

September 15, 2020

## **BC Business Corporations Act - New Transparency Register Requirements**

### **General**

The B.C. Government has passed significant legislation, effective October 1, 2020, affecting all private B.C. companies. The legislation requires every B.C. private company to take reasonable steps to create and maintain a “Transparency Register” that is accessible at its records office.

### **The Transparency Register (the “Register”)**

The Register must contain the following information for each “Significant Individual” in respect of a private company:

1. The individual's full name, date of birth and last known address.
2. Whether or not the individual is a Canadian citizen or permanent resident of Canada.
3. If the individual is not a Canadian citizen or permanent resident of Canada, every country or state of which the individual is a citizen.
4. Whether or not the individual is resident in Canada for the purposes of the *Income Tax Act* (Canada).
5. The date on which the individual became or ceased to be a significant individual in respect of the company.
6. A description of how the individual is a significant individual.

If a company determines that there are no individuals who are significant individuals in respect of the company, the Register must contain a statement setting this out.

If a company is unable to obtain or confirm some or all of the information referred to above in respect of a significant individual, the Register must contain the information that the company was able to obtain or confirm, and a summary of the steps taken to obtain or confirm the missing information.

### **Significant Individuals**

The rules for determining the “Significant Individuals” of a company are in theory quite straight forward, but in practice can be very complex to apply, depending on numerous factors, including the following:

1. The identity of and nature of the shareholders of the company.
  2. The number of shares held by a shareholder.
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3. If a shareholder is not an individual, but some other entity, such as another company, a trust, or a partnership (an “Intermediary”), the identity of the individual or individuals who “control” the Intermediary, and hence have “indirect control” of shares of the company.
4. The relationship between any direct and / or indirect shareholders of the company, including their place of residence.

Significant Individuals of a company include the following:

1. Each individual who, either alone or jointly with another person, is the registered or beneficial owner of, or who has indirect control of (through an Intermediary), 25% or more of the total issued shares of a company, *or* 25% or more of the total issued *voting* shares of a company.
2. Each individual who owns or who has indirect control of any shares of a company, that when combined with the shares owned or indirectly controlled by: (a) their spouse; and / or (b) another relative or relatives who live at the same address, meet the 25% threshold set out in paragraph 1 above.
3. Each individual with a direct right or indirect control of a right to elect, appoint or remove a majority of a company’s directors, or the ability to exercise direct and significant influence over an individual with such direct right or indirect control of such right.

### **Ongoing Compliance and Maintenance**

Please note the following ongoing obligations with respect to a company’s Register:

1. The Register must be reviewed and updated at least once per year during the period starting on the anniversary of the recognition date of the company (usually the company’s date of incorporation) and ending 2 months after that date.
  2. If a company becomes aware of any information to be amended in and / or added to the Register, such information must be recorded within 30 days of the company becoming aware of such new information.
  3. A company must, within 10 days after indicating in its Register that an individual is a significant individual, or that an individual has ceased to be a significant individual, send a notice to the individual that sets out this fact.
  4. Within 1 year after the sixth anniversary of the date on which a person has ceased to be a significant individual, a company must delete from its Register all information relating to the individual and destroy any record that the company created or received in respect of the individual for the purposes of maintaining the Register.
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### **Duties on Shareholders**

Registered shareholders of a company are legally obligated to take reasonable steps to compile any information that the company may request for the purposes of maintaining its Register, and to promptly provide such information to the company.

### **Importance of Compliance**

A company and its shareholders, directors and officers may be subject to significant fines for non-compliance. For example:

1. A company's failure to maintain the Register may result in a fine to the company of up to \$100,000.00.
2. A shareholder's failure to provide a company with accurate and current information at the request of a company may result in fines of up to \$100,000.00 for corporate shareholders and \$50,000.00 for individual shareholders.
3. Directors and officers of a company who knowingly authorize, permit or acquiesce in the contravention of a company's obligations concerning the preparation or maintenance of, and / or access to, the Register may face a fine of up to \$50,000.00.

### **Access to the Transparency Register**

Access to a company's Register is limited to the directors of the company, law enforcement agencies, and certain governmental officials, including representatives of the Canada Revenue Agency and other regulatory agencies.

### **Duties on Records Office**

The records office of a company must take reasonable steps to: (a) keep the Register complete; (b) avoid loss of the Register; (c) avoid falsification of entries; (d) provide inspecting officials and directors of the company with simple, reliable and prompt access to the Register; and (e) not disclose the Register to anyone other than persons who are permitted to have access to the Register.

**Please note that the foregoing is intended to be a general summary only of the BC Business Corporations Act Transparency Register requirements. Please contact us if you have any questions or concerns, or require any specific legal advice regarding your company and its obligations pursuant to the foregoing.**

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