

Legal update

Amendments to *BC Business Corporations Act* requiring private companies to prepare and maintain a “transparency register”

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Corporate, M&A and securities

On May 17, Bill 24 “*Business Corporations Amendment Act, 2019*” (the *Amendment Act*) received royal assent in the British Columbia legislature. The amendments to the BC *Business Corporations Act* (the BCBCA) contained in the *Amendment Act* require private companies under the BCBCA to prepare and maintain a “transparency register” of information about “significant individuals.”

The amendments follow recent changes made by the federal government to the *Canada Business Corporations Act* (the CBCA), as further described in our [legal update](#) in February 2019. The amendments to the BCBCA and the CBCA follow up on the commitments made under the 2017 [Agreement to Strengthen Beneficial Ownership Transparency](#) among the federal, provincial and territorial finance ministers, in which they agreed to pursue legislative amendments to provide law enforcement, tax authorities and certain other regulatory authorities with up-to-date information on beneficial ownership of companies.

Obligations of private companies and shareholders

The *Amendment Act* will require private companies (meaning those companies that are not (i) reporting issuers [or equivalent] (ii) listed on a designated stock exchange or (iii) in a class to be prescribed by regulation) to take reasonable steps to maintain a transparency register containing accurate, complete and up-to-date information about significant individuals. Specifically, the transparency register must contain the following information for each significant individual:

- full name, date of birth and last known address;
- whether or not the individual is a Canadian citizen or permanent resident of Canada or, if not, a list of every country of which the individual is a citizen;
- whether or not the individual is a resident of Canada for tax purposes;
- the date on which the individual became or ceased to be a significant individual;
- a description of how the individual meets the definition of a “significant individual”; and
- any further information that may be required by regulation.

In addition to the obligation to take reasonable steps to obtain the required information, private companies must also review the register annually and update the register throughout the year as new information becomes available. Private companies may send requests for information to shareholders at any time and, upon receipt of such requests, shareholders must take reasonable steps to compile and promptly provide the requested information. If a company is unable to confirm some or all of the required information, then the register will need to reference the information that could not be confirmed and the steps taken by the company to obtain such information.

Significant individuals

The transparency register will only be required to include information relating to individuals deemed to be “significant individuals.” Individuals will be significant individuals if:

- they directly or indirectly own, or indirectly control:
 - 25% or more of the issued shares of the company; or
 - shares that carry 25% or more of the voting rights of the company, or
- they are able to exercise rights or influence, directly or indirectly, that would result in the election, appointment or removal of the majority of the company’s directors.

If two or more individuals meet the above criteria by jointly holding the prescribed interest or right, then each will be deemed a “significant individual.” Such interests or rights may be held among individuals through an agreement or arrangement to exercise rights in concert. In each instance, all individuals holding the rights jointly or in concert are deemed to be significant individuals under the proposed amendments.

Access to transparency register

Once the transparency register is prepared, the information must be held at the company’s records office and remain available for inspection by prescribed officers. Unlike the CBCA, which will allow shareholders and creditors the right to inspect beneficial ownership information, under the BCBCA, such information will be available only to directors and officials conducting tax, regulatory or law enforcement investigations.

Specifically, the transparency register must be made available to taxing authorities, police officers and regulators such as the British Columbia Securities Commission, the Financial Institutions Commission, the Financial Transactions and Reports Analysis Centre of Canada, the Law Society of British Columbia and such other regulators to be prescribed by regulation.

Although the *Amendment Act* will require registers to be maintained at each company’s records office, it is notable that BC’s finance minister stated to the Committee of the Whole at third reading that the current amendments may only be a first step in an ongoing process. She noted there have been “discussions and recommendations from a variety of groups and organizations about a centralized registry similar to the land registry.”¹ The minister’s comments suggest openness to a future centralized transparency registry that may offer public access to such information, as is available in the United Kingdom.

Offences and liability

The *Amendment Act* will make it an offence for private companies to not take reasonable steps to (i) identify significant individuals, (ii) obtain and record information about such individuals and (iii) maintain and review such records on an ongoing basis. Further, any director or officer of a private company who authorizes, permits or acquiesces to the commission of such offences or any shareholder who provides false or misleading information to a private company may be held personally liable. Liability for such offences is limited to a fine of up to \$50,000 for individual offenders and \$100,000 for other persons.

Timeline

Certain minor provisions of the *Amendment Act* in relation to bearer shares and warrants came into force immediately on royal assent; however, the *Amendment Act's* key operative provisions will come into force by regulation. While the exact timeframe for implementation is not clear, it is expected there will be a transition period to allow companies to contact shareholders and develop compliance procedures. Regarding the proposed amendments to the BCBCA and the CBCA, we expect similar changes will soon be introduced by other provinces and territories.

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Footnote

¹ <https://www.leg.bc.ca/documents-data/debate-transcripts/41st-parliament/4th-session/20190514pm-CommitteeA-Blues>

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