Privately-held Nova Scotia companies impacted by required new information registry

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In Canada, corporations may be incorporated and organized under various federal, provincial or territorial corporate laws. Corporate entities are often formed as limited liability companies; however, certain provinces, such as Nova Scotia, British Columbia and Alberta, provide an alternate structure called an unlimited liability company (ULC). The ULC structure may be attractive to foreign investors looking to incorporate in Canada because of the potentially favourable tax treatment of the ULC. This has led to a large number of foreign companies incorporating their businesses in jurisdictions that offer the ULC structure.

While the ULC structure may be an attractive destination for foreign investors looking to create Canadian subsidiaries—or for U.S. companies looking to earn a slice of the Canadian market—it also potentially opens the door to a high incidence of financial crimes, including money laundering, terrorist financing, tax evasion and tax avoidance.

To safeguard the Canadian economy from these risks and continue to encourage business growth, the government of Nova Scotia will now follow the Federal Government's lead and enact Bill-226 – *Companies Act Amended*. The Bill, which is likely to take effect in 2020, will require all companies incorporated under the *Nova Scotia Companies Act* (NSCA) to create and maintain a register of individuals considered to have "significant control" of the business (Register). The Register is intended to mitigate financial crimes by requiring companies to create and maintain information about the true owners (beneficial and registered) of their shares.

Current register requirements

Currently, private, non-distributing companies incorporated under the NSCA must maintain a central securities register that records the name of each security holder, the number of securities held by each of them, and the date and particulars of the issue and transfer of each security. The securities register is only required to reflect information about registered shareholders – not beneficial owners or other individuals that could have influence over the corporation.

New register requirements

Once the new provisions come into force in Nova Scotia, private, non-distributing NSCA companies will be required to create a Register of individuals with significant control. The Register must identify and describe all significant individuals in respect of the company. An overview of the steps that foreign companies incorporated under the NSCA need to take to comply with the new register requirements are outlined below.

1. Identify individuals with significant control of the company

"Significant individuals" means an individual who, individually or jointly:

- owns more than 25 per cent of the issued shares of the company or shares that carry 25 per cent of 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
- has direct or indirect control or influence over the corporation – whether or not they are a shareholder
- prescribed information set out under any regulations (which have yet to be determined)
- has an interest, right or ability set out under any NSC regulations (which have yet to be determined)

2. Confirm and record the required information in the register

The following information must be provided in the register:

- the name, date of birth and last known address of each individual with significant control
- the jurisdiction and address that each individual uses for tax purposes
- the date on which such individual became or ceased to be an individual with significant control
- a description of how each individual has "significant control," including a description of each individual's interest and rights in respect of shares of the corporation
- prescribed information set out any regulations (which have yet to be determined)

3. Update the register regularly

The Register must be reviewed and maintained on an annual basis and corporations must take reasonable steps to update it within 15 days of becoming aware of any significant changes. Corporations are responsible to maintain the register themselves and have internal processes in place to ensure that they are properly updated and reviewed.

4. Store the register

Corporations may store and maintain the Register at their registered office or at any other place in the Province designated by the directors. Ideally, the directors should designate—preferably by resolution—where and how the information will be stored and updated.

5. Disclosure of the register

Corporations are not generally required to disclose their Register to the pubic. However, upon request the corporation may have to disclose the Register to the Registrar, its shareholders and creditors (if an affidavit is provided), and investigative bodies.

Conclusion

The new Register will impose significant new obligations on private, non-distributing NSA companies and, given the need for further regulations to clarify aspects of the *Amending Act*, there is some uncertainty regarding application and compliance matters under the *Amending Act*. Accordingly, we anticipate further developments and expect to receive additional guidance from the Nova Scotia Registrar of Companies in respect of the register in short order.

Please reach out to the author or another lawyer at BLG to assist with compliance as non-compliance could result in significant penalties for both the organization and its board of directors.

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By

Graham King

Expertise

Corporate Commercial, Private Company

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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