New details about the planned transparency register for B.C. companies

April 21, 2020

This article supplements our bulletin from July 2, 2019, and provides an update regarding the requirement of private companies governed by the B.C. *Business Corporations Act* (the BCA) to prepare and maintain a "transparency register" on which information about the true owners of their shares are recorded.

What you need to know

In response to COVID-19, and by Order in Council dated April 6, 2020, the B.C. Ministry of Finance has extended the effective date of the transparency requirements for all impacted companies governed by the BCA to October 1, 2020.

The B.C. government has also approved amendments to related BCA regulations (the regulations) that will also become effective on October 1, 2020. These amendments set out:

- the "prescribed classes of companies" referred to in paragraph (d) of the BCA's definition of "private company", which refers to companies excluded from any transparency requirements. Put simply, if a company meets the requirements of any prescribed class in the list, it will not be required to maintain a transparency register.
- certain deeming and other rules with respect to "special intermediaries" used to determine whether an individual is a "significant individual" of an impacted B.C. company.

The remaining provisions in the regulations, which were largely unamended from the previous iteration approved on October 24, 2019, include those guiding the interpretation of control, indirect control and chains of intermediaries, each as referred to in the BCA, to assist impacted companies in accurately completing the required details in their transparency registers.

Control of a B.C. company

Subject to the previously discussed exclusions and the next section on indirect control, a shareholder of an impacted B.C. company is controlled by an individual if, for:

- a **corporation**, the individual has the right to elect or appoint a majority of the directors of that corporation
- a **trustee**, the individual is empowered under the terms of the trust to direct how the trustee is to exercise any rights attached to the legal ownership of the trustee's shares in the B.C. company (including rights relating to changing the board of directors of the B.C. company the trustee is the shareholder of)
- a **partnership of any kind**, the individual is a partner of any kind
- an **agent**, the individual is the principal of the agent.

Indirect control of a B.C. company

The concept of indirect control in the BCA arises only when an "intermediary"[1] comprises an entity in a chain of shareholders of the impacted B.C. company. An individual who is not himself or herself an intermediary will have indirect control of the shares of an impacted B.C. 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 those shares.

Assisting you with the transparency register

There remains some uncertainty regarding certain application and compliance matters under the BCA associated with the new transparency requirements, and we anticipate that the B.C. Registrar of Companies may provide further guidance. We will consider further updates as additional information becomes available.

BLG will also be contacting B.C. private companies for whom we act as the registered and records office to offer assistance with the preparation of their transparency registers.

[1] Defined in section 46 of the Regulations as "a corporation, partnership, agent, trustee or personal or other legal representative."

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