

April 2020

Update – British Columbia *Business Corporations Act* Transparency Register Requirements Extended to October 1, 2020

In response to the COVID-19 pandemic, by [Order in Council issued April 6, 2020](#) (the “Order”) the British Columbia Ministry of Finance has delayed the coming into force effective date of the transparency register requirements to October 1, 2020 for all private companies governed by the *Business Corporations Act* (British Columbia) (“BCBCA”). The transparency register requirements were detailed in our January 2020 bulletin, which can be found here: [New Transparency Requirements: Private Companies in British Columbia Now Required to Collect and Disclose Shareholder Information](#).

As we had previously reported, the *Business Corporations Amendment Act 2019* amended the BCBCA to require every private B.C. company to maintain a transparency register identifying all “significant individuals”, meaning all individuals who:

- a) Own more than 25% of the issued shares of the company, or shares that carry 25% or more of the rights to vote at a general meeting, in each case whether as a registered or beneficial owner and whether directly or indirectly;
- b) Have the right or ability, directly or indirectly, to elect, appoint, or remove one or more of the company’s directors, or the ability to exercise direct and significant influence over an individual who has that right or ability; or
- c) Have a prescribed interest, right, or ability.

Notably, if a shareholder is a non-individual entity, the register must disclose the significant individual who ultimately controls, directly or indirectly, such entity. This means companies are required to drill

down into their shareholder structure until all significant individuals at the top of each applicable corporate chain have been identified on the transparency register.

Failure to comply with the transparency register requirements can result in fines up to \$50,000 for directors or officers and up to \$100,000 for corporations.

Update

In addition to the five-month extension for the effective date of the transparency register requirements, the Order amends the *Business Corporations* Regulation to provide clarity for determining indirect control as well as how to assess control within certain types of intermediaries, such as trusts, corporations, partnerships, and agents. These amendments are noted below.

- **Indirect Control – Shares.** An individual has indirect control of shares of a private company if the individual controls an intermediary that is the registered owner of the shares, or controls a chain of intermediaries, the last of which is the registered owner of the shares. An individual also has indirect control if the individual is a trustee or personal or other legal representative in a chain of intermediaries, the last of which is the registered owner of the shares.
- **Indirect Control – Rights Relating to Directors.** An individual has indirect control of the right to elect, appoint, or remove directors of a private company if the individual controls an intermediary that has that right, or controls a chain of intermediaries, the last of which has that right. An individual also has these rights if the individual is a trustee or personal or other legal representative in a chain of intermediaries, the last of which has that right.
- **Chain of Intermediaries.** A chain of intermediaries is a group of intermediaries where an intermediary in the chain controls the intermediary below it, and where the last intermediary in the chain is the registered owner of the shares, or has the right to elect, appoint or remove directors of the private company.
- **Control of a Corporation, Partnership or Agent.** A person controls: (a) a corporation if the person has the right to elect or

appoint a majority of the directors of the corporation; (b) a partnership if they are a partner in the partnership; or (c) an agent if the person is the principal of the agent.

- **Control of Trustee.** A person controls a trustee (among other things) that is the registered owner of shares, if the person has power to direct the trustee on how to exercise the rights attached to the shares or that has the right to elect, appoint, and remove directors.
- **Control of Personal or Legal Representative.** A person controls a representative (among other things) that is the registered owner of shares, if the person has the legal authority to direct how the representative exercises the rights attached to the shares or that has the right to elect, appoint, and remove directors.

Although these amendments are intended to provide clarity on the transparency register requirements, the analysis to determine significant individuals is nonetheless complex. Private companies in BC should diligently review their shareholder records and work with their legal advisors to ensure they will be compliant with these requirements by October 1, 2020.

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[a cautionary note](#)

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