Federal Corporations: Significant Changes to Disclosure Requirements Coming into Force in June, 2019

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Bill C-86, the Budget Implementation Act, 2018, No. 2 (the "Bill") is scheduled to come into force on June 13, 2019. The Bill will make significant changes to various federal legislation, including the Canada Business Corporations Act (R.S.C., 1985, c. C-44) (the "CBCA"). In a trend towards more transparency, the CBCA will require corporations to have complete and up-to-date information about who ultimately controls each private corporation. As such, all corporations governed by the CBCA (except public corporations) will be required to maintain detailed registers identifying all individuals with "significant control" over the corporation.

What is "significant control"?

An individual with "significant control" will include individuals who are registered holders, beneficial owners or have direct or indirect control or direction of:

- 25% or more voting rights in the corporation; or
- any number of shares that is equal to 25% or more of all of the corporation's issued and outstanding shares measured by fair market value.

An individual with "significant control" could also include two or more individuals in certain circumstances, including when shares are held jointly, or individuals who have any direct or indirect influence that, if exercised, would result in control in fact of the corporation.

Identifying individuals with significant control may be a difficult process depending on the complexity of the corporation and may include a detailed review of the share structure and certain corporate documents and instruments (such as shareholder agreements, purchase agreements, or debentures) that may include options to purchase, veto rights, or contingent rights that would ultimately affect the control of the corporation.

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Maintaining Up-to-date Registers

The corporation must prepare and maintain a register that not only includes the shareholdings of the corporation, but information identifying the individuals with significant control. The register must contain the following information for each individual with significant control:

- name;
- date of birth;
- address;
- their residence for tax purposes;
- the day each individual became or ceased to be an individual with significant control;
- a description of how each individual is an individual with significant control; and
- any other prescribed information.

The corporation will be required to take reasonable steps to identify individuals with significant control annually. Unfortunately, “reasonable steps” is not defined in the CBCA. In that regard, the register must also include a description of the steps taken by the corporation in obtaining this information. The corporation must also update the register within 15 days of becoming aware of any information that is required to be recorded in the register.

Although not available to the general public, the register will be available to directors upon request and shareholders and creditors of the corporation for certain permitted purposes.

Shareholder Disclosure Requirements

Upon request from the directors and officers of the corporation, a shareholder must, to the best of its knowledge, reply accurately and completely to the request as soon as feasible.

If the individual with significant control is a shareholder, they will need to disclose whether they are the beneficial owner and if not, provide the relevant information of the beneficial owner. Non-individual shareholders (i.e.: corporations, trusts, partnerships, etc.) will have to disclose their individual owners and, depending on the structure, may need to work their way up the chain of control until the individual owner is identified.

Non-compliance and penalties

If a corporation does not comply with the new obligations, it may be subject to a fine not exceeding $5,000.00.

The changes to the CBCA are more punitive for directors, officers and shareholders of private corporations. Directors and officers may be personally liable if they knowingly authorize, permit or acquiesce the corporation to record false or misleading information in the register or fail to maintain the required register. Further, a shareholder who knowingly contravenes its obligation to reply accurately and completely to a request for information from the

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corporation commits an offence. Upon conviction of an offence, directors, officers and shareholders are liable to a fine not exceeding $200,000 or to imprisonment for a term not exceeding six months, or both.

The federal government intends on developing regulations to clarify the new obligations under the CBCA, however, a specific timeline and process for these regulations have not been announced. In light of the impending deadline, federal private corporations should begin proactively collecting the requisite information from its shareholders and reviewing its key agreements to determine the individuals who hold significant control.

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