions comply.

- Other Canadian jurisdictions have been slow to fulfill their commitment to strengthen beneficial ownership transparency.
- Waiting for similar action by other jurisdictions lowers the risk of companies moving to other jurisdictions to avoid the requirement and affecting the Corporate Registry's revenue.
- Would provide government with time to develop information materials and conduct outreach with the public and the legal community prior to the requirements coming into force.

- Would not satisfy the third recommendation made by the Expert Panel on Money Laundering in BC Real Estate.
- Would not meet the Finance Ministers' agreement to strengthen beneficial ownership transparency by target date of July 1, 2019.
- BC companies will continue to be susceptible to being used as vehicles for money laundering and tax evasion.

RECOMMENDATION:


- **Option 2.**

Attachment

APPROVED / NOT APPROVED



Carole James
Minister and Deputy Premier



Date

APPENDIX A

Province/Territory	Introduction of Bill
Alberta	No current plan
British Columbia	Passed Spring 2019
Manitoba	Introduced Spring 2019. Did not pass, will be reintroduced in Fall 2019.
New Brunswick	No current plan
Newfoundland and Labrador	No current plan
Northwest Territories	No current plan
Nunavut	No current plan
Ontario	No current plan
PEI	No current plan
Quebec	Holding consultations September 2019
Saskatchewan	Targeting Fall 2019 introduction
Yukon	Targeting Fall 2019 introduction