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BY EMAIL: fcsp@gov.bc.ca

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Dear Sirs/Mesdames:

**Re: Request for Comments on the *Land Owner Transparency Act*
White Paper: Legislation with Annotations**

We write in response to the Ministry of Finance's request for comments on the proposed *Land Owner Transparency Act* (the "Act") made available to the public on June 20, 2018. We appreciate the opportunity to offer comments. We believe it is in the public interest for the Province of British Columbia and its residents to collect and disclose the beneficial interests of the parties involved in real estate transactions in British Columbia and feel it is a natural next-step to prevent tax avoidance and evasion in British Columbia. However, we are concerned that the detailed disclosure requirements and the impact on purchasers for whom privacy is an important investment consideration may negatively affect the construction industry. As such, the Act will have an impact on the construction industry and the availability of much needed housing.

Our specific concerns are the following:

1. **General:** Before enacting the proposed Act, we urge the Province of British Columbia to conduct and publish an economic analysis of the impact of the Act on the construction industry and the supply of affordable housing in British Columbia. The construction industry employs a significant part of British Columbia's labour force, particularly in the lower mainland of British Columbia. A minimum level of pre-sale condominiums sold is required by banks and other construction lenders as a condition to construction financing without which construction financing is not available. The disclosures required under the Act could adversely affect these pre-sales of condominiums and other residential housing developments. Without pre-sales, there is no financing and without financing there is no construction. Before implementing the Act, an analysis of the anticipated economic effect of the Act on pre-sales is critical to ensure the objectives of the Act will not have material unintended consequences.
2. **Equal Obligations All Business Entities:** We suggest there should be the same exemptions applicable to relevant corporations, relevant trusts, and relevant partnerships. We note two

different exemptions available to relevant corporations under the Act that are not available to relevant partnerships or relevant trusts: (i) certain types of corporate interest holders are excluded from the definition of a corporate interest holder; and (ii) publicly traded corporations are excluded from the definition of a relevant corporation.

- (a) **Corporate Interest Holder Qualities:** In particular, section 3 of the Act states that an individual is a corporate interest holder if that individual (i) has legal / beneficial ownership of 25% or more of the equity or voting rights of the relevant corporation, (ii) has the right to appoint or remove the majority of the board of directors of a relevant corporation, or (iii) has the right to exercise significant influence or control over the relevant corporation (the “**Corporate Interest Holder Qualities**”). All of the Corporate Interest Holder Qualities should similarly apply equally to those partnership interest holders and beneficiaries of business trusts. We would like to also like to point out that currently there is no disclosure required by the *Partnership Act* or a similar Act governing relevant trusts that oblige these business entities to disclose on a routine basis to any governmental entity all of its limited partners of a partnership or beneficiaries of a business trust, as applicable.
 - (b) **Publicly Traded Corporations:** While a relevant corporation that is a public company is exempted from filing a disclosure report, publicly traded partnerships or publicly traded trusts that are not mutual fund trusts, real estate investment trusts, or SIFT trusts are not exempted. This exemption should similarly apply equally to publicly traded partnerships or publicly traded trusts that are not mutual fund trusts, real estate investment trusts, or SIFT trusts.
3. **Significant Influence or Control:** In section 3(1)(c), we suggest further delineation of what is captured by the meaning ‘significant influence or control over the relevant corporation’ in the context of a whether an individual is a corporate interest holder.
 4. **Pre-Existing Corporations:** The obligation in section 14 that obliges pre-existing reporting bodies to report all current interest holdings will be administratively unworkable and will likely take years to complete.
 5. **Obligation to File an Updated Disclosure Report:** The obligation under section 15 will increase the cost of the already unaffordable real estate in British Columbia. Section 15 requires a reporting body to file an updated disclosure report when the current disclosure report is inaccurate (in whole or in part because of a change in beneficial ownership). The continuous disclosure required to comply with the section 15 would necessitate increased legal, financial, and in-house costs to reporting bodies that have changes in their interest holders, however frequent the change may be. These costs will ultimately be passed to home buyers.

September 17, 2018

- 3 -

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It is our view that the implementation of the Act in its current form will create certain problems for the British Columbia housing market. Some of the objectives outlined in the proposed Act have already been implemented in the new version (version 31) of the Property Transfer Tax Return form for taxable transactions on and after September 17, 2018. In light of these changes, we are concerned that the Province of British Columbia will not consider or reflect upon the comments included in this comment letter in a meaningful way. We urge the Province of British Columbia to critically engage with the content of this letter. It is our view that the concerns listed above should be addressed before the Act is brought into force.

Yours truly,

“Farris, Vaughan, Wills & Murphy LLP”