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Québec Enacts New Corporate Transparency Rules

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The National Assembly of Québec has assented to Bill 78, *An Act mainly to improve the transparency of enterprises*. As its name indicates, Bill 78 aims to increase the transparency of enterprises operating in Québec as part of a wave of international efforts directed at countering tax fraud, money laundering and the financing of terrorist activities. Bill 78 amends the *Act respecting the legal publicity of enterprises* (LPA) to add an important aspect to the role of the Québec Enterprise Registrar (REQ). In doing so, the Québec government has followed and even gone further than the federal government and other provinces that enacted similar legislation.

Who Are Registrants?

Registrants are persons or groups that must be registered with the REQ in accordance with the LPA or that register voluntarily, including corporations, partnerships, trusts operating a commercial enterprise, cooperatives, sole proprietorships and other groups carrying on business in Québec, wherever their place of incorporation.

Exempted Registrants

Not-for-profit corporations, Crown corporations, reporting issuers, certain financial institutions according to the *Insurers Act*, trust companies, banks and associations are all exempted from the obligation to disclose the information requested concerning their ultimate beneficiaries.

Who Are the Ultimate Beneficiaries?

General

An ultimate beneficiary is a natural person, or an entity considered to be a natural person, who satisfies one or more of the following conditions:

- i. The person is a holder, even indirectly, or a beneficiary of a number of shares or units of the registrant, conferring on the person 25% or more of the voting rights.
- ii. The person is a holder, even indirectly, or a beneficiary of a number of shares or units whose value corresponds to 25% or more of the fair market value of all the shares or units issued by the registrant.
- iii. The person has any direct or indirect influence that, if exercised, would result in control in fact of the registrant.
- iv. The person is the general partner of the registrant or, if a general partner of the registrant is not a natural person, the person meets one of the conditions described in items i. and iii. or is a party to an agreement referred to in the following paragraph in respect of the general partner.
- v. The person is the trustee of the registrant.

The following are also ultimate beneficiaries of the registrant: natural persons, or entities considered to be natural persons, having agreed to jointly exercise their voting rights so that together they have the capacity to exercise 25% of the voting rights of the registrant.

Entities Considered to Be Natural Persons

Entities, whether registered or not, that belong to a category of exempted registrants as described above are considered to be natural persons for the purpose of determining ultimate beneficiaries.

In addition, a legal person acting as a fiduciary is considered to be a natural person.

Trusts

Under certain conditions, the beneficiaries of trusts will be regarded as ultimate beneficiaries. However, the beneficiaries of a testamentary trust cannot be ultimate beneficiaries.

Sole Proprietorships

A registrant who is a natural person operating a sole proprietorship is presumed to be the only ultimate beneficiary of the registrant unless that person declares otherwise.

Information and Documents to Disclose

Registrants will need to provide the REQ with a copy of identification issued by a governmental authority for each of their directors, and to declare their dates of birth. Registrants will also need to declare the birth dates of the three shareholders holding the most voting rights as well as the birth dates of the president, the secretary and the chief executive officer.

For partnerships, the following will need to be disclosed to the REQ: the date of birth of each partner or, if the partnership is a limited partnership, the birth date of each general partner and of the three largest contributors to the partnership among the special partners.

Furthermore, information concerning the ultimate beneficiaries of the registrants will need to be disclosed. The required information includes the names, domiciles and dates of birth of the ultimate beneficiaries and the "type of control exercised by each ultimate beneficiary or the percentage of shares or units each one holds or of which each one is a beneficiary." In addition, the date at which the ultimate beneficiary became one and the date at which the person ceased to be an ultimate beneficiary will have to be disclosed.

For all natural persons registered with the REQ, a professional address can be declared in addition to the person's domicile.

Who Can Consult the Information at the REQ?

In general, the public can consult the information held by the REQ, free of charge. As a result, exceptions have been made to the accessibility of the new information that will need to be disclosed by registrants. Moreover, the date of birth, domicile of a natural person – if a professional address is declared – and the names and domiciles of minors that are ultimate beneficiaries will not be accessible to the public.

However, Bill 78 allows the public to do a search by the name of a natural person, contrary to other North American laws in this context. A wide range of governmental enterprises and organizations will also be able to conclude agreements with the REQ under which they will be able to access information.

Penalties

The penalties and administrative measures existing under the LPA will be applicable for registrants who do not comply with the new requirements. Sanctions can include the cancellation of the registration of the offending enterprises and penalties ranging from \$500 to \$25,000.

Coming into Force

Registrants will have a grace period to provide the required information and documents to the REQ until their first annual update following the date that the relevant provisions come into force. As of the date of this bulletin, the date that the relevant provisions of Bill 78 come into force is unknown but is contemplated to be around the end of 2022.

This information and comments herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations the reader should seek professional advice.