

## Commercial Real Estate

November 17, 2016

### Ontario Corporations Will Soon Be Required to Maintain Real Property Holdings Registry

In an effort to make it easier for the Province of Ontario to locate the assets of dissolved corporations, the Province has enacted the new *Forfeited Corporate Property Act*, which comes into effect on December 10, 2016. Of particular interest to many of our clients, the *Forfeited Corporate Property Act* amends the *Ontario Business Corporations Act* (OBCA) to impose new record keeping obligations on Ontario corporations. These OBCA amendments also come into force on December 10, 2016.

**Pursuant to the newly added section 140.1 of the OBCA, Ontario corporations formed on or after December 10, 2016, will immediately be required to maintain and update, at their registered office, a register of their ownership interests in Ontario lands together with certain supporting documentation. Ontario corporations formed before December 10, 2016 will have a two-year grace period within which they will also be required to establish such a register.** Notwithstanding the grace period, it is recommended that corporations, especially those with significant ownership interests in Ontario real property, begin complying well before December 10, 2018, as it may take considerable time to gather the information and documentation required.

#### *Register Requirements*

The register may be maintained and updated in paper or electronic form. It must include the dates on which the Ontario corporation acquired the real property and, if applicable, the dates the corporation disposed of such

lands. Supporting documents required to be kept along with the register include copies of deeds, transfers or similar documents containing any of the following information relating to the Ontario lands listed in the register:

1. municipal address
2. registry or land titles division and the property identifier number
3. legal description
4. assessment roll number

While the legislation does not define “ownership interest,” the prudent view is that the register should include registered and beneficial ownership interests in Ontario real property as well as mortgages over Ontario lands held by Ontario corporations, in which case copies of such mortgages should be added to the register.

#### *Risks of Non-Compliance*

While compliance with these new record keeping obligations may be burdensome for Ontario corporations with significant ownership interests in Ontario real property, non-compliance could have negative consequences. Fines could be assessed against a non-complying Ontario corporation and against its directors and officers. Further, in the context of third party transactions, representations and warranties made by a corporation may require the determination of a corporation’s compliance with relevant statutes. Therefore, Ontario corporations will need to consider their state of compliance with the new record keeping obligations when making such representations and warranties.

Please contact any members of our Real Estate Group for further information or for assistance with these new record keeping requirements.