New federal requirements for a corporate beneficial ownership registry on the horizon

August 31, 2023

In March 2023, Industry Minister Francois-Philippe Champagne tabled legislative amendments regarding the creation of a Canadian corporate beneficial ownership registry. The proposed amendments, which recently passed the second reading in the House of Commons,[1] apply to entities incorporated under the *Canada Business Corporations Act* (the CBCA).

Non-compliance with the proposed amendments will carry significant administrative sanctions or criminal penalties.

Background

A beneficial ownership registry publicizes information on individuals with significant control over a private corporation. "Significant control" includes individuals who own, control, or direct a significant number of shares, or those who have direct or indirect influence tantamount to control in fact over the corporation.[2] A "significant number" of shares is defined as:

- Any number of shares that carry 25 per cent or more of the voting rights; or
- Any number of shares equal to 25 per cent or more of all of the corporation's outstanding shares measured by fair market value (regardless of voting rights).[3]

Beneficial ownership registries are touted as a key tool in combatting money laundering, terrorist financing, and tax evasion. In 2020, the federal government held consultations on beneficial ownership transparency and received input from a variety of stakeholders including law enforcement, tax agencies, and privacy commissioners.[4] Nearly all participating parties supported the creation of a centralized registry for beneficial ownership data.[5] A strong majority also supported tiered access whereby law enforcement, the Canadian Revenue Agency, and other competent authorities would have unrestricted access to beneficial ownership information.

Following the 2021 federal election, Prime Minister Justin Trudeau's mandate letter to Minister Champagne included instructions to implement a beneficial ownership registry.[6] The timeline to implement the registry was fast-tracked to 2023 following the signing of the supply-and-confidence agreement with the New Democratic Party last year.[7]

Proposed legislative changes

Bill C-42, *An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts*, proposes a series of CBCA amendments, as well as amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Income Tax Act*, and the *Access to Information Act*.

Bill C-42 follows an initial series of CBCA amendments which were part of last year's *Budget Implementation Act, 2022, No. 1*.[8] These amendments require most federally incorporated businesses to proactively report information on their beneficial owners to Corporations Canada on an annual basis, or when a change in control occurs. The Government of Canada's news release regarding Bill C-42 states that Corporations Canada would leverage those intake/reporting mechanisms to ease the administrative burden on businesses in relation to the newly proposed corporate beneficial ownership registry.[9]

The proposed CBCA amendments create a registry under which the following information is available about each individual with significant control in a corporation:

a. Their name;
b. Their address (service and residential);
c. The day on which the individual became or ceased to be an individual with significant control;
d. A description of how the individual has significant control over the corporation (rights, interests, shares, etc.); and
e. Any other prescribed information.[10]

A director appointed under the CBCA (the Director) may provide all or part of the above information to a provincial corporate registry or agency that is responsible for corporate law in that province.[11] However, individuals or a corporation they control can apply to have any of the above information made unavailable to the public. The Director may choose to make information unavailable to the public if:

a. The Director reasonably believes that making the information available presents or would present a serious threat to the safety of the individual; or
b. The Director is satisfied that:
    i. The individual is incapable,
    ii. The information is to be kept confidential under subsection 27(8) of the *Conflict of Interest Act* or a similar provision of an Act of the legislature of a province, or
    iii. Prescribed circumstances apply to the individual.[12]

Strengthening Canada's anti-money laundering regime

Bill C-42 comes one year after the publication of the Final Report of the Commission of Inquiry into Money Laundering in British Columbia (referred to as the "Cullen Commission"). Despite its narrower focus on money laundering in British Columbia, the Final Report (reviewed in our June 2022 article "Cullen Commission Final Report makes

sweeping recommendations for anti-money laundering regulation in B.C.") included significant findings regarding the weaknesses of the federal anti-money laundering regime.[13]

The Final Report reflects a growing international consensus in support of beneficial ownership transparency. In 2003, the Financial Action Task Force (FATF) published an updated list of recommendations for combatting money laundering and terrorist financing. The updated recommendations emphasized that countries must ensure there is "adequate, accurate, and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities."[14]Access to beneficial ownership continues to be a key FATF recommendation.[15]

We anticipate that provinces will take steps to implement similar provincial registries, with varying degrees of public access. Earlier this year, British Columbia amended its *Business Corporations Act* requiring every corporation to maintain a transparency register, which includes information on beneficial owners. Historically, this document was held within each company's own records office. Under the new amendments, businesses will be required to submit the information in the company's transparency register to the Registrar of Companies for inclusion in a new, publicly accessible transparency register.[16]

Next steps

Following its second reading, Bill C-42 has now been referred to the Standing Committee on Industry and Technology for consideration.[17]

When Bill C-42 receives royal assent, corporations will likely be granted a grace period to comply with the requirements under the new registry. Once that grace period has expired, non-compliance with the registry could result in administrative sanctions or criminal penalties of up to $200,000 and/or up to six months' imprisonment.[18]

Contact us

For more information on the creation of a Canadian corporate beneficial ownership registry and how best to prepare for its reporting mechanisms, please reach out to any of the key contacts below or BLG's Investigations & White Collar Defence or Government & Public Sector groups.

Footnotes

[1] See Parliament session updates for Bill C-42.

[2] Canadian Business Corporations Act, RSC 1985, c C-44, s 2.1(1).

[3] Canadian Business Corporations Act, RSC 1985, c C-44, s 2.1(3).

[4] Consultation on strengthening corporate beneficial ownership transparency in Canada (Innovation, Science and Economic Development Canada)

[5] Public consultations on strengthening corporate beneficial ownership transparency in Canada: What we heard (Innovation, Science and Economic Development Canada)

[6]Minister of Innovation, Science and Industry Mandate Letter, Dec. 16, 2021

[7] "Delivering for Canadians Now", New Democratic Party, March 22, 2022

[8] SC 2022, c 10.

[9] Government of Canada tables new legislation to create a beneficial ownership registry (Innovation, Science and Economic Development Canada)

[10] Bill C-42, s 4 (s 21.303(1)), CBC s 21.1(1)(c-d).

[11] Bill C-42, s 4 (s 21.302).

[12] Bill C-42, s 4 (s 21.303(3)).

[13] Note: One of the key recommendations from the Final Report was that the province of British Columbia work with its federal, provincial, and territorial partners to ensure that a publicly accessible pan-Canadian corporate beneficial ownership registry be established by the end of 2023.

[14] FATF – The Forty Recommendations, 20 June 2003.

[15] FATF – The Forty Recommendations, updated February 2023.

[16] Bill 20 – 2023: Business Corporations Amendment Act, 2023

[17] See Parliament session updates for Bill C-42.

[18] Ibid., note 9.

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