

NEW TRANSPARENCY REQUIREMENTS: PRIVATE COMPANIES IN BRITISH COLUMBIA NOW REQUIRED TO COLLECT AND DISCLOSE SHAREHOLDER INFORMATION

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On May 16, 2019, Bill 24 the *Business Corporations Amendment Act, 2019* (the "Bill") received Royal Assent. The Bill requires private companies recognized under the laws of British Columbia to create a "transparency register". The Government intends for the transparency register to help mitigate criminal activity, such as tax evasion and money laundering, by requiring private companies to maintain detailed information about certain shareholders.

Effect on your Company

As of May 1, 2020 the Bill will come into effect. All private companies in British Columbia will be required to establish a detailed register of all significant individuals falling within the scope of the amendments. In addition, companies that do not have qualifying significant individuals must still maintain a transparency register containing a statement to that effect. Maintaining the transparency register will involve time, expense, and significant diligence. To avoid penalties, companies will also need to comply with their annual review requirements and promptly amend their transparency registers within 30 days of receiving any relevant information.

Required Disclosure

The Bill amends the British Columbia *Business Corporations Act* ("BCBCA") to require every private B.C. company to maintain a transparency register identifying all "significant individuals", meaning all shareholders 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.

The transparency register must include the following information for each significant individual:

- The shareholder's full name, date of birth, and last known address;
- Whether the shareholder is a Canadian citizen or a permanent resident of Canada, and if not, every country or state of which they are a citizen;
- Whether the shareholder is resident in Canada for purposes of the Income Tax Act (Canada);
- The date on which the shareholder became or ceased to be a significant individual in respect of the company;
- A description of how the individual meets the criteria of a significant individual; and
- Prescribed information, if any.

If a private company determines that there are no individuals who qualify as significant individuals, the company must include a statement to that effect in the transparency register. If a private company is unable to obtain or confirm any information in respect of a significant individual, the company must include a summary of the steps taken to obtain or confirm this information.

Updating the Transparency Register

Companies must update their transparency register within 30 days of becoming aware of any relevant new information and perform an annual review to ensure accuracy of the information. Companies must also notify each significant individual added to the transparency register within 10 days of each such addition.

Who Has Access to the Transparency Register?

Only directors of the company or inspecting officials may review the company's transparency register. The categories of inspecting officials contemplated in the Bill are tax authorities, law enforcement officers, and regulators.

Shareholders Obligated to Provide Information

Upon receiving a request for information from the company, shareholders must promptly compile and send the company the required information.

Penalties for Non-Compliance

If a company fails to identify all significant individuals (or falsely identifies a significant individual) or provides false or misleading material facts about significant individuals (or omits material facts about significant individuals), the company and any involved directors or officers are liable for fines up to \$50,000 for individuals and up to \$100,000 for corporations. However, a company will not be guilty of an offence if the company did not know, and could not have known with the exercise of reasonable diligence, that the identification or exclusion of the significant individual was incorrect or that the information about a significant individual was false or misleading.

Shareholders will also be liable for fines of up to \$50,000 for individuals and up to \$100,000 for corporations if they fail to send the company applicable requested information.

Implications of Increased Transparency

The Bill signals the increasing transparency of corporate ownership and is consistent with similar changes for federally incorporated private corporations under the *Canada Business Corporations Act* (which came into force in June 2019) and the new *Land Owner Transparency Act* (British Columbia), which requires disclosure of beneficial ownership of land in BC. The Bill's proposed legislative changes are part of a trend to lessen the attractiveness of British Columbia as a jurisdiction for shell companies and other legal entities to hide wealth, evade taxes, and launder money.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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