City of Richmond

Report to Committee

To:	General Purposes Committee	**Date:**	February 4, 2020
From:	Cecilia Achiam General Manager, Community Safety	**File:**	09-5350-20- CAOP1/Vol 01
Re:	**Provincial Consultation on new Anti-Money Laundering Legislation and Regulations**		

Staff Recommendation

That the responses summarized in Attachment 3 and 4 of the staff report titled "Provincial Consultation on new Anti-Money Laundering Legislation and Regulations", dated February 4, 2020, from the General Manager, Community Safety be endorsed for submission to the BC Ministry of Finance.

Cecilia Achiam
General Manager, Community Safety
(604-276-4122)

Att. 4

REPORT CONCURRENCE		
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SENIOR STAFF REPORT REVIEW		**INITIALS:** CJ
APPROVED BY CAO		

Staff Report

Origin

On January 17, 2020, the BC Ministry of Finance announced a public engagement process on creating a central registry of company beneficial ownership as well as modernizing mortgage broker regulations to address anti-money laundering measures. The Province provided two consultation papers with questions which are provided as Attachment 1 and 2. As noted in the Minister's news release[1], this consultation effort stems from two key recommendations made by the Expert Panel on Money Laundering in B.C. Real Estate (Expert Panel).[2]

This consultation effort is also, in part, a response to the September 2019 UBCM resolution, which was originally put forward by Richmond City Council, that:

> *Whereas the provincial Ministry of Finance has not proposed legislation around the establishment of a publicly searchable registry around beneficial ownership of corporations;*
>
> *And whereas the federal Minister of Finance has not proposed legislation for a public registry of beneficial ownership of land or corporations:*
>
> *Therefore be it resolved that the UBCM call on the provincial Minister of Finance to propose both a new provincial publicly searchable registry of corporate beneficial ownership and advocate to the federal Minister of Finance to create a new national public registry around beneficial ownership of corporations and land.*

This report supports Council's Strategic Plan 2018-2022 Strategy

#1 A Safe and Resilient City:

> *Enhance and protect the safety and well-being of Richmond.*
>
> *1.1 Enhance safety services and strategies to meet community needs.*

Analysis

Beneficial Ownership

According to the Transparency International (TI) Canada report on beneficial ownership[3], there are millions of trusts in Canada with property holdings but only 210,000 are actually registered to pay taxes. Prior to recent legislative changes, these trustees were operating without any formal

[1] https://news.gov.bc.ca/releases/2020FIN0002-000075

[2] https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/combatting-money-laundering-report.pdf

[3] The Financial Action Task Force (FATF), an international body leading the global efforts against money laundering, defines the "beneficial owner" as the natural person who "ultimately owns or controls" a customer or corporation. This beneficial ownership/control is often exercised through a chain of legal or title ownership or by means of control other than direct control. https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

requirement to maintain a registry of the beneficial owners of the assets held in trust. Media and public scrutiny around the issue of beneficial ownership can be traced back to a 2017 study by TI Canada which found the following:

> *"Analysis of land title records by TI Canada found that nearly half of the 100 most valuable residential properties in Greater Vancouver are held through structures that hide their beneficial owners. Nearly one-third of the properties are owned through shell companies, while at least 11 percent have a nominee listed on title. The use of nominees appears to be on the rise; more than a quarter of the high-end homes bought in the last five years are owned by students or homemakers with no clear source of income. Trusts are also common ownership structures for luxury properties; titles for six of the 100 properties disclose that they are held through trusts, but the actual number may be much higher as there is no need to register a trust's existence."*[4]

Several government studies including those authored by Dr. Peter German and the Expert Panel confirmed the findings of TI Canada that money launderers and tax evaders can hide behind legal[5] title owners or trustees. In 2019, the Provincial government passed legislation which partially dealt with the issue of the exploitation of beneficial ownership by money launderers and organized crime. The *Land Ownership Transparency Act* (*LOTA*) makes it mandatory for corporations, trusts and partnerships to disclose, through a searchable public registry, their beneficial owners. *LOTA* is projected to come into force later in 2020.

While the *LOTA* will be an unprecedented step taken in Canada towards transparency in beneficial ownership, it excludes all corporations, trusts and partnerships that do not own land. To address this, the Province passed the *Amendments to the BC Corporations Act* (*Corporations Act*) which will come into force in May 2020. The *Corporations Act* only requires corporations to maintain a beneficial ownership registry which could be obtained by law enforcement and regulators, and there is no requirement for a searchable public registry of beneficial ownership. Lastly, the *Corporations Act* also excludes non-corporate entities such as partnerships and trusts, whose beneficial ownership structure can be equally exploited by criminals and tax evaders.

It should be noted that holding companies, which often involve the separation of legal owners and beneficial owners, are legitimate corporate structures designed to protect personal assets and facilitate succession and tax planning. A simplified holding company model is shown below in Figure 1:

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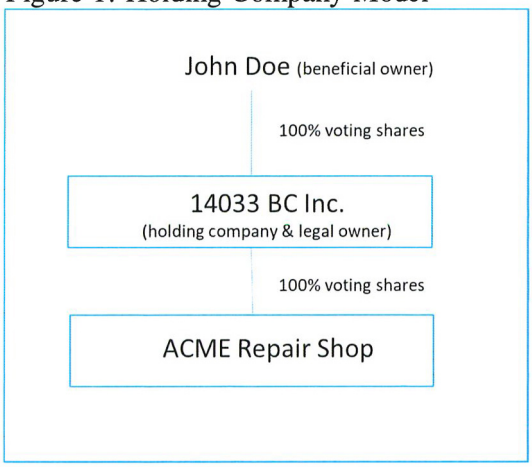
[4] http://www.transparencycanada.ca/wp-content/uploads/2017/05/TIC-BeneficialOwnershipReport-Interactive.pdf pg 6

[5] The legal owner is the person under whose name the property is registered. The legal owner is not the true owner but merely holds the title for the beneficial owner. The beneficial owner is the person with the right to enjoy or benefit from the property – this can include the right to occupy or enjoy any income from the property. To facilitate the division between the legal and the beneficial owner there is often a legal structure called a bare trust. A bare trust is a type of company which is used to hold a legal and registered title to the property as nominees, in trust for the beneficial owner of the property.

Figure 1: Holding Company Model



The above structure has often been used by organized crime to evade law enforcement/regulators and efforts to simply identify "John Doe" (beneficial owner) would require significant investigative resources. But with the new *Corporations Act*, law enforcement will be able to more efficiently determine an overview of the corporate ownership structure. Nonetheless, as was identified in Dr. German's work[6], there is currently a lack of dedicated money laundering investigators to pursue the boon of new leads that will be generated when the *Corporations Act* and *LOTA* come into force this year.

A recommended response to the Province's consultative questions regarding beneficial ownership can be found in Attachment 3.

Mortgage Broker Act

The Expert Panel's recommendation 9 asserted that the:

> *"The BC government should replace the Mortgage Broker Act (MBA) with a modern regulatory statute that is effective in regulating all those in the business of mortgage lending, with few exceptions."*[7]

Currently, the *MBA* includes a registry of licenced mortgage brokers which is overseen by the newly created BC Financial Services Authority (BCFSA). However, the Expert Panel found that it was unclear as to what types of lenders and brokers were covered by the *MBA* and are subject to the registry. Moreover, the Expert Panel found that the BCFSA's precursor, the Financial Institutions Commission (FICOM), who oversaw enforcement of the *MBA* at the time, was "undergoing considerable change" and that a new *MBA* regime would place "change management responsibilities on the organization." In short, FICOM did not have the adequate resources, structure or training to proactively and aggressively pursue irregularities and non-compliance under the modernized *MBA*.

[6] https://news.gov.bc.ca/files/Dirty_Money_Report_Part_2.pdf pg. 18.
[7] Expert Panel Report, pg 80.

Dr. German also found regulations regarding the mortgage industry to be antiquated in that "mortgage brokers, registered and unregistered, including private lenders and mortgage investment corporations (MIC), are not required to report to the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC)."[8] He found that 90,000 or nine per cent of residential mortgages were held by corporate entities of whom many had no requirement to report to FinTRAC on their beneficial owners, lending practices or source of funds. He asserted that a considerable portion of the funding for private lending for mortgages originated from outside Canada and is channeled through "gatekeepers" such as lawyers.

While foreign banks are excluded from mortgage lending in BC, private lenders outside of Canada are permitted to register mortgages on BC property. Dr. German found that 13,678 residential properties, collectively worth $16.12 billion were linked to foreign owners of which 20 per cent operated in high-risk-jurisdictions for money laundering. He found that FICOM staff were aware of the issues and concerned that FinTRAC reporting did not apply to private lender mortgages. Given this ambiguity in reporting private mortgages, they have been commonly and aptly also referred to as shadow mortgages.[9]

Since Dr. German and the Expert Panel report, there has been continued growth in the unregulated private lending industry in response to ever tightening lending rules from regulated mortgage lenders, including the chartered banks and credit unions. Well known financial analyst, Steven Punwasi, has noted that Mortgage Investment Corporations now hold over $29 billion which represents a three-fold increase from 2007. He explains that Mortgage Investment Corporations:

> *"Mortgage investment corporations (MICs) have a longer history as big business. These mortgage lenders sell shares or debt to investors, to finance operations. They typically provide short-term loans, secured by real estate. The role of an MIC is largely to provide more flexible financing, with short-turn around times. For the convenience, these lenders charge higher interest rates than traditional lenders."*[10]

While MICs serve a function of providing lending to borrowers who would not qualify for a more traditional mortgage, it is important to note that Mortgage Investment Corporations' mortgages are not ensured by the Canada Mortgage and Housing Corporation (CMHC). CMHC backed loans play a crucial role in ensuring the borrower gets a reasonable rate of interest with a smaller down payment, particularly during economic downturns. It can be argued that uninsured loans represent a higher risk to the lender as well as the economy at-large. Growing concern around the rise of MIC and unregulated real estate lending led a recent review by the Attorney General of Ontario to call for a registry of private lenders:

> *"During the review, many stakeholders noted that private/unregulated lending should not be restricted, but could be better understood or quantified. As such, it*

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[8] Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)'s mandate is to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control.

[9] Dr. German, 60.

[10] https://betterdwelling.com/canadas-non-bank-mortgage-industry-more-than-triples-its-business/

> *is our recommendation that the Ministry of Finance work with FSRA [Financial Services Regulatory Authority of Ontario] to create a registration regime for private/unregulated lenders that meet certain monetary or activity thresholds."*[11]

A recommended response to the Province's consultative questions regarding the Mortgage Broker Act can be found in Attachment 4.

Financial Impact

None.

Conclusion

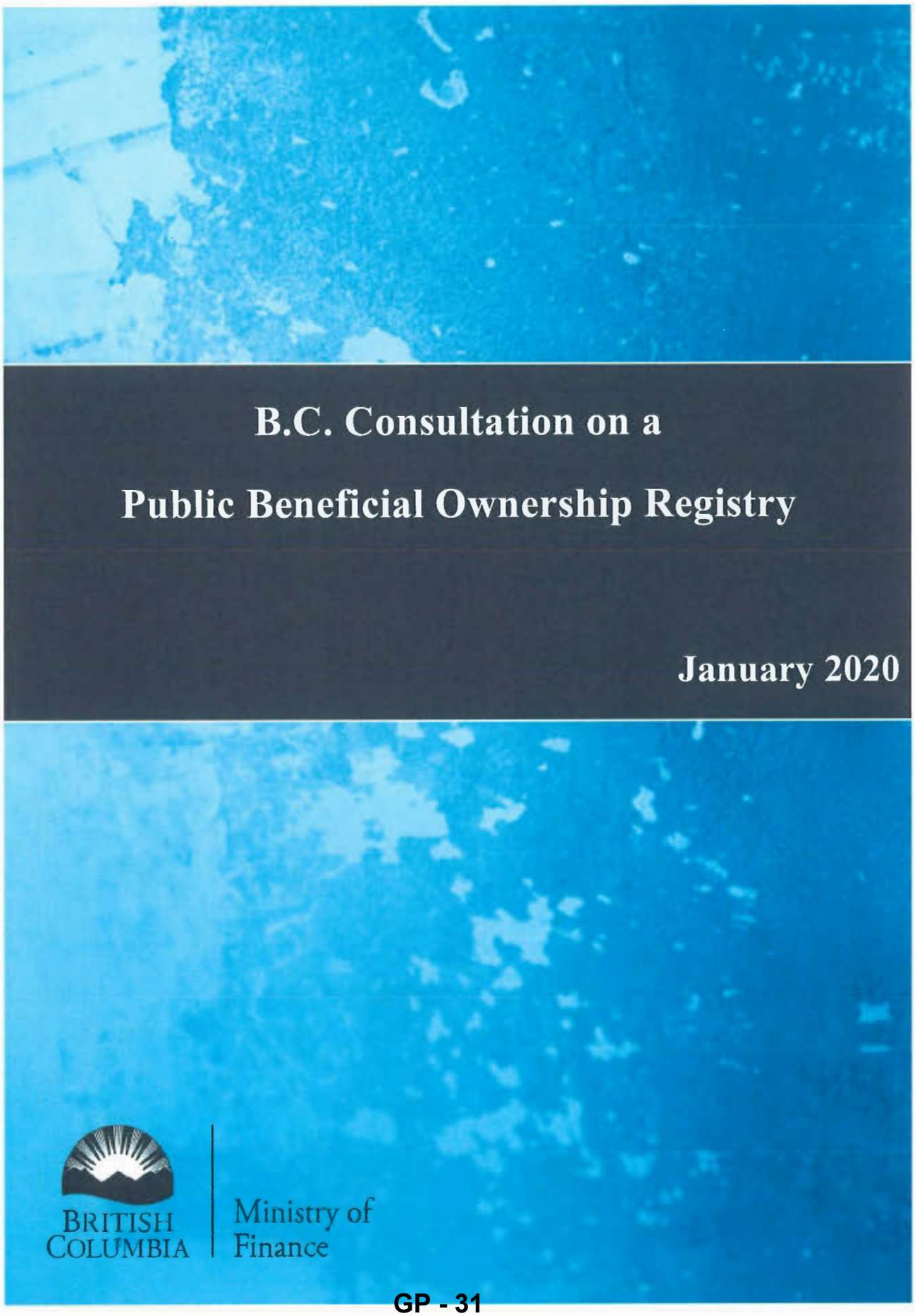
Following direction from Council, staff will submit the attached responses to the Provincial government's consultation on preventing money laundering in mortgages and corporations. A key recommendation in this response is the call for an expansion of the existing beneficial ownership registry to include non-land owning corporations. At the same time, it recommends the expansion of the *Mortgage Broker Act* to included currently non-regulated Mortgage Investment Corporations, car loan lenders, and private lenders. Staff will continue to research the issue of money laundering as well as monitor the Federal and Provincial government's legislative, regulatory, and policy responses.

Mark Corrado
Manager, Community Safety Policy and Programs
(604-204-8673)

MC:mc

Att. 1: Provincial Consultation Paper on a Public Beneficial Ownership Registry
2: Provincial Consultation Paper on the Mortgage Broker Act
3: Response to Provincial Consultation on a Public Beneficial Ownership Registry
4: Response to Provincial Consultation regarding the Mortgage Broker Act

[11] https://www.fin.gov.on.ca/en/consultations/mblaa-report-september2019.pdf



B.C. Consultation on a Public Beneficial Ownership Registry

January 2020

BRITISH COLUMBIA | Ministry of Finance

Foreword from the Honourable Carole James, Minister of Finance and Deputy Premier

The impact of money laundering in British Columbia can be seen in every corner of our province: driving up the cost of goods, affecting business competitiveness, eroding the trust in our economy and institutions, and facilitating criminal activities such as drug trafficking that is responsible for the many opioid-related deaths in this province[1].

Two Reports by Peter German found evidence that the proceeds of crime are being laundered in many sectors in B.C. including through casinos, the sales of luxury vehicles and real estate purchases.[2] The Expert Panel on Money Laundering in BC Real Estate estimated that $7.4 billion was laundered in B.C. in 2018, enough to have inflated housing prices by almost 5%.[3] As the very nature of money laundering is grounded in secrecy, these are conservative estimates and it is possible that the real numbers are much higher.

When the price of real estate grows because of the influx of dirty money, it pushes costs above what local incomes can support. From the young family struggling to purchase a home to the small businesses unable to attract talented employees, everyone is affected by money laundering.

Our work to stamp out money laundering is limited by a lack of data, including information on beneficial ownership in corporations and in real estate. That's why the Expert Panel has made several recommendations to improve data collection and data sharing — including Recommendation 5, which suggests consultation on a full corporate beneficial ownership registry consistent with best practices.[4]

In 2017, the provincial, territorial and federal Finance Ministers committed to improving transparency for the beneficial ownership of business corporations in Canada. To prevent misuse of corporations for criminal purposes such as money laundering, corruption, terrorist-financing and tax evasion, the Finance Ministers agreed to:

1) eliminate bearer shares, and
2) require corporations formed in Canada to maintain a list of beneficial owners within their corporate records office that is available to law enforcement, tax authorities and other regulators.[5]

In May 2019, the B.C. government delivered on this commitment by passing Bill 24, the *Business Corporations Amendment Act, 2019*, becoming one of three Canadian jurisdictions requiring corporations to keep records of beneficial owners in their corporate records office.

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[1] Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 1.
[2] Peter M. German, *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia*, March 31, 2018, and *Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019.
[3] Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 48.
[4] Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 76.
[5] Agreement to Strengthen Beneficial Ownership Transparency, December 11, 2017, https://www.fin.gc.ca/n17/data/17-122_4-eng.asp

In addition to pressures in B.C., there has been an increased push for greater transparency of corporate entities across the globe. Many countries have moved forward with publicly accessible government registries of beneficial ownership of companies. In particular, the European Union is requiring 31 European Countries to implement publicly accessible government registries by January 10, 2020.

B.C. added to this global momentum last spring with the successful passing of the *Land Owner Transparency Act*, which establishes the world's first public registry of beneficial ownership in real estate. In June of this year, I committed to initiate consultations to increase beneficial ownership transparency of companies along with my provincial, territorial and federal counterparts.[6]

Our next step is to consider how transparency for the beneficial ownership of companies will look in the future, and I want to hear from you. The following paper sets out potential policy changes and discussion questions regarding a potential government-maintained registry of company beneficial ownership.

We want to know how this potential registry may impact you or your business, and your comments will help make this registry as effective as possible. As a result, the registry will help give tax auditors, law enforcement agencies and federal and provincial regulators the information they need to conduct their investigations. It will also help those government agencies to crack down on tax frauds and those engaged in money laundering.

I want to thank you in advance for engaging with us as we work to end tax evasion and hidden ownership in British Columbia. I look forward to hearing your thoughts and ideas on this potential registry of company beneficial ownership.

Sincerely,

Carole James

Minister of Finance and Deputy Premier

[6] Joint Statement – federal, provincial and territorial governments working together to combat money laundering and terrorist financing in Canada, June 14, 2019 – https://www.fin.gc.ca/n19/19-065-eng.asp.

How to Participate

This paper is provided for public discussion and comment.

Comments on the paper are open until the end of the day, March 13, 2020 and should be directed, in electronic form to BCABO@gov.bc.ca or mailed to:

Attn: Policy and Legislation Division
BCA Beneficial Ownership
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria B.C. V8W 9V1

Similarly, should you have any questions about the issues raised in this consultation, please send them to the above address and a member of the Financial Real Estate Data Analytics Branch team will contact you.

Public Nature of Consultation Process

The Ministry of Finance will share comments it receives with other branches of government, specifically the Corporate Registrar, who is responsible for the administration of the corporate registry and the Land Title and Survey Authority, who is responsible for the administration of the land owner transparency register.

Freedom of information legislation may require that responses be made available to members of the public who request access.

Contents

Background

What is Beneficial Ownership and Why is it Important for Anti-Money Laundering?

Transparency of beneficial ownership is concerned with identifying the true or ultimate owner or controller of a company. The Financial Action Task Force (FATF), an intergovernmental organization of which Canada is a founding member, defines the beneficial owner as follows:

> Beneficial owner refers to the natural person(s) who ultimately owns or controls a legal entity and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.
>
> Reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.[7]

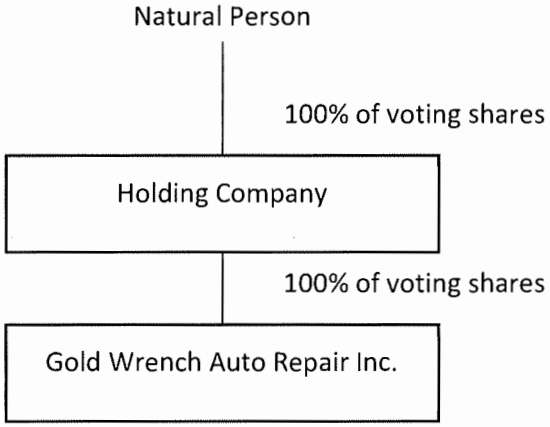
Companies are currently required to keep information of their legal owners, the shareholders, in the company's central securities register. However, that information does not always provide enough information to determine the persons described by FATF's definition above. For instance, the beneficial owner(s) may differ from the legal owner(s) due to:

- one shareholder having sufficient power (shares) to guide the decision making of the company more so than the others,
- the shareholder may be holding the shares on behalf or for the benefit of another through a trust, agency or nominee relationship, or
- the shareholders may themselves be companies who take direction from their shareholders.

The last-mentioned situation is a common situation referred to as a holding company arrangement often established as an added precaution to protect the owner's personal assets and to allow tax, business and succession planning.

[7] *FATF Guidance, Transparency and Beneficial Ownership*, Financial Action Task Force, at page 8 Box 1; see also the glossary in the *FATF Recommendations*. Definition has been amended with "legal entity" replacing "customer" for clarity in this context. FATF uses "customer" in that definition as many of the FATF recommendations are aimed at the requirements of financial institutions, including the recommendation that financial institutions identify the beneficial owners of their customers.

Visually, the structure would look as follows:



In this case, Holding Company is the legal owner of Gold Wrench while Natural Person, is the beneficial owner of Gold Wrench.

Such arrangements are legitimate and regularly created for normal business purposes. However, such a structure also largely obscures the ultimate owner and decision maker of Gold Wrench.[8] Without beneficial ownership information to complete the picture, it is difficult to distinguish between legitimate business structures such as Gold Wrench's and those designed to facilitate money laundering – money launderers are deliberately exploiting this fact.

As highlighted by the provincially appointed Expert Panel on Money Laundering in BC Real Estate, which was released on May 9, 2019, the ultimate goal of money laundering is to make the proceeds of crime appear to be from legitimate sources. Money laundering is comprised of three steps each dependent on anonymity to succeed:

Placement – The process of moving the criminal proceeds into the financial system.

Layering & Justification –

Layering: The process of moving criminal proceeds already placed in the financial system away from the underlying crime.

Justification: The process of creating evidence and providing a rationale for the existence of the money so that it appears legitimate. [9, 10]

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[8] An investigator could reach this conclusion by inspecting Gold Wrench's central securities register, then inspect Holding Company's central securities register and make the connection. However, this can be an onerous, multi-step process and for that reason it is often not done.

[9] For example, entering into business transactions and generating invoices between controlled companies giving the appearance of money being exchanged for the services or goods.

[10] The justification stage is a new phase suggested by T.J. van Koningsveld that takes place between the layering and integration stages. T.J. van Koningsveld, "Money Laundering – 'You don't see it, until you understand it': Rethinking the stages of the money laundering process to make enforcement more effective" in B. Unger and D. van der Linde (Eds.), *Research Handbook on Money Laundering* (Edward Elgar, 2013).

Integration/Extraction – Using the laundered proceeds without raising suspicions.

During placement, anonymity helps put the money into the financial system as the criminal avoids being identified as the true owner of the funds. During layering, the proceeds can be moved from account to account and from entity to entity while hiding the fact that the accounts and entities are ultimately controlled by the same person. This also helps justify the source of the funds and makes them appear to come from legitimate business transactions. At the final phase, integration/extraction, the cleaned funds are used to purchase goods or services from businesses. To the business, this customer is indistinguishable from ordinary customers.

In addition to allowing money laundering to flourish, anonymity undermines law enforcement's ability to investigate the predicate crime and the money laundering itself. It slows down the investigation as law enforcement must determine who the true owner of each company is as they trace the proceeds of crime back to the predicate offence. Tracing the proceeds of crime is already a time-consuming endeavour; money launderers further complicate this practice by deliberately exploiting the anonymity provided by the company structure.

Without anonymity, it is possible to unwind these transactions and see that ultimately, the funds have always been effectively controlled by the criminal during every stage of the process.

Although the separate legal personality of the company is what creates this anonymity, anonymity was not a primary feature that lead to the recognition of the corporate body at law. Rather, the primary feature of the company structure, dating back to *Joint Stock Companies Act 1856* (UK)[11] was to create a separate legal personality distinct from the shareholders to shield them from the liabilities incurred by the company. When the company structure is looked at globally, there are five key features, none of which are anonymous ownership:

1. legal personality,
2. limited liability,
3. transferable shares,
4. delegated management under a board structure, and
5. investor ownership.[12]

Rather than being a core feature of a company structure, anonymous ownership is a result of the need to create a separate legal personality combined with the historical data limitations at the corporate registries across the globe.

Disclosure is the answer to anonymity. The Expert Panel stated that "disclosure of beneficial ownership is the single most important measure that can be taken to combat money laundering."[13] This sentiment

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[11] 19 & 20 Vict. C. 47.

[12] Armour, John, Henry Hansmann and Reinier Kraakman, "The Essential Elements of Corporate Law: What is Corporate Law?", *Harvard Law and Economics Research Paper* No. 643 (2009), http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_643.pdf.

[13] Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, page 2.

is echoed by the non-governmental organizations including the Tax Justice Network,[14] Transparency International Canada[15] and Canadians for Tax Fairness.[16] Disclosure simplifies the tracing process for investigators when following the proceeds of crime. It also allows data analytics without undermining any of the primary functions of the company structure.

Those are the arguments in favour of increasing beneficial ownership transparency of B.C. private companies as well as the recently passed *Land Owner Transparency Act*, establishing the world's first publicly accessible registry of the beneficial owners of real estate. However, the government of B.C. recognizes that increasing beneficial ownership transparency of companies through a similar registry would represent a business and cultural change concerning company information; it would create new filing requirements for B.C.'s approximately 430,000 private companies while removing a level of privacy company owners have become accustomed to.

We are seeking your input and feedback about the impacts of such a registry of beneficial ownership of B.C. private companies, including:

- Business impacts,
- Efficient collection of data,
- Public access,
- Scope, and
- Role of government.

The Current State of Company Beneficial Ownership in B.C.

B.C. has already taken significant steps to improve the ownership transparency of B.C. companies. Bill 24, the *Business Corporations Amendment Act, 2019* received Royal Assent on May 16, 2019. It fully eliminated bearer shares and requires B.C. private companies to list their beneficial owners, referred to as "significant individuals" in the legislation, in a transparency register at the company's corporate records office by May 1, 2020.[17] The transparency register is then accessible by law enforcement, tax authorities and certain regulators.

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[14] Knobel, Andres, Moran Harari and Markus Meinzer, "The State of Play of Beneficial Ownership Registration: A Visual Overview", Tax Justice Network, June 27, 2018, at page 2 https://www.taxjustice.net/wp-content/uploads/2018/06/TJN2018-BeneficialOwnershipRegistration-StateOfPlay-FSI.pdf.

[15] Transparency International Canada, "No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts" 2016, at page 34 http://www.transparencycanada.ca/wp-content/uploads/2017/05/TIC-BeneficialOwnershipReport-Interactive.pdf.

[16] Transparency International Canada, Canadians for Tax Fairness and Publish What You Pay Canada. "Opacity: Why Criminals Love Canadian Real Estate (And How to Fix It)" at page 40 http://www.transparencycanada.ca/wp-content/uploads/2019/03/BOT-GTA-Report-WEB-copy.pdf.

[17] Please see the B.C. website, Bearer Share Certificate Elimination & Transparency Register, https://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-transparency-register, for more information.

Bill 24 established the criteria and tests that B.C. private companies are to use when identifying their significant individuals. Private companies must list every individual who is caught by one of the following rules:

- the registered owner of 25% or more of the shares or shares entitled to 25% or more of the votes,
- has a beneficial interest in 25% or more of the shares or shares entitled to 25% or more of the votes,
- has indirect control of 25% or more of the shares or shares entitled to 25% or more of the votes,
- has the right to elect, appoint or remove a majority of the company's directors,
- has indirect control of the right to elect, appoint or remove a majority of the company's directors, or
- has the ability to exercise direct and significant influence on an individual or group of individuals with the right to elect, appoint or remove a majority of the company's directors.

Bill 24 also requires companies to look for individuals who meet or exceed the 25 per cent threshold through combined interests or rights, who act in concert with others, or who jointly hold the above interests or rights.

The above legal tests for significant individuals bring the Financial Action Task Force definition of beneficial ownership into B.C. law. As a result, significant individuals are equivalent to beneficial owners in B.C. and the two terms are synonymous when speaking in the B.C. context. For the remainder of this document, the term beneficial owner will be used to refer to these individuals.

Once these measures take effect on May 1, 2020, B.C. will be compliant with Financial Action Task Force Recommendation 24.

As part of this consultation, the B.C. Ministry of Finance is also accepting feedback on the amendments created through Bill 24. Please send your feedback as part of your submission to BCABO@gov.bc.ca.

Canadian Context

In June 2019, amendments to the *Canada Business Corporations Act* (CBCA), requiring CBCA corporations to maintain a register of individuals with significant control in their records office for inspection by shareholders, directors, law enforcement, tax authorities and certain regulators took effect. Manitoba recently passed amendments to its *Corporations Act* modeled on the federal amendments. Manitoba's changes are set to take effect by April 8, 2020 at the latest. Saskatchewan introduced similar amendments on November 18, 2019.

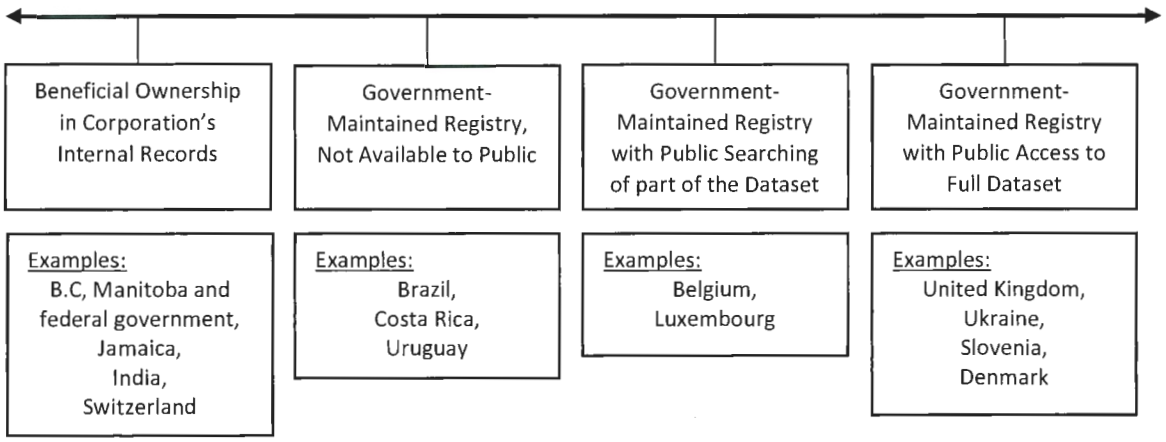
The amendments in Manitoba and at the federal level are very similar to the recent amendments to the B.C. *Business Corporations Act* regarding the transparency register as ultimately, both changes reflect the work undertaken by the Federal-Provincial-Territorial Working Group on Beneficial Ownership to bring Canada, as a nation, into compliance with Financial Action Task Force Recommendation 24.

In October 2019, Quebec initiated a similar consultation and has indicated a preference for using the definition of "individuals with significant control" to align with the federal definition.

Overall, while the legislative language is different across the jurisdictions, those differences reflect the differing legal frameworks of the underlying corporate statutes. They do not reflect a differing objective or underlying policy.

International Context

Increasing beneficial ownership transparency of corporate bodies is an international trend with many countries around the world taking steps to increase this information. In order to comply with Financial Action Task Force Recommendation 24, there are a range of options; from requiring companies to keep beneficial ownership information in their internal records to a fully-accessible dataset of information complied by the government.



Lately, the trend has been more towards full public access. In particular, the European Union's 5th Anti-Money Laundering Directive[18] requires 31 European countries to have a publicly accessible government-maintained registry of beneficial ownership by January 10, 2020. Similarly, the Extractive Industries Transparency Initiative (EITI) requires all 52 EITI countries to publicly disclose the beneficial ownership information of corporations involved in the extractive industries in their country by January 1, 2020.[19] With these two international initiatives, more and more countries are implementing registers on the rightward side of the above range of options.

Next Steps in B.C.

The Expert Panel on Money Laundering in B.C. Real Estate included a description of the 5 best practices of beneficial ownership registries.

[18] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, *OJ L 156, 19.6.2018, p. 43–74* http://data.europa.eu/eli/dir/2018/843/oj.

[19] EITI International Secretariat, The EITI Standard 2019 Requirement 2.5 at page 20 https://eiti.org/document/eiti-standard-2019#r2-5.

Chart 1 – B.C.'s Progress on Expert Panel's 5 Beneficial Ownership Best Practices[20]

Best Practice		B.C.'s Status
1. Information should be maintained about both the beneficial owner and the legal owner.	In progress	Bill 24 requires companies to maintain this information in their records office. To fully meet this, the information needs to be stored in a government database.
2. The ownership threshold for disclosure should be no greater than 10 per cent.	Not Started	B.C. has chosen the 25% threshold to align with Federal-Provincial-Territorial Working Group on Beneficial Ownership.
3. The beneficial ownership register should include all types of non-individual owners.	Not started	Transparency register requirement applies to B.C. private companies. There is no register of beneficial owners of B.C. partnerships or trusts.
4. The beneficial ownership register should be easily accessible and regularly updated.	Not started	Transparency register is only accessible by law enforcement, tax authorities and designated regulators
5. Bearer shares should be forbidden	Complete	Bearer shares eliminated through Bill 24.

Because of the Expert Panel's recommendation to develop a registry with these best practices, as well as the work being done across Canada and internationally, we would like your input on the specific questions throughout this document as B.C. considers its next steps for increasing beneficial ownership transparency.

[20] Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, pages 30-31.

Consultation Topics

Government-Maintained Transparency Registry

Once the requirement to maintain a transparency register at the company's office takes effect, investigators will need to go to the physical location of each company's corporate records office in order to inspect it. This is the minimum required to be compliant with the Financial Action Task Force; however, concerns have been raised regarding this approach's effectiveness in curtailing money laundering. For instance:

- it requires initial evidence that the company is being used for criminal activities before law enforcement will think to check the company's transparency register,
- the process of physical inspection means the check is costly for law enforcement,
- the process of physical inspection itself has the potential to alert the criminals that they are being investigated,
- because the data is not in a single location, data analysis cannot be performed, and
- aside from money laundering concerns, government cannot analyze data for social, demographic or economic trends including Gender-Based Analysis +.[21]

Advocates argue that these issues can be alleviated by requiring companies to upload their transparency register information to a government-maintained registry.[22] Doing so does not mean the information will be accessible by the public; that is a separate consultation topic to be addressed below. Rather, it will allow law enforcement, tax authorities and the authorized regulators to access the data much faster and in a more cost-effective manner.

A government-maintained registry of beneficial ownership information would mean taking the beneficial ownership information located in each company's records office as of May 1, 2020 and uploading this information to a government database. The other requirements would remain the same: private companies would still be required to perform an annual review to ensure the information is correct within 2 months of the companies' anniversary date and would be responsible for updating the information within 30 days after becoming aware of the information.[23]

Questions

1. How would the requirement to provide the information in your transparency register to government impact your operations?
2. Are there any steps that could be taken to streamline the process, including the uploading process?

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[21] Gender-Based Analysis + "is an analytical process used to assess how diverse groups of women, men and non-binary people may experience policies, programs and initiatives." – Government of Canada, https://cfc-swc.gc.ca/gba-acs/index-en.html.

[22] Government-maintained registry is being used to describe a beneficial ownership registry or companies as no decision has been made concerning which government body would be responsible for the registry if government proceeds.

[23] Sections 119.3 and 119.31, *Business Corporations Act*, SBC 2002, c. 57. See also *Business Corporations Amendment Act, 2019* (Bill 24), https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/progress-of-bills.

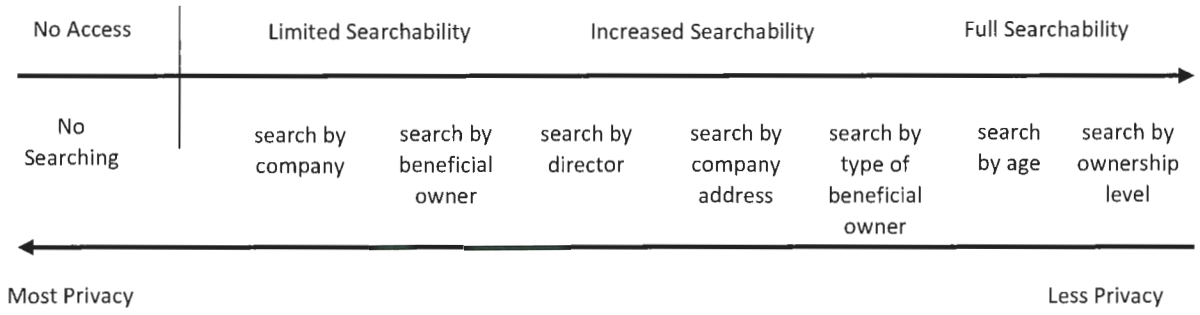
3. Are there any types of B.C. private companies you think should be exempted from the requirement to upload information? If so, why?
4. Should B.C. change the share ownership threshold from 25 per cent to 10 per cent for determining beneficial ownership?
5. Should a B.C. registry of beneficial ownership be linked with those in other Canadian jurisdictions?

Public Access to Government Maintained Transparency Registry

In stating its vision of an effective anti-money laundering system, the Expert Panel on Money Laundering in B.C. Real Estate stressed that the beneficial ownership information of legal persons should be public.[24] A benefit of doing so is that it gives businesses, customers and investors the opportunity know who they are dealing with.

In addition to the public at large, certain Canadian entities (referred to as anti-money laundering actors), notably in the financial sector are interested in this beneficial ownership information as they have know-your-customer requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.[25] That is, before they are permitted to take on a client as a customer, they must undertake due diligence to verify the true identity of their prospective customer including beneficial ownership information. Lawyers across Canada are similarly required to identify and verify clients before agreeing to represent them under their professional rules.[26] Granting public access would help these groups fulfill their requirements.

Related to the question of public access is the question of how much access to give. At one end of the spectrum is a system that allows the public to search by company name only. At the other end is a system in which the entire dataset, aside from information the legislation keeps private,[27] is accessible by the public: either through downloadable datasets or application programming interface (API). The latter allows interested users to develop their own tools for searching the data. As the searchability increases though, there is a corresponding decrease in privacy granted to the beneficial owners.



[24] Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*, at page 9.
[25] SC 2000, c. 17.
[26] B.C.'s *Law Society Rules* 3-98 to 3-109, Law Society of BC. It should be noted that Identification and verification are two distinct concepts in the Rules. In January 2020, the amendments to the client identification and verification rules will provide more options for how to confirm a client's identity.
[27] Detailed personal data about beneficial owners will not be available under any type of publicly accessible government-maintained registry. This is described in more detail in the next topic.

Advocates of full searchability of the database argue that full access deputizes every member of the public to act as verifiers of the information. If inconsistencies are found, they can be pointed out to the government for further follow-up. This role is most facilitated when the public has the greatest level of access to the data. That is, members of the public can develop tools to perform their own red flag analysis. This is the case with the United Kingdom's Persons with Significant Control Register as the API is available to any interested person.

Case Study: OpenOwnership.org's combined registries

OpenOwnership.org bills itself as "the global beneficial ownership register" as it has created a combined registry of beneficial ownership with data taken from the United Kingdom, Denmark, Slovakia and Ukraine. It is able to do so as all four countries enabled full data access through APIs.

OpenOwnership has developed the Beneficial Ownership Data Standard to assist governments in developing beneficial ownership registries that can be integrated with OpenOwnership.org's global registry. By following this standard, B.C. could allow its information to be available on the OpenOwnership.org registry.

Questions

6. How will publicly available beneficial ownership information impact your operations?
7. In your opinion, what degree of searching should the public have?

Protection of Personal Information

Government is aware that public searchability of the registry means personal information will be displayed publicly. Under the *Land Owner Transparency Act*, which will establish a public registry of beneficial owners of land in B.C., the collected information has been divided into public information and information that is not publicly available:

Chart 2 – Information Collected under the Land Owner Transparency Act

Information Available Publicly	Information Not Available Publicly
• Individual's full name*	• Date of birth*
• Whether the individual is a Canadian citizen or permanent resident of Canada*	• Last known address*
• If neither of the above, every country or state of which the individual is a citizen*	• Social insurance number
• If the principal residence is Canada, the city and province of that residence	• Individual's tax number if any,
• If the principal residence is outside Canada, the city and country of that residence	• Whether or not the individual is resident in Canada for the purposes of the *Income Tax Act* (Canada)*
	• The date on which the individual became or ceased to be an interest holder*
	• A description of how the individual is an interest holder*

* information required about beneficial owners in each private company's transparency register under the *Business Corporations Act*. See Appendix 2 for full details.

A publicly accessible government-maintained registry would take the *Land Owner Transparency Act* as the starting point regarding what information is public through a search.

Finally, as was done with *the Land Owner Transparency Act*, if public access is selected, there will be a mechanism to obscure the information of vulnerable individuals. In particular, individuals under the age of 19 or individuals who have been determined to be incapable of managing their own financial affairs will be automatically obscured. Similarly, there will also be an application process for individuals to request that their information be obscured if its publication could reasonably be expected to threaten the safety or mental or physical health of the individual or a member of the individual's household.

Questions

8. Are there any reasons to limit/expand the availability of information on the registry beyond what is described above in Chart 2?
9. Are there other situations in which an individual's information should be obscured other than the scenarios described above?

Verifying Beneficial Ownership Information

A concern about transparency registers stored at companies' records offices and government-maintained registries is that there is not sufficient verification of the information contained therein.

Generally, to ensure the information in a government-maintained registry is accurate, government can take a reactive approach, a proactive approach or a mixture of the two.

The reactive approach refers to situations where the government only takes steps to verify the information about beneficial owners when alerted by another party that the information is potentially incorrect. For example, with a publicly-accessible database, every member of society can search the information and then report on potentially false information they come across. Once a report is generated, government will be able to follow-up with the particular company.

Another reactive approach relies on anti-money laundering actors, who must identify the beneficial owners of their customers, to inform the government when their information differs from that on the government-maintained registry. For instance, when a company opens about a bank account at a Canadian bank, the bank is required to investigate the identity of the company's beneficial owner as part of the know-your-customer process. After verifying the identity of the customer, the bank can then double check this information against the information in the government database.

The proactive approach would involve government enforcement officers monitoring the information in the government-maintained registry for suspicious entries and following up with the companies to ensure the information they provided is correct. As there are over 430,000 B.C. private companies, for the government to adopt a proactive approach, government resources (staffing, training) will need to be allocated to this task. These would be additional resources beyond those required to establish the registry and for its ongoing maintenance. It is possible to fund the registry, including a proactive approach to verification, by charging the public search fees.

Questions

10. What role should government play in making sure the beneficial ownership information is correctly reported?
11. If there were a cost to search the database, would that change the way you interact with the beneficial ownership database?

Compliance and Enforcement

Once the government issues a request to a private company to update its beneficial ownership information, the issue of how to ensure this request is complied with arises. Currently, under the *Business Corporations Act* there are two tools to ensure the beneficial ownership information is correct. First, the permitted authorities (law enforcement, tax authorities and specified regulators) can seek a compliance order from the court that is backed up by the court's contempt proceedings. For more serious falsifications, the offending party can be charged with an offence.

Administrative penalties are another option to ensure compliance. Administrative penalties would require a government administrator/investigator empowered to levy fines in the face of non-compliance. These types of penalties are present in the recently enacted *Land Owner Transparency Act* that allows the enforcement officer to levy penalties of up to $50,000 plus 5 per cent of the assessed value of the property in question. See Appendix 3 for full list of *Land Owner Transparency Act* penalties.

Another option to enforce compliance would be to give the Corporate Registrar the power to suspend a company's status in the face of non-compliance. Suspension would prevent the company from updating

its corporate information and could ultimately lead to dissolution[28] due to non-compliance if it continued long enough. One enforcement option is to extend the suspension powers of the Corporate Registrar to include suspension a company that has failed to correct its beneficial ownership information once requested.

Questions

12. Do you support the use of administrative penalties to ensure compliance? If so, what range of penalties is appropriate in light of the anti-money laundering goals?
13. Do you support the use of suspensions or dissolutions of the corporation by the Corporate Registrar to ensure accurate beneficial ownership information is provided? Why? Why not?

Transparency Register for Other Entities

As it stands now, the transparency register requirement under the *Business Corporations Act* is limited to B.C. private companies. However, other legal entities, notably partnerships and trusts, are also susceptible to being used for money laundering purposes. In fact, FATF recommends that countries have beneficial ownership transparency for both legal persons (Recommendation 24) and legal arrangements including trusts (Recommendation 25).[29] Similarly, the European Union's 5th Anti-Money Laundering Directive requires 31 European countries to establish registers for both.

Once the land owner transparency registry is developed, individuals who have beneficial ownership of real property in B.C. through partnerships or trusts will be required to disclose those interests. Otherwise, there is no general registration process to cover all such arrangements in B.C.

In B.C., there is no registry of trust arrangements. Such a measure would be a tremendous shift in how B.C. regulates trusts as there is currently no registry. At this stage, the Ministry of Finance is seeking general feedback concerning a registry of trusts with further consultations to follow if this option is pursued.

Questions Regarding a Register of Trusts

14. How would a government-maintained registry of trusts impact your operations?
15. Should the public have access to a government-maintained registry of trusts? Why? Why not?
16. If a registry of trusts is created, what would be an appropriate consequence for noncompliance?

All partnerships governed the by *Partnership Act* are required to register with the Corporate Registry. Because of this registration requirement, the Corporate Registry is already in possession of the following information that helps identify the beneficial owners of partnerships:

a. the name and general nature of the business carried on by the partnership,
b. the full name and address of each general partner,
c. for limited partnerships and LLPs, the location of the registered office, and

[28] Dissolution of the company would mean that company would no longer exist.
[29] Financial Action Task Force, the *FATF Recommendations*, Recommendations 24 and 25, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf.

d. for limited partnerships, the term of the limited partnership, the fair value of contributions made by the limited partners, and the basis on which the limited partners are entitled to receive income.

This information combined with a government-maintained database of beneficial owners of B.C. private companies, means that much of the work towards gathering beneficial ownership information of B.C. partnerships will be accomplished through the corporate beneficial ownership registry.

However, there will nonetheless remain some gaps in the beneficial ownership of partnership information. The identities of the limited partners and the partners in a limited liability partnership will not be in the database. Likewise, if the partners are corporations incorporated outside of B.C. the beneficial owners will not be available in the B.C. government-maintained database without further action.

Questions Regarding Partnership Registration

17. How would increasing the information collected about partnerships impact your operations?
18. If further information is required of partnerships, what would be an appropriate consequence for non-compliant partnerships?

Concluding Remarks

Thank you for taking the time to read through this paper and engage with the ideas and issues it addresses. Your input will help inform government's decisions regarding a beneficial ownership registry for B.C. companies and shape the legislative changes.

Please send your comments to BCABO@gov.bc.ca or:

Attn: Policy and Legislation Division
BCA Beneficial Ownership
Ministry of Finance
PO BOX 9418 Stn Prov Govt
Victoria, B.C.
V8W 9W1

The consultation period is open until 4 pm March 13, 2020.

Public Nature of Consultation Process

The Ministry of Finance will share comments it receives with other branches of government, specifically the Corporate Registrar, who is responsible for the administration of the corporate registry and the Land Title and Survey Authority, who is responsible for the administration of the land owner transparency register.

Freedom of information legislation may require that responses be made available to members of the public who request access.

Appendix 1 – Glossary of Terms

"anti-money laundering Actor" – means a person with responsibilities to investigate their clients under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

"beneficial owner" (Financial Action Task Force meaning) – refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. This term is the focus of this paper.

"beneficial owner" (legal meaning) – refers to a person with a beneficial interest in the property. This includes a person with a beneficial interest in the property as a beneficiary in a trust but also includes a person with an interest in the property held by an agent or personal or legal representative. This paper never refers this type of beneficial owner.

"corporate shareholder" – refers to a shareholder of a company that is itself, a body corporate (B.C. company, federally-incorporated corporation, extra-provincially incorporated corporation).

"Federal-Provincial-Territorial Working Group on Beneficial Ownership" – refers to the group of federal, provincial and territorial government bodies and agencies working towards increasing beneficial ownership transparency across Canada.

"Gender-Based Analysis +" – refers to the analytical process of assessing a policy, program or initiative to determine its impact on diverse groups of women, men and non-binary people https://cfc-swc.gc.ca/gba-acs/index-en.html.

"government-maintained registry" – the centralized registry, operated by government where all the information about B.C. private companies' beneficial owners is stored. The word "registry" is used in this document to indicate a centralized database, while "register" is used for decentralized records stored in the companies' records offices.

"Know your customer", "KYC" – means the requirement of businesses to verify the identity of its customers prior to taking on the customer as a client under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

"public access" – refers to allowing members of the public to access a B.C. private company's information about beneficial owners.

"significant individual" – is the legislative term for individuals described in section 119.11 of the *Business Corporations Act*. The tests of significant individuals in section 119.11 of the *Business Corporations Act*, implemente the Financial Action Task Force definition of beneficial owner into B.C. law. This term is synonymous with beneficial owner (Financial Action Task Force meaning).

"transparency register" – the internal register at the B.C. private company's records office listing the required information of the company's beneficial owners that is accessible by law enforcement, tax authorities and specified regulators.

Appendix 2 – Information Required in the B.C. Private Company's Transparency Register

For each significant individual, the company's transparency register must contain the following information:

1. full name, date of birth and last known address,
2. if they are a Canadian citizen or permanent resident of Canada,
3. if they are not a Canadian citizen or permanent resident of Canada, every country or state of which they are a citizen,
4. if they are a resident in Canada for the purposes of the *Income Tax Act* (Canada),
5. the date when they became or ceased to be a significant individual in the company, and a description of how they are a significant individual.

Appendix 3 – Land Owner Transparency Act Penalties

Penalties Related to the Filing of a Transparency Report with the Land Title and Survey Authority

Maximum Penalty - $50,000 plus 5% of the assessed value of the property (for individuals, the maximum is $25,000 plus 5% of the assessed value).

- Failure to file a transparency report when required.
- Filing a non-compliant transparency report.
- Providing false or misleading information in a transparency declaration or report.

General Penalties

Maximum Penalty - $50,000 (for individuals, the maximum is $25,000).

- Failure of an interest holder to provide information to the person completing the transparency report.
- Inappropriately affixing an electronic signature to a transparency report in non-compliance with the Act.
- Failure to respond to a demand for information from the enforcement officer.
- Failure to verify the information in the transparency declaration or transparency report is accurate when requested to by the enforcement officer or administrator.
- Failure to provide proof of a fact stated in a transparency report, transparency record or other document when requested to by the enforcement officer or administrator.
- Providing false or misleading information in:
    - a written statement to a person completing the transparency report,
    - an application to the administrator to conduct a search or inspection,
    - an application to have information omitted from the registry due to a health or safety risk,
    - an application to correct or change information about the person on the registry,
    - a written statement or record given to the enforcement officer in respect of a demand for information,
    - the verification statement or proof requested by the administrator or enforcement officer, and
    - a written statement as part of the process of disputing the enforcement officer's penalty.
- Inappropriate disclosure or use of information in a transparency report by the person preparing the transparency report.
- Misuse of information on the public registry to:
    - solicit the person, or
    - harass the person.
- During the enforcement officer's inspection:
    - obstructing that inspection,
    - withholding, destroying, concealing or refusing to provide information required for the inspection, and
    - providing false or misleading records or information.

Mortgage Brokers Act Review

Public Consultation Paper

January 2020

BRITISH COLUMBIA

Ministry of Finance

MORTAGE BROKERS ACT REVIEW

PUBLIC CONSULTATION PAPER

TABLE OF CONTENTS

INTRODUCTION

The *Mortgage Brokers Act* (MBA) was originally enacted in 1972 as consumer protection legislation in response to an increased number of mortgage brokers and complaints of gross and unconscionable interest rates and fees. At the time, mortgage brokers were considered the lenders of last resort; however, over the years the industry has changed and has become part of the mainstream financial market.

Although it has been amended several times since its enactment, the MBA has not kept pace with evolving national and international standards in consumer protection, changes in the financial services market and emerging issues such as money laundering in the real estate market.

The 2018 Expert Panel on Money Laundering in BC Real Estate described the MBA as antiquated and recommended replacing the MBA with a modern statute to regulate all those in the business of mortgage lending, with few exceptions.

Purpose of MBA Consultation Paper

The purpose of this consultation is to elicit discussion and feedback from stakeholders on the Expert Panel on Money Laundering in Real Estate's recommendation[1] to replace the MBA with modern legislation that would:

- establish business authorization requirements for all mortgage lenders, with the possible exception of individuals lending to a small number of friends and family;
- make a distinction between regulation of the intermediary function and the lending function, with appropriate provisions for both aspects of the industry;
- establish a governance structure with designated management responsible for compliance within mortgage intermediaries and mortgage lenders, as well as compliance requirements placed on employees within the organization; and
- include modern regulatory powers and requirements.

After the consultation period, Ministry staff will analyze feedback and prepare policy proposals for the consideration of government. Ultimately, the replacement of the MBA is subject to consideration and approval by the Minister of Finance and Cabinet, and approval of the Legislature of British Columbia.

How to Provide Input

Submissions and comments must be received by March 13, 2020 and may be transmitted electronically to mbareview@gov.bc.ca.

[1] See Appendix A

Submissions and comments may also be mailed to:

Attn: Policy & Legislation Division
MBA Review
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Public Nature of Consultation Process

Please note that this is a public consultation process and, unless confidentiality is specifically requested, comments and submissions may be disclosed to other interested parties or made publicly available.

If certain comments should not be shared publicly with other parties, please clearly indicate that in the submission or covering letter. However, please note that all submissions received are subject to the *Freedom of Information and Protection of Privacy Act* and, even where confidentiality is requested, this legislation may require the Ministry to make information available to those requesting such access.

Background and Context

Legislative and Regulatory Framework – The *Mortgage Brokers Act* (MBA)

The MBA provides a framework for the regulation of mortgage brokers in BC and creates a Registrar of Mortgage Brokers (the Registrar). The Registrar was a part of the Financial Institutions Commission and has now become a part of the BC Financial Services Authority (see below). The MBA provides the Registrar with the power to investigate complaints and to suspend and cancel registrations.

Although the MBA has been amended several times, most notably in 1998 to protect investors following discovery of the Eron Mortgage fraud, the financial services market has changed profoundly. Examples of the degree of change include the type of mortgage products available, securitization of mortgage pools (i.e. asset-backed commercial paper), reverse mortgages, syndicated mortgage investments, the emergence of non-traditional mortgage lenders and the increased role of mortgage brokers as intermediaries in arranging mainstream residential mortgages.

Many provinces that first enacted mortgage broker legislation in the 1970s have since modernized their legislation. Manitoba rewrote their MBA in 1987, Ontario in 2006, Saskatchewan in 2007 and New Brunswick in 2016.

The results of a recent review of Ontario's legislation, published in September 2019 focussed on streamlining processes and reducing regulatory costs. Specific recommendations from the review

would raise the sector's professional and education standards, boost protections for homebuyers and assist in the fight against money laundering.

Adopting best practices and promoting legislative consistency across provinces where feasible ensures consumer protection and promotes a fair and stable market across jurisdictions, helping to create certainty in the market place.

The BC Financial Services Authority (BCFSA)

The *Financial Services Authority Act*, which received Royal Assent May 16, 2019, established the BC Financial Services Authority (BCFSA) as a new Crown entity that replaces the Financial Institutions Commission (FICOM). On November 1, 2019, FICOM was dissolved and the Authority took on all of FICOM's regulatory responsibilities, including the regulation of mortgage brokers.

The establishment of the BCFSA reflects government's commitment to building a modern, efficient, and effective regulatory framework to respond to a rapidly changing financial services industry and new risks to consumers.

The Ministry is targeting fall 2020 to bring forward new legislation to include real estate in BCFSA's mandate by spring 2021. The BCFSA will fully leverage expertise and best practices across regulated industries, including mortgage brokers, real estate, insurance, trusts, credit unions, and pensions.

Objectives of the MBA Review

Financial sector stability and consumer protection remain core priorities for government. These priorities are balanced with the need to ensure that the industry is not unduly burdened and that regulations do not stifle innovation or create barriers to new entrants.

The ultimate goal is a regulatory framework that helps to ensure that British Columbians continue to benefit from a financial services sector that is strong, stable, and inspires public confidence and trust.

The following objectives provide a framework to guide the analysis of issues during the review to:

- Reflect recognized national and international standards, while respecting the context of the BC marketplace including the size, scope and diversity of the industry.
- Enable early detection, timely intervention and resolution of issues.
- Promote clear, consistent and harmonized regulation.

- Foster an environment that promotes industry growth, innovation, and responsible business conduct.

Broadly speaking, the Ministry is proposing to meet these objectives by developing legislation that clearly sets out current best practices by:

- Requiring licensing of all mortgage brokering with limited exemptions.
- Providing for minimum standards of conduct and a duty of care to consumers.
- Requiring transparency and disclosure in mortgage transactions.
- Providing enhanced disclosure and reporting requirements for more complex products.
- Reducing regulatory gaps, leveraging work done in other provinces and respecting existing inter-jurisdictional agreements.

DISCUSSION OF KEY ISSUES AND AREAS FOR PUBLIC INPUT

Overview

The remainder of this paper sets out in summary form what replacing the current MBA with more modern provincial legislation could look like. For each issue, a description of the current approach and possible changes are discussed. Please note that the issues have been numbered for ease of reading and discussion and do not reflect any sort of ranking.

In addition to the issues listed below, the government is also seeking feedback on any other reforms that could be considered or aspects of the MBA that are working well and that should be retained.

MORTGAGE BROKER REGISTRATION OR LICENCING REQUIREMENTS

Building on national and international best practices, a modern MBA would establish business authorization requirements for all mortgage brokers and lenders except in circumstances of low consumer risk, such as individuals lending to a small number of friends and family. The authorization requirements would be supplemented by targeted consumer protection measures relevant to the borrower, lender or investor.

Ideally, the governance structure would impose clear accountability, requiring a brokerage to designate an individual responsible for managing the conduct of the business and supervision of employees and place compliance requirements on both the brokerage and the employees.

Issue 1: Scope of the MBA

As noted in the 2012 consultation paper, the original goal of the MBA was to protect consumers from harsh and unconscionable mortgage transactions. At the time, less reputable brokers were tacking on fees to the face rate of a mortgage without disclosing the impact of the fees on the true cost of borrowing. To address this, the MBA required persons carrying on activities captured by the definition of "mortgage broker" to register their business address and provide borrowers with true cost of borrowing disclosure if the mortgage broker charged a finder's fee or other charge.

Under the current MBA, a mortgage broker is a person who engages in any of the following activities:

(a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;

(b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;

(c) carries on a business of buying and selling mortgages or agreements for sale;

(d) in any one year, receives an amount of $1,000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;

(e) during any one year, lends money on the security of 10 or more mortgages;

(f) carries on a business of collecting money secured by mortgages.

Mortgage broker legislation differs from province to province but, broadly speaking, most mortgage broker legislation fulfills a consumer protection mandate by regulating all business activity carried on within the province in respect of:

- lending money secured by a mortgage,
- soliciting a mortgage loan or investment,
- negotiating and arranging a mortgage loan or an investment,
- administering mortgage loans and investments and
- holding one's self out to be a mortgage broker.

While the existing definitions of a mortgage, mortgage broker, and submortgage broker in the MBA captures much of the spirit of the above, there are gaps in the existing legislation.

The key differences between the current MBA and modern mortgage broker legislation are:

- The current definition of "mortgage" is limited to mortgages on real property located in BC and is only expanded to include all mortgages in limited circumstances, such as the disclosures required to be made to lenders. If the intent of the MBA is to ensure all mortgage brokering transactions that include a BC person, or that are carried on in BC, are

regulated[2] the current legislation is not clear. This creates potential gaps in the regulatory framework.

- "Carrying on business" is not defined separately from, but is integral to, the definition of a "mortgage broker." Modern legislation more clearly provides that persons are within the scope of the legislation and are regulated if they meet a two-part test: 1) the person must be "carrying on business;" and, 2) the business activities must be "mortgage brokering activities" or "mortgage administration activities." Such a test would provide more clarity than the current MBA, which sets thresholds of either $1,000 or more in fees or lending money on the security of 10 or more mortgages above either of which a person is considered a "mortgage broker."

- The MBA does not allow definitions to be expanded to include new business activities as the industry changes without changing the Act. Modern legislation provides the ability to expand the scope of the legislation by regulation. Providing the ability to bring new business activities or ways of doing business by regulation allows the legislative framework to meet the changing needs of consumers and the marketplace in a more timely fashion.

With the current definitions private mortgage lenders may not be regulated unless they meet the existing thresholds. This is the case even if the lender is otherwise lending money secured by mortgages in BC. An estimated 5% of mortgages are originated by unregulated mortgage lenders, or private lenders. This activity can expose consumers to risks that should be mitigated by the MBA.

Questions:

1) Are there any unintended consequences or concerns with amending the scope of the MBA legislation to align with other modern provincial MBA legislation?
2) To what extent should private lending be regulated?
3) Are there any other mortgage broker or lending activities that should be subject to regulatory oversight?

Issue 2: Types of Licences and Related Obligations

Currently, the MBA requires persons to register as either mortgage brokers or submortgage brokers. A submortgage broker is an employee of a particular mortgage broker and may carry on the same activities as a mortgage broker.

The MBA places most statutory duties and obligations on the business entity registered as a mortgage broker, while imposing fewer duties on the individuals employed as submortgage brokers.

[2] Other than federally regulated transactions.

To more clearly define the responsibility of mortgage brokers and their relationship with employees, the Registrar requires each mortgage broker, as a condition of registration, to have a submortgage broker act as a designated individual, who is responsible for the conduct of the business entity and all of its submortgage brokers.

Today, mortgage brokers carry out a number of different mortgage related activities, each with different associated risks to the consumer and public. The different risks are not always addressed with the current broad categories of registration. Modern mortgage legislation addresses this issue, at least in part, by distinguishing between persons carrying out different mortgage brokering activities and imposing duties and obligations specific to those activities. Licences are grouped as follows:

- "mortgage brokerage" – a business entity that is a corporation, partnership or sole proprietorship that brokers mortgages,
- "mortgage administrator" – a corporation that provides administrative services in respect of mortgages, including receiving mortgage payments from borrowers for the benefit of lenders or investors,
- "mortgage associate" – an individual who brokers mortgages on behalf of a mortgage brokerage, and
- "managing mortgage broker" – an individual who brokers mortgages on behalf of a mortgage brokerage and meets criteria to supervise mortgage associates,

While statutory obligations and responsibilities could vary by license type, all licensees should be required to apply for a licence, pay an annual fee, and comply with the terms of their license and the legislation.

Another possible change from the current application of the MBA in BC is licenses could be continuous. This would eliminate licence renewals, though licences could still be suspended or cancelled.

Under modern mortgage legislation in other jurisdictions, mortgage administrators and brokerages are required to establish policy and procedures to ensure compliance with the legislation. They also have a duty to appoint a managing mortgage broker as a representative in all dealings under the legislation.

Questions:

1) What are the challenges associated with moving to a more modern licencing regime described above?
2) Are there disadvantages to continuous licensing the government should consider?

Issue 3: Exemptions from Registration or Licencing

Currently, the MBA provides exemptions from registration to persons who are otherwise subject to equivalent regulation under another Act, including the following persons:

- insurance companies,
- savings institutions (banks, credit unions, extraprovincial trust corporations and subsidiaries of banks that are loan companies),
- a member of the Law Society of British Columbia,
- an employee, or director, of an insurance company or savings institution,
- persons registered under the *Securities Act*, other than exempt dealers, that offer for sale securities of syndicated mortgages and
- a person licensed under the *Real Estate Services Act*, in respect of vendor take-back mortgages.

Additional exemptions are available for:

- persons acting for the government or for an agency of the government,
- a liquidator, receiver, trustee in bankruptcy or a person acting under the authority of any court or an executor or trustee acting under the terms of a will or marriage settlement.
- a person lending money, directly or indirectly, on the security of land to provide housing for the person's employees,
- any other person or class of persons exempted by the Registrar from registration.

Modern mortgage legislation tends to provide similar exemptions from licensing. However, additional exemptions are also provided, including exemptions for:

- persons acting on behalf of a Crown corporation or agency of any Canadian jurisdiction,
- persons registered under the *Securities Act* of any Canadian jurisdiction,
- persons that provide simple referrals, and
- mortgage lenders who only lend through a licensed brokerage or an otherwise exempt broker.

Questions:

1) In your view, what are the costs or benefits of matching the MBA registration exemptions to parallel modern mortgage legislation?
2) Is the exemption from registration for persons lending money on the security of land to provide housing for the person's employees still relevant?
3) Are there any other persons currently exempted from registration either under the MBA or modern legislation that should not be exempted?
4) Are there any other persons that should be exempted from registration under the MBA?

DUTIES OF ALL REGISTERED OR LICENCED PERSONS

The MBA requires mortgage brokers and submortgage brokers to register by filing an application to the Registrar. The required form, any additional requirements, and the fee are set out in the regulation and in guidelines. Applicants are subject to a suitability review.

Modern mortgage legislation, sets out directly in the legislation, duties and obligations that apply to all licensed persons, including the following:

- a duty to act fairly, honestly and in good faith in carrying out licensed activities,
- comply with errors and omission insurance requirements,
- record keeping and retention requirements,
- restrictions on tied selling and
- working capital requirements for persons who handle trust funds.

The legislation is supplemented by regulations or rules that set out how the legislated duties and obligations are to be achieved.

Issue 1: Duty to Act Fairly, Honestly and in Good Faith

The MBA does not legislate a duty to act fairly, honestly and in good faith.

Generally, financial services providers in the areas of securities, insurance, and real estate should have as an objective, to work fairly and honestly and to exercise good faith in their dealings. This duty already cuts across sectors in BC. BC requires a positive obligation or duty to act honestly in rules created under the *Real Estate Services Act* and the Insurance Council of BC requires good faith as a fundamental aspect of conduct.

Modern mortgage legislation tends to contain such a duty that is consistent with the duties imposed across the financial sector. In addition, to further promote responsible business conduct, the MBA could place a positive obligation or duty for licencees to report industry member misconduct to the regulator.

Questions:

1) Do you have any concerns with matching modern mortgage legislation to include a duty to act fairly, honestly and in good faith?
2) Should a positive obligation to require reporting misconduct be legislated?

Issue 2: Insurance

Errors and omissions (E&O) insurance is not currently required in BC under the MBA. This is inconsistent with modern mortgage legislation as well as the requirements placed on other regulated persons (e.g., insurance agents, real estate brokers). E&O insurance is a significant tool in

consumer protection regimes to ensure funds are available to pay for consumer losses caused by an agent's negligence.

The Mortgage Brokers Regulator's Council of Canada[3] (MBRCC) is currently developing national standards for E&O insurance for mortgage brokering activities.[4] As the national standards are developed, a new MBA would require insurance with a goal to harmonize with other jurisdictions and adopt the national standards for E&O insurance developed by the MBRCC for the protection of consumers.

Questions:

1) If you are a mortgage broker, do you currently have E&O insurance?
2) If you are a mortgage broker, what are your reasons for having or not having E&O insurance?
3) Is there any reason why E&O insurance should not be required?

DUTY TO BORROWERS

In addition to the general duty to act fairly, honestly and in good faith in carrying out licensed activities, licencees under some modern mortgage legislation have a specific duty to act in the best interest of a borrower.

Acting in the best interest of a borrower means a broker must:

- verify the identity of the borrower, lender or private investor and determine the suitability of mortgage products available to the borrower by taking into account specified factors, including the interest rate, term, amortization period and any other distinguishing features of the mortgage,
- provide information about the brokerage business that a borrower may want to consider in their dealings with the brokerage, including ownership by a mortgage lender or private lender, the name and number of lenders they work with, the fees and remuneration or penalties payable by the borrower,
- disclose all direct or indirect compensation receivable by the brokerage from others, or payable by the brokerage if the borrower enters into the specific mortgage.

The brokerage must keep a record that the above steps took place and obtain acknowledgement, in writing, from the borrower that the steps took place.

[3] The MBRCC is comprised of the provincial regulators that are responsible for administering mortgage broker legislation and regulating the industry across Canada. The MBRCC aims to balance consumer protection with an open and fair marketplace and works cooperatively to improve information sharing, promote harmonized regulatory practices and to develop a unified approach to engaging stakeholders on common issues.

[4] In support of this initiative, the MBRCC E&O Committee consulted with mortgage brokering stakeholders across Canada. The consultation period closed April 1, 2019.

Further, the above measures are typically supplemented by additional requirements to disclose the cost of credit and prohibitions against deceptive or unconscionable acts or practices.

Issue 1: Duty to Act in Borrowers' Best Interest and Mortgage Suitability

The current MBA does not place a duty on a broker to act in the best interest of the borrower nor does it place a duty on a broker to determine if a mortgage product is suitable for the borrower.

The duty to act in the best interest of the borrower is common in modern mortgage legislation and is not unique to Canada. The European Union mortgage credit directive (MCD) sets out a duty to act honestly, fairly, transparently and professionally, considering the rights and interest of the consumer. The United Kingdom, in adopting the MCD, further specifies actions that will tend to show a contravention of the customer's best interest.

The current MBA is out of step with international standards and may create a gap in consumer protection by not requiring a broker to act in the borrower's best interest. Unethical actors may continue to work as brokers and remediation must be sought through other, often more costly channels.

Questions:

1) What do you consider to be acting in the best interest of the borrower? What parts of that should be required by legislation?
2) If a duty is placed on a broker to determine suitability of a mortgage product for a borrower, what factors should a broker consider when determining suitability?
3) Are there borrowers who do not require the protection offered by a duty to determine mortgage suitability?

Issue 2: Disclosure of Brokerage Information

The current MBA does not require brokerages to provide basic brokerage business information beyond requiring disclosure of potential conflicts of interest (discussed below in Issue 3).

Most modern legislation recognizes that information about the brokerage and the type of services offered, in addition to disclosing potential conflicts of interest, is required to ensure transparency and enable the borrower to make an informed decision. Basic brokerage information that must be provided to a borrower and maintained on record would include the following:

- if the brokerage is owned by a mortgage lender or private investor, the name of that mortgage lender or private investor;
- the name and number of lenders or private investors,
- the steps that the brokerage took to confirm the identity of the lender and private investor,

- the fees, remuneration or penalties payable by the borrower in connection with the services offered by the mortgage brokerage, and
- potential conflicts of interest, (i.e., where the brokerage or a related person has an interest in the mortgage).

Question:

1) Is there information that should or should not be included in disclosures to borrowers?

Issue 3: Disclosure of Compensation Receivable or Payable

Under the MBA, mortgage brokers are required to disclose interests in transactions. The disclosure must be made to the borrower and lender on a prescribed form (Form 10).[5]

The MBA does not prescribe the detailed information required to be disclosed to borrowers. As a result, the Registrar has published the Mortgage Broker Conflict of Interest Disclosure Guidelines and Frequently Asked Questions, which provides that brokers must disclose in dollar terms the commission and volume bonuses, plus other rewards, that a broker may receive.

Modernizing the legislation would include providing the Registrar with the ability to determine the form and manner of all filings including any required information to be disclosed to consumers. The legislation would allow the Registrar to be more responsive to changes in the industry and adjust the required forms as needed.

Question:

1) Are there any specific concerns with providing the Registrar with the flexibility to strengthen the MBA disclosure requirements as needed?

Issue 4: Disclosure of Cost of Credit for Home Equity Loans

The *Business Practices and Consumer Protection Act* (BPCPA) amalgamated a number of consumer protection statutes and the *Cost of Consumer Credit Disclosure Act*. The consumer credit disclosure requirements were developed as a federal-provincial-territorial initiative to harmonize laws concerning the cost of consumer credit disclosure. The BPCPA requires mortgage brokers and lenders to provide disclosure to individuals who borrow primarily for personal, family or household purposes, regardless of whether the broker or lender is charging additional fees or expenses.[6]

[5] The form is not required if the borrower received the required information as part of an offering memorandum or prospectus.

[6] By referencing the BPCPA, the MBA adopts the provisions that deal with the disclosure of the cost of borrowing and broker conduct rules.

While the MBA does not require that the cost of borrowing disclosure be provided to individuals who use their home equity to secure a business loan, this gap may create unnecessary risk to the residential housing market.

Question:

1) Is there a reason why disclosure of the cost of borrowing should not be required in every instance where an individual takes out a mortgage secured against residential property?

Issue 5: Reverse Mortgages

While the MBA applies to reverse mortgages, it does not require any enhanced disclosure, which may be needed to protect the vulnerable populations most likely to access these products. In 2006, the British Columbia Law Institute and the Canadian Centre for Elder Law published a report on reverse mortgages. The report recommended that legislation should specifically address reverse mortgages, with a focus on enhanced disclosure requirements, an extended cooling-off period and independent counselling.

In surveying best practices across Canada, New Brunswick, Ontario and Saskatchewan currently require independent legal advice before a borrower can take out a reverse mortgage. The *Mortgage Act* of Manitoba sets rules for reverse mortgages to limit fees, provides for an extended cooling-off period and requires disclosure that highlights the effect of an interest rate change on the mortgage balance.

Questions:

1) What are the benefits and costs of requiring independent legal advice before taking out a reverse mortgage?
2) What is an appropriate extended cooling off period for reverse mortgages?
3) Should disclosure of the effects of an interest rate change on the mortgage balance be required for reverse mortgages?
4) Are there other disclosures or requirements that could better protect consumers not contemplated here?

Duty to Lenders and Investors

The current MBA does not place a duty to act in the best interest of a lender or private investor on mortgage brokers. The MBA also does not place a duty to determine if the mortgage is a suitable investment for an investor.

Under modern mortgage legislation, in addition to the general duty to act fairly, honestly and in good faith in carrying out licensed activities, licencees that solicit, negotiate, arrange or provide advice to private investors in respect of an investment in a mortgage have a duty to act in the best interest of the private investor.

As an example, a private investor in New Brunswick, meaning everyone other than a corporation with $5M or more in net realizable assets, a trustee of a registered pension plan, another mortgage broker or a government entity must act in a private lender's best interests.

A broker required to act in the best interest of a private investor must take reasonable steps to verify the identity of the investor, ensure the mortgage investment is suitable and provide the investor with:

- disclosure in respect of mortgage investment information,
- disclosure of material risks, and
- disclosure of potential conflicts of interest.

Issue 1: Suitability of Investment

The MBA requires disclosure of mortgage investment information (via Form 9) to all lenders and private investors, except if:

- the borrower or the investor is a sophisticated person[7],
- an offering memorandum or a prospectus has been provided in accordance with the *Securities Act,* or
- in the case of a mortgage that is part of a pool of mortgages, an interest in the pool is being offered as a security, as defined in the *Securities Act,* and the mortgage is fully guaranteed by the government of Canada or a province.

In contrast, under modern mortgage legislation, the suitability of the investment and related disclosure requirements are intended to apply only in respect of private investors. The disclosure requirements are focused on protecting persons who are the most likely to benefit from standard disclosure in respect of the mortgage investment.

Questions:

1) Should the duty to disclose mortgage information be amended and limited to private investors?
2) Should the mortgage broker duty to a private investor include determining mortgage investment suitability?

[7]A sophisticated person is defined and includes government bodies, banks, credit unions, insurance companies, trusts companies, mortgage brokers, registered investment dealers, portfolio managers and certain transactions with persons registered under the *Securities Act.*

Issue 2: Best Interest of Private Investor

The current MBA does not include a duty to act in the best interest of an investor or lender nor does it limit a brokerage from simultaneously acting for both the borrower and the investor.

Modern mortgage legislation would set out that mortgage brokerages that solicit, negotiate, arrange or provide advice to private investors in respect of an investment in a mortgage have a duty to act in the best interest of the private investor, if the private investor is not represented by another brokerage. Additionally, some jurisdictions require that if a mortgage brokerage has a duty to act in the best interest of a private investor, the brokerage must ensure that the borrower is represented by another brokerage.

Questions:

1) Are there potential conflicts between the duties to a borrower as outlined above and acting in the best interest of a private investor?
2) What would be the effect, if any, on your mortgage brokerage business if you are prohibited from acting for both the borrower and the private investor in a mortgage transaction?

Issue 3: *The Securities Act*

Since the late 1980's, the mortgage investment market has become increasingly complex, attracting both sophisticated and unsophisticated investors. Because mortgages sold as investments are generally securities within the meaning of the *Securities Act*, both the MBA and the *Securities Act* can apply to a person registered as a mortgage broker in BC.

The intent underlying the *Securities Act* is to protect investors and support fair capital markets by regulating companies, firms or individuals that issue, trade or provide advice on securities. To assist investors, companies offering securities for sale must generally file a prospectus and meet extensive continuous disclosure requirements, unless an exemption exists. In addition, firms and individuals trading or advising on securities must be registered under the *Securities Act*, unless an exemption exists.

Beginning January 1, 2019, mortgage investment entities (MIE)[8] are now subject to the dealer registration regime, including 'know your client' and suitability requirements relating to:

- the general investment needs and objectives of their client and any other factors necessary for them to be able to determine whether a proposed purchase or sale is suitable ('know your client' or KYC); and
- the attributes and associated risks of the products they are recommending to clients (commonly referred to as know your product or KYP).

[8] Mortgage investment entities include both mortgage investment corporations and mortgage syndications.

Although a MIE must be registered under the MBA when lending, the Registrar has limited authority to regulate the capital raising activities of the MIE as that falls under the BC Securities Commission (investors buy shares in the MIE and not mortgages).

Question:

1) Does the current division of regulatory oversight between the *Securities Act* and the MBA create gaps or unnecessary duplication in regulation or oversight?

Issue 4: Disclosure of Compensation Receivable or Payable

As discussed above, under the MBA, mortgage brokers are required to disclose interests in transactions to all borrowers and lenders. (via Form 10).

In contrast, modern mortgage broker legislation requires brokers to disclose actual or potential conflicts of interest only to private investors, so that the private investor may make an informed decision.

Question:

1) Should the disclosure to lenders of potential conflict of interests be limited and only required if the lender is a private investor?

MODERN REGULATORY REQUIREMENTS AND POWERS

As noted above, the new Financial Services Authority has taken on all regulatory responsibilities relating to the credit union, insurance, trust, mortgage broker and pension sectors. Additionally, the Authority will become the sole regulator for real estate services by spring 2021.

Ensuring the Authority's regulatory powers are harmonized across the sectors (where appropriate) would increase efficiency and transparency across the broader financial services sector.

Issue 1: Regulations and Rule Making Powers

The current MBA provides broad regulation making powers to the Lieutenant Governor in Council and more limited powers to the registrar.

Modern mortgage legislation provides rule making power to the regulator, for example in New Brunswick the Financial and Consumer Services Commission is given broad rule making power. Similarly, formal rule making power is provided to the Superintendent under the *Real Estate Services Act*, respecting licensing and regulating the provisions of real estate services and it

is expected the Authority will take on this power once it becomes the sole regulator for real estate services in BC.

Before making or amending specific rules, the Minister's consent would be required.

Question:

1) Please, provide your views on the Authority being provided with the power to make rules under the MBA?

Issue 2: Annual Information Returns

Currently, annual filing requirements under the MBA are limited. A mortgage broker is required to file either a declaration that they do not handle trust funds, or to file a report on the trust funds, including an accountant's report.

Modern mortgage legislation requires mortgage brokerages and administrators to file annual information returns, which are then used by regulators to identify, assess and monitor risk. The filings are completed by the managing broker and typically include the following information:

- Contact information including all locations and an address for service,
- Types of licensed activities carried on during the year,
- Number of brokers and broker associates,
- Number and dollar amount of mortgages placed, by type of mortgage and by type of lender,
- Errors and omission insurance coverage, claims and payouts, and
- A description of any complaints made to the brokerage regarding the brokerage or any of its associated brokers.

If the brokerage does not handle trust funds, a declaration to that effect would be filed. If the brokerage handles trust funds, audited financial statements would be filed.

The annual information filings would support the continuous licensing system and provide the regulator with up to date information on the industry.

The audited financial statements would support the prudential supervision of those mortgage brokerages and administrators that handle trust funds. For example, licencees in New Brunswick that hold trust funds must maintain at least $25,000 in working capital.

Questions:

1) What concerns, if any, would you have with requiring an annual information return from all brokerages and administrators?

2) What are the expected impacts to your business in requiring audited financial statements in place of an accountant's report on trust funds.

Issue 3: Enforcement and the BPCPA

The MBA not only adopts by reference provisions of the BPCPA that deal with the disclosure of the cost of borrowing and broker conduct rules, it also adopts the related BPCPA enforcement provisions. The Registrar may exercise the BPCPA enforcement provisions in respect of inspections, undertakings, freeze orders, administrative penalties and court proceedings. Navigating the requirements under the MBA is made more complex where the same or similar enforcement powers are dealt with in both the MBA and the BPCPA.

Modern mortgage legislation would provide for enforcement provisions based on their specific jurisdiction. In Ontario, for example, the regulatory framework provides for all enforcement powers within the mortgage legislation. In contrast, New Brunswick mortgage transactions may be subject to both the mortgage legislation and the *Cost of Credit Disclosure and Payday Loans Act*.

Questions:

1) Would the administrative and enforcement provisions be clearer if they were all embedded directly in the MBA, and not split between the MBA and the BPCPA?
2) If enforcement provisions continue to be split, are there clarifications that could be made in the MBA to reduce complexity and uncertainty?

Issue 4: Enforcement

The MBA provides the Registrar with enforcement powers to take effective action against non-compliant mortgage brokers. Specifically, the Registrar may investigate, summon witnesses, and inspect the affairs and records of a person and may:

- suspend or cancel a registration;
- issue orders requiring a person to take specified actions;
- levy administrative penalties of up to $50,000;
- issue cease and desist orders and
- enforce orders by filing them with the courts.

Mortgage brokers and submortgage brokers are generally entitled to a hearing before these powers are enforced. A person affected by a direction, decision or order of the Registrar is entitled to be heard and can make an appeal to the Financial Services Tribunal. The Tribunal's decisions are final, but subject to judicial review.

The maximum dollar amount of administrative penalties imposed to deter non-compliance in other consumer protection statutes have been substantially increased. For example, the *Real Estate*

Services Act maximum administrative penalty was increased from $20,000 to $500,000 for brokerages and from $10,000 to $250,000 in any other case.

Questions:

1) Do you have any suggestions on ways to further improve enforcement powers and remedies?
2) Given the significant monetary value of mortgages and the significant increase to penalties provided in other legislation that regulates real estate services is the current $50,000 limit on the administrative penalties still appropriate?

CONCLUDING REMARKS

Thank you for taking the time to read through this paper and engage with the ideas and issues it addresses. Your input will help inform government's decision on replacing the MBA with modern legislation.

Please send your comments to MBAReview@gov.bc.ca or:

Attn: Policy and Legislation Division
MBA Review
Ministry of Finance
PO BOX 9418 Stn Prov Govt
Victoria, BC
V8W 9W1

The consultation period is open until March 13, 2019.

Public Nature of Consultation Process

The Ministry of Finance will share comments it receives with other branches of government, specifically the BC Financial Services Authority, who is responsible for the administration of the MBA.

Freedom of information legislation may require that responses be made available to members of the public who request access.

GLOSSARY

"BCFSA" is the BC Financial Services Authority established under the *Financial Services Authority Act* a new Crown entity that replaces FICOM.

"BPCPA" is the *Business Practices and Consumer Protection Act*, a consumer protection statute.

"Expert Panel" is the Expert Panel on Money Laundering in BC Real Estate appointed by the Minister of Finance in September 2018 to review money laundering in the real estate sector after two independent reports revealed that B.C.'s real estate market is vulnerable to criminal activity and market manipulation.

"FICOM" refers to the Financial Institutions Commission appointed by the Lieutenant Governor in Council which had statutory authority for the regulation of financial institutions in BC.

"FINTRAC" Financial Transaction Reporting and Analysis Centre: federal financial intelligence unit

"modern mortgage legislation" include the New Brunswick, Ontario and Saskatchewan mortgage legislation that provides the regulatory framework for mortgage brokers.

"MBA" is the *Mortgage Brokers Act*, the BC legislation that provides the regulatory framework for mortgage brokers.

"MCD" is the European Commission Mortgage Credit - Directive 2014/17

"PCMLTFA" – *Proceeds of Crime (Money Laundering) and Terrorist Financing Act:* federal anti-money laundering legislation

APPENDIX A – EXPERT PANEL AND RECOMMENDATIONS

The *Mortgage Broker Act* (MBA) is not a modern statute and does not provide a solid basis for the regulation of the industry, especially mortgage lenders that are not financial institutions. Currently it is unclear exactly which lenders are subject to the Act, and many that should be regulated are not registered. The Act should be replaced.

New legislation would:

- establish business authorization requirements for all mortgage lenders except individuals lending to a small number of friends and family;
- include modern regulatory powers and requirements;
- establish a governance structure with designated management responsible for compliance within mortgage intermediaries and mortgage lenders, as well as compliance requirements placed on employees within the organization; and
- make a distinction between regulation of the intermediary function and the lending function, with appropriate provisions for both aspects of the industry.

Those using mortgages as a money laundering tool either directly or through currently unregulated lenders should be subject to regulatory action under the new act, which would also enhance the market conduct public protection that the MBA was originally intended to provide.
A modern MBA would require additional regulatory resources to be effective, and this should be funded on a user-pay basis by regulated entities. The Panel recognizes that FICOM is currently undergoing considerable change. Implementing a new MBA would place additional change-management responsibilities on the organization. A new MBA would also place additional compliance costs on those currently registered under the MBA and those who would be regulated for the first time.

Recommendation 9: Replace the MBA with a modern regulatory statute that is effective in regulating all those in the business of mortgage lending, with few exceptions

Recommendation 19: The BC government should require BC regulators of reporting entities to enforce compliance with PCMLTFA requirements and provide training and education to assist them in doing so, in cooperation with FINTRAC.

Recommendation 25: The BC government should ensure that all those in the mortgage lending business should be required under provincial legislation to conduct and maintain know-your-customer records and records of the source of mortgage payment funds from borrowers, until such requirements are placed on mortgage lending businesses by the federal government

APPENDIX B – REFERENCES

British Columbia - BCFSA - Mortgage Brokers
(https://www.bcfsa.ca/index.aspx?p=mortgage_brokers/industry)

Combatting Money Laundering Report
(https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf)

G20 High-level Principles on Financial Consumer Protection
(https://www.oecd.org/daf/fin/financial-markets/48892010.pdf)

Manitoba - Securities Commission - Mortgage Brokers
(http://www.mbrealestate.ca/home_buyers/index.html)

Mortgage credit - Directive 2014/17/EU | European Commission
(https://ec.europa.eu/info/law/mortgage-credit-directive-2014-17-eu_en)

New Brunswick - Financial and Consumer Services Commission - Mortgage Brokers
(http://www.fcnb.ca/industry-mortgage-brokers.html)

Ontario - Financial Services Commission of Ontario - Mortgage Brokering
(https://www.fsco.gov.on.ca/en/mortgage/Pages/industry.aspx)

Saskatchewan - Financial and Consumer Affairs Authority - Mortgage-Brokerages
(https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/mortgage-brokerages)

Attachment Three: Response to Provincial Consultation on a Public Beneficial Ownership Registry

Questions:

1. How would the requirement to provide the information in your transparency register to government impact your operations?

The requirement to provide information in a beneficial ownership registry would enable local law enforcement to better identify the chain of ownership behind corporate structures. Determining the "true" owner behind a business allows for investigators to cross-reference beneficial owners with known targets of investigation. In short, it is anticipated that the registry will lead to more investigative leads. This will have an impact on resourcing at the local law enforcement level as the onus will be on them to pursue initial leads. If these initial investigative efforts uncover connections to organized crime, money laundering or international crime, it will be essential that provincial and federal law enforcement be engaged as there is neither the capacity nor mandate to conduct these major investigations at the Municipal level alone.

2. Are there any steps that could be taken to streamline the process, including the uploading process?

The Provincial government should build a common platform and searchable online registry of all corporations, trusts and partnerships registered in BC. Currently, only LOTA impacted or land owning corporations are slated to be listed publicly in a searchable database. All other corporations would maintain private registrars that are only accessible to law enforcement or regulators. Moreover, non-land owning partnerships and trusts are excluded. It would be easier for uploading, searching, analyzing beneficial ownership data if it was found in a single source or website. This would enable investigators, media, researchers and even foreign law enforcement to access this resource. Multiple websites and separate closed or open systems should not be used.

3. Are there any types of B.C. private companies you think should be exempted from the requirement to upload information? If so, why?

All corporations should be included as criminals could shift to exploiting those that are not registered publicly.

4. Should B.C. change the share ownership threshold from 25 per cent to 10 per cent for determining beneficial ownership?

B.C. should change the share of ownership threshold to 10 per cent. While 25 per cent is the more common standard there have been repeated efforts to lower this standard to 10 per cent as was most recently attempted by the EU. Moreover, dual citizens (Canadian and US nationals) are subject to US Treasury's Foreign Account Tax Compliance Act (FATCA) which requires

financial institutions to report on whether a US citizens are 10% owners of certain business entities.

5. Should a B.C. registry of beneficial ownership be linked with those in other Canadian jurisdictions?

The BC's registry should be linked to as many Canadian jurisdictions as possible to ensure the most efficient sharing of information between law enforcement, regulators and financial institutions. Financial Action Task Force has repeatedly recommended information sharing between various government bodies and financial institutions as a key to combatting money laundering as well as terrorist financing.

6. How will publicly available beneficial ownership information impact your operations?

It is likely that publicly available beneficial ownership information will increase both investigative leads and have an impact on police resources. Again there must be an increase to Provincial and Federal money laundering law enforcement resources to deal with the likely increase in investigations. Municipalities must prioritize their police resources to ensure there are mandatory minimum levels to deal with emergency calls. Although local law enforcement can be play a role in money laundering and organized crime investigations there must be more support dedicated to provincial and federal units.

7. In your opinion, what degree of searching should the public have?

The public should be able to have a similar search function as regulators and law enforcement as there is currently a shortage of police resources at the provincial and federal level. Engagement with the public, NGOs and academics can provide support in identifying illegality as well broader trends and issues.

8. Are there any reasons to limit/expand the availability of information on the registry beyond what is described above in Chart 2?

The information available as described in Chart 2 is sufficient.

9. Are there other situations in which an individual's information should be obscured other than the scenarios described above?

If the person is under the age of 19 their information should be obscured. Moreover, a person should be able to request their information to be obscured if their safety or their physical or mental health is at risk. These applications for an exemption should represent the exception and not the norm. In short, each obfuscation request should require evidence and documentation in order to thoroughly examine the credibility of the threat.

10. What role should government play in making sure the beneficial ownership information is correctly reported?

It is crucial that the Provincial government proactively verify the information provided to the registry on beneficial ownership. There should be enforcement actions and the inclusion of penalties and fines for providing incorrect information. Periodic and random audits should be conducted to test the veracity of the information provided.

11. If there were a cost to search the database, would that change the way you interact with the beneficial ownership database?

A reasonable annual cost to search the database would not effect the way the City of Richmond would use the database or the public. This cost should not be set at such a level that it will inhibit the majority of the public from using the database.

12. Do you support the use of administrative penalties to ensure compliance? If so, what range of penalties is appropriate in light of the anti-money laundering goals?

Administrative penalties and fines are critical to the integrity of the registry and to ensure compliance. A similar penalty and fine structure in place for the LOTA Part 6 should be utilized. LOTA offences committed by Corporations, trusts, and partnerships that fail to disclose property ownership could face fines of up to $50,000 or 5 per cent of the assessed property value, whichever is greater.

13. Do you support the use of suspensions or dissolutions of the corporation by the Corporate Registrar to ensure accurate beneficial ownership information is provided? Why? Why not?

The City is supportive of suspensions or dissolutions of corporations to ensure compliance.

14. How would a government-maintained registry of trusts impact your operations?

Similar to a registry regarding LOTA trusts, partnerships, and corporations, the impact is likely to include an increase investigative leads, but these local law enforcement resources must be supported by full-time provincial and federal money laundering and organized crime resources. These provincial and federal resources should take the lead with most money laundering and organized crime investigations as they have requisite expertise, resources, and mandate to conduct these complex investigations that can often span international borders.

15. Should the public have access to a government-maintained registry of trusts? Why? Why not?

Similar to the LOTA registry, the public will play a key role in identifying potential illegality as well as key trends and issues. There are numerous NGOs and academic institutions as well as

private sector resources that can be leveraged if this registry is publicly accessible. Moreover, foreign law enforcement will also be able to utilize the database which will likely be key to the anti-money laundering and enforcement effectiveness of the registry.

16. If a registry of trusts is created, what would be an appropriate consequence for noncompliance?

Similar penalty and fine structure as is already envisioned under LOTA. LOTA offences committed by Corporations, trusts, and partnerships that fail to disclose property ownership could face fines of up to $50,000 or 5 per cent of the assessed property value, whichever is greater.

17. How would increasing the information collected about partnerships impact your operations?

Increasing information about partnerships will have a similar impact as the LOTA registry in that it will increase investigative capabilities but will also demand more use of law enforcement resources. Again there must be an increase in provincial and federal law enforcement resources to deal with these new investigative leads.

18. If further information is required of partnerships, what would be an appropriate consequence for non-compliant partnerships?

Similar penalty and fine structure as is already envisioned under LOTA. LOTA offences committed by Corporations, trusts, and partnerships that fail to disclose property ownership could face fines of up to $50,000 or 5 per cent of the assessed property value, whichever is greater.

Attachment Four: Response to Provincial Consultation regarding the Mortgage Broker Act

Issue 1: Scope of the MBA

1) Are there any unintended consequences or concerns with amending the scope of the MBA legislation to align with other modern provincial MBA legislation?

The modernization of the MBA legislation to align with other modern provincial MBA legislation and, in particular, internationally accepted anti-money laundering measures is necessary. The Provincial government should seek to continuously improve financial regulatory legislation as the appearance of new modalities of money laundering and financial crime are a near constant. As has been demonstrated by three provincially sponsored reviews of money laundering from Dr. German and the Expert there is a vital need to modernize the MBA. The Province should also monitor and align with the recommendations from the Financial Action Task Force (FATF) which is the widely-accepted authority of anti-money laundering measures.

2) To what extent should private lending be regulated?

Mortgage Investment Corporations (MIC) and other private lenders involved in mortgages in BC should be regulated in order to protect borrowers and ensure the integrity of the financial system. As per the recommendations of Dr. German and the Expert Panel, these regulations should include beneficial ownership status, lending practices and the source of funds. Moreover, the lenders should be registered in a public searchable database similar to LOTA. The mortgage loans can be easily exploited by criminals and, in particular, money launderers, who attempt to obscure their activities from financial regulators. As chartered banks and credit unions, which are both federally and provincially regulated, continue to tighten mortgage lending standards there has been a correlational increase in private lending. Private lending now represents a significant portion of the national economy and it is vital that this sector be protected through regulation. Mortgage brokers should be compelled to file suspicious transactions reports as is mandated for banks and credit unions.

3) Are there any other mortgage broker or lending activities that should be subject to regulatory oversight?

In addition to the need to regulate MICs and private lenders and lessor for cars should be regulated. As was identified in the Dr. German report, "Turning the Tide - An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing," the car resale and leasing industry is at-risk for money laundering. Car loan lending and lease activities should be regulated. Luxury vehicle leases have been repeatedly targeted by organized crime in BC. Luxury car dealers should be required to report suspicious transactions, often involving cash or bank drafts, to FINTRAC. Some form of documented due diligence should be also be undertaken by these car dealers.

Issue 2: Types of Licences and Related Obligations

1) What are the challenges associated with moving to a more modern licencing regime described above?

As noted in the Expert Panel report, the Province should have adequate resources who are trained and given the mandate to provide proactive verification and enforcement of a more modern licencing regime. The newly formed BC Financial Services Authority (BCFSA) must be given the mandate and capability to ensure compliance and to serve as a deterrent to non-compliance and fraud. This will entail a significant initial investment from the Province. A portion of licensing fees should be fenced to fund regulatory and enforcement resources.

2) Are there disadvantages to continuous licensing the government should consider?

As long as there are adequate enforcement and audit measures in place, a continuous licencing regime could prove to be efficient. However, it is vital that verification of reported information and inspections of the businesses are robust and are conducted by adequately resourced staff.

Issue 3: Exemptions from Registration or Licencing

1) In your view, what are the costs or benefits of matching the MBA registration exemptions to parallel modern mortgage legislation?

Despite being governed by the Law Society of BC, lawyers should not be exempt from the MBA legislation. Under current Law Society of BC guidelines, lawyers are not required to complete suspicious transactions reports to FinTRAC.

2) Is the exemption from registration for persons lending money on the security of land to provide housing for the person's employees still relevant?

This exemption is no longer relevant.

3) Are there any other persons currently exempted from registration either under the MBA or modern legislation that should not be exempted?

The current exemptions are adequate with the notable exceptions of lawyers and the provision of exemption for persons lending to their employees.

4) Are there any other persons that should be exempted from registration under the MBA?

None.

DUTIES OF ALL REGISTERED OR LICENCED PERSONS

Issue 1: Duty to Act Fairly, Honestly and in Good Faith

1) Do you have any concerns with matching modern mortgage legislation to include a duty to act fairly, honestly and in good faith?

The duty to act fairly, honestly and in good faith should be included in new mortgage legislation or amendments.

2) Should a positive obligation to require reporting misconduct be legislated?

A positive obligation to require the reporting of misconduct should be legislated as this an effective practice in many professions in identifying a range of unethical as well as criminal behaviour.

Issue 2: Insurance

1) If you are a mortgage broker, do you currently have E&O insurance?

Not applicable to the city.

2) If you are a mortgage broker, what are your reasons for having or not having E&O insurance?

Not applicable to the city.

3) Is there any reason why E&O insurance should not be required?

Not applicable to the city.

DUTY TO BORROWERS

Issue 1: Duty to Act in Borrowers' Best Interest and Mortgage Suitability

1) What do you consider to be acting in the best interest of the borrower? What parts of that should be required by legislation?

A similar requirement as the EU's mortgage credit directive (MCD) should be included. The duty to act honestly, fairly, transparently, and professionally, considering the rights and the interests of the consumer is integral to inhibiting predatory lending practices.

2) If a duty is placed on a broker to determine suitability of a mortgage product for a borrower, what factors should a broker consider when determining suitability?

A broker should consider the overall risk tolerance and financial knowledge of their clients as is the case with current regulations for the mutual funds and the security industries.

3) Are there borrowers who do not require the protection offered by a duty to determine mortgage suitability?

Borrowers who are financially knowledgeable, experienced and are well aware of their risk tolerance could be exempted.

Issue 2: Disclosure of Brokerage Information

1) Is there information that should or should not be included in disclosures to borrowers?

It should be mandatory that the following information is disclosed:
- *if the brokerage is owned by a mortgage lender or private investor, the name of that mortgage lender or private investor;*
- *the name and number of lenders or private investors,*
- *the steps that the brokerage took to confirm the identity of the lender and private investor,*
- *the fees, remuneration or penalties payable by the borrower in connection with the services offered by the mortgage brokerage, and*
- *potential conflicts of interest, (i.e., where the brokerage or a related person has an interest in the mortgage).*

Issue 3: Disclosure of Compensation Receivable or Payable

1) Are there any specific concerns with providing the Registrar with the flexibility to strengthen the MBA disclosure requirements as needed?

None and this flexibility is required is new AML and fraud modalities emerge.

Issue 4: Disclosure of Cost of Credit for Home Equity Loans

1) Is there a reason why disclosure of the cost of borrowing should not be required in every instance where an individual takes out a mortgage secured against residential property?

None. It should be disclosed in every instance.

Issue 5: Reverse Mortgages

1) What are the benefits and costs of requiring independent legal advice before taking out a reverse mortgage?

The benefits of requiring independent legal advice is that it would provide the uninformed borrower with a better understanding of their rights, obligations and commitments. However, there will be increased cost which will likely be passed on to the borrower.

2) What is an appropriate extended cooling off period for reverse mortgages?

The City has not specific comment on this question.

3) Should disclosure of the effects of an interest rate change on the mortgage balance be required for reverse mortgages?

Yes. Disclosure of the effects of an interest rate change on the mortgage balance would better protect and inform the consumer.

4) Are there other disclosures or requirements that could better protect consumers not contemplated here?

The City has no specific comment on this question at this time.

DUTY TO LENDERS AND INVESTORS

Issue 1: Suitability of Investment

1) Should the duty to disclose mortgage information be amended and limited to private investors?

The City has no specific comment on this question at this time.

2) Should the mortgage broker duty to a private investor include determining mortgage investment suitability?

A mortgage brokers' duty to a private investor should include determining mortgage investment suitability.

Issue 2: Best Interest of Private Investor

1) Are there potential conflicts between the duties to a borrower as outlined above and acting in the best interest of a private investor?

The City has no specific comment on this question at this time.

2) What would be the effect, if any, on your mortgage brokerage business if you are prohibited from acting for both the borrower and the private investor in a mortgage transaction?

The City has no specific comment on this question at this time

Issue 3: The Securities Act

1) Does the current division of regulatory oversight between the Securities Act and the MBA create gaps or unnecessary duplication in regulation or oversight?

The City has no specific comment on this question at this time.

Issue 4: Disclosure of Compensation Receivable or Payable

1) Should the disclosure to lenders of potential conflict of interests be limited and only required if the lender is a private investor?

The City has no specific comment on this question at this time.

MODERN REGULATORY REQUIREMENTS AND POWERS

Issue 1: Regulations and Rule Making Powers

1) Please, provide your views on the Authority being provided with the power to make rules under the MBA?

The City has no specific comment on this question at this time.

Issue 2: Annual Information Returns

1) What concerns, if any, would you have with requiring an annual information return from all brokerages and administrators?

None.

2) What are the expected impacts to your business in requiring audited financial statements in place of an accountant's report on trust funds?

Not applicable to the city.

Issue 3: Enforcement and the BPCPA

1) Would the administrative and enforcement provisions be clearer if they were all embedded directly in the MBA, and not split between the MBA and the BPCPA?

The City has no specific comment on this question at this time.

2) If enforcement provisions continue to be split, are there clarifications that could be made in the MBA to reduce complexity and uncertainty?

The City has no specific comment on this question at this time.

Issue 4: Enforcement

1) Do you have any suggestions on ways to further improve enforcement powers and remedies?

Enforcement and verification resources should be adequately staffed and funded as was identified in the Expert Panel's report.

2) Given the significant monetary value of mortgages and the significant increase to penalties provided in other legislation that regulates real estate services is the current $50,000 limit on the administrative penalties still appropriate?

Fines and penalties could be modernized and aligned with the Real Services Act whose maximum administrative penalty was increased from $20,000 to $500,000 for brokerages and from $10,000 to $250,000 in any other case.