New Requirements Regarding Beneficial Ownership of Federal Corporations Come into Force in June 2019

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The *Budget Implementation Act, 2018, No. 2* (Bill C-86), which amends several federal statutes, including the *Canada Business Corporations Act* (the CBCA), received royal assent on December 13, 2018.

This bulletin discusses key aspects of amendments to the CBCA which come into force on June 13, 2019. Regulations in respect of these amendments remain to be drafted and will come into effect on a date to be determined.

These amendments bring the CBCA closer into line with the Financial Action Task Force (the FATF) 2018 *Recommendations* on transparency and disclosure of beneficial ownership of assets. In its 2016 *Mutual Evaluation Report on Canada*, the FATF reported that legal persons are at high risk for money laundering and terrorist financing because Canada's corporation registration regime permits nominee shareholders and trusts to conceal the identity of beneficial owners and the source of funds without adequate controls in place to mitigate these risks.

Current Shareholder Disclosure Requirements

Currently, the CBCA requires that federal non-distributing corporations maintain a central securities register at their registered office or at another location in Canada to record:

1. the names, in alphabetical order, and latest known address of each person who is or has been a security holder of the corporation;
2. the number of securities held by each such security holder; and
3. the date and particulars of the issue and transfer of each security.

CBCA Amendments Introduced by Bill C-86

Effective as at June 13, 2019, federal non-distributing corporations must identify individuals with “significant control” over the corporation. An individual with “significant control” is an individual:

1. who is the registered or beneficial owner of, or has direct or indirect control or direction over any number of shares that: (a) carry 25 per cent or more of the voting rights attached to all of the corporation’s outstanding voting shares or (b) is equal to 25 per cent or more of all of the corporation’s outstanding shares measured by fair market value (Significant Number of Shares);
2. who has any direct or indirect influence that, if exercised, would result in control in fact of the corporation; or
3. to whom prescribed circumstances (which are yet to be determined) apply.

Two or more individuals with joint ownership of a Significant Number of Shares are each considered to be an individual with “significant control” for purposes of Bill C-86.

In order to identify individuals with “significant control”, each federal non-distributing corporation will be required to maintain a register (the New Register) containing:

1. their name, date of birth and latest known address;
2. their jurisdiction of residence for tax purposes;
3. the date on which the individuals became or ceased to be individuals with “significant control”;
4. a description of how the individuals qualify as individuals with “significant control”, including their right, title and interest in and to shares of the corporation;
5. other prescribed information to be set forth in upcoming regulations; and
6. steps taken to identify all individuals with “significant control” and to ensure that information in the New Register is accurate, complete and up-to-date.

The New Register must be updated within 15 days of the date that information regarding individuals with “significant control” becomes known to the corporation. Personal information (within the meaning of the *Personal Information Protection and Electronic Documents Act*) contained in the New Register must be disposed of within one year after the sixth anniversary of the day on which an individual ceases to qualify as an individual with “significant control”.

Disclosure of Information

Although information from the New Register is not reported to Corporations Canada, the Director appointed under the CBCA may request information about individuals with “significant control”.

In addition, shareholders and creditors (or their personal representatives) may request access to, or an extract from, the New Register pursuant to subsection 21.3(2) of the CBCA. However, information so obtained cannot be used except in connection with:

1. an effort to influence the voting of shareholders of the corporation;
2. an offer to acquire securities of the corporation; or
3. any other matter relating to the affairs of the corporation.

It remains to be determined if an auditor can access the New Register in the course of conducting its review of the financial statements of the corporation pursuant to section 170 of the CBCA.

Conclusion

Bill C-86 heralds a new era of transparency and signals changes to Canadian laws in response to the FATF 2018 *Recommendations*. Bill C-86, however, expressly states that the New Register is not intended to be a "report" and Canada remains one of only two G7 countries which does not require that beneficial ownership of non-distributing corporations be reported. Whether or not Bill C-86 will be followed by increasingly stringent disclosure requirements remains to be determined.

Please contact us if you wish to discuss the requirement to maintain the New Register or the implications of Bill C-86 in more detail

By

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