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Québec's Enterprise Transparency Regime Is Coming Into Force

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Amendments to the *Act respecting the legal publicity of enterprises* (LPA), which require registrants (described below) to declare their "ultimate beneficiaries," will come into force on March 31, 2023. Corporate ownership transparency requirements are being mandated across Canada to promote greater public accountability and combat financial crimes such as money laundering and tax evasion. With these amendments, Québec will join the expanding rank of Canadian federal and provincial corporate regimes that have already adopted transparency registers. See our [bulletin](#) for an update on the Canadian corporate transparency landscape more generally.

Bill 78, An Act mainly to improve the transparency of enterprises

As discussed in our [bulletin](#), the LPA transparency amendments were introduced by way of Bill 78, *An Act mainly to improve the transparency of enterprises* (Bill 78), which received royal assent on June 8, 2021. Since then, the Québec Government (Government) has passed accompanying regulations that will take effect on March 31, 2023. Further, on February 1, 2023, amendments to Bill 78 were introduced pursuant to [Bill 7](#), *An act respecting the implementation of certain provisions of the Budget Speech of 22 March 2022 and amending other legislative provisions* (Bill 7). Bill 7 is currently expected to be in force on March 31, together with the balance of the legislation.

Who Is a Registrant and Who Must Comply?

The LPA requires that certain persons or groups (referred to as "registrants") must be registered with the Québec Enterprise Registrar (REQ), including corporations, partnerships, trusts operating a commercial enterprise, cooperatives, sole proprietorships and other groups carrying on business in Québec, *wherever their place of incorporation*. For example, a company incorporated under the Ontario *Business Corporations Act* that is carrying on business in Québec would be a registrant for purposes of the LPA. The Québec regime thus exercises a distinctly broad ambit when compared to other Canadian transparency regimes, capturing not just corporations formed under Québec law but also business enterprises of various forms (provincial and extra-provincial) that are registered with the REQ.

The obligation to record and declare an enterprise's ultimate beneficiaries applies to all registrants under the LPA, unless otherwise exempted. The LPA provides for categories of enterprises that, for policy reasons, are exempt from the transparency requirements (Exempt Entities), including not-for-profit corporations, Crown corporations, reporting issuers within the meaning of the *Québec Securities Act* (QSA), certain financial institutions listed in the Insurers Act, trust companies, banks, associations within the meaning of the *Québec Civil Code* (Civil Code) and any such other entities that may be listed by way of regulations from time to time. Since the original list of exemptions was published in Bill 78, the Government has, by way of regulation, deemed that co-ownership syndicates constituted under the Civil Code will also be exempt from the requirement to declare their ultimate beneficiaries.

These exemptions apply in the main because the ownership and control of these entities is otherwise ascertainable, such as through securities law reporting obligations in the case of reporting issuers or by virtue of being a Crown corporation. We note, however, that public entities that are not reporting issuers within the meaning of the QSA are currently not considered Exempt Entities, notwithstanding that such entities may be subject to security ownership disclosure laws of another Canadian or non-Canadian jurisdiction (e.g., the United States) that are substantially similar to the Québec disclosure rules.

The LPA permits persons or groups of persons that are not otherwise required to be registered under the Act to nonetheless request registration. We understand that such voluntary registrants will not be subject to the LPA's requirement to declare their ultimate beneficiaries.

Who Is an Ultimate Beneficiary of a Registrant?

An ultimate beneficiary of a registrant is a natural person (or certain entities deemed to be natural persons for purposes of transparency reporting requirements, as discussed below) that meets certain conditions, including any one of the following:

- the person is a holder, even indirectly, or beneficiary of a number of shares or units of the registrant conferring on the person the power to exercise 25% or more of the voting rights attached to the shares or units;
- the person is a holder, even indirectly, or beneficiary of a number of shares or units, the value of which corresponds to 25% or more of the fair market value of all the shares or units issued by the registrant;
- the person has any direct or indirect influence that, if exercised, would result in control in fact of the registrant (as determined within the meaning of the *Taxation Act*);
- 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 the first three bullets above or is a party to an agreement to exercise voting rights jointly in respect of the general partner (discussed below); or
- the person is the trustee of the registrant (and any legal person acting as a trustee is considered a natural person).

As well, where natural persons have agreed to jointly exercise their voting rights in respect of securities of a registrant, and such agreement confers on them, together, the power to exercise 25% or more of the outstanding voting rights of the registrant, then each of those natural persons will be considered an ultimate beneficiary of the registrant.

In addition, the Act permits the Government to add – by way of regulations – additional circumstances in which a person would be considered an ultimate beneficiary. Since the passing of Bill 78, regulations have been approved specifying that, in addition to the above scenarios, a natural person will be considered an ultimate beneficiary of a registrant where that person controls, directly or indirectly, a number of shares or units of the registrant that is equal to 25% or more of the voting rights or 25% or more of the fair market value of all the shares or units issued by the registrant. “The same applies,” the regulations provide, “to a natural person who controls, directly or indirectly, a number of the shares or units of an entity that is a party to” a joint voting agreement.

The LPA also provides that, under certain conditions, the beneficiaries of trusts will be regarded as ultimate beneficiaries. As well, in the case where a limited partnership holds shares of a registrant equal to 25% or more of the voting rights or fair market value of the outstanding shares or units of the registrant (or is party to a joint voting agreement in respect of the registrant), the LPA provides certain look-through rules that deem the ultimate beneficiaries of the limited partnership to be the ultimate beneficiaries of the registrant. Further, 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.

Which Entities Are Deemed Ultimate Beneficiaries, and in What Circumstances?

Importantly, the LPA provides a deeming provision pursuant to which Exempt Entities will be considered natural persons for purposes of determining a registrant's ultimate beneficiaries. Accordingly, a registrant may record an Exempt Entity as its ultimate beneficiary in those circumstances where the Exempt Entity would otherwise satisfy the conditions to constitute an ultimate beneficiary but for the fact that it is not a natural person. For example, a registrant in respect of which a Québec reporting issuer owns 25% or more of the outstanding voting rights can simply record the reporting issuer as its ultimate beneficiary. This conveniently avoids the need for a registrant to look through and track the ownership chain of an Exempt Entity – an allowance that makes sense given the existing reasons for relieving Exempt Entities themselves from the requirement to declare their ultimate beneficiaries (discussed above). This approach may be contrasted with that taken by other regimes, such as the *Canada Business Corporations Act* (CBCA), which, under the current draft

regulations, does not contemplate an exemption for direct or indirect ownership or control of a federally incorporated company by a reporting issuer on a less than wholly owned basis.

What Information Must Be Declared to the REQ?

Under the LPA, a registrant must annually file a declaration with the REQ. Pursuant to the amendments, a registrant's declaration will need to include certain information relating to its ultimate beneficiaries, including their name, domicile and, in the case of ultimate beneficiaries that are natural persons, their date of birth and professional address, if applicable. Pursuant to Bill 7, which is expected to be in force on March 31, 2023, a registrant must also disclose the "condition under which the ultimate beneficiary became one." Bill 78 requires the registrant to include in its declaration 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"; Bill 7, however, would replace these somewhat opaque instructions with a clearer requirement calling for registrants to disclose the percentage of shares owned or controlled by their ultimate beneficiaries.

Where a person is considered an ultimate beneficiary in respect of a registrant by virtue of holding, controlling or being a beneficiary of a number of shares or units equal to 25% of the outstanding voting rights or 25% of the fair market value of the outstanding shares or units, the registrant must disclose the percentage so owned or controlled by noting where it falls within one of three ranges: (i) 25% to 50%; (ii) over 50% to 75%; and (iii) over 75%. In addition, the date that the person became an ultimate beneficiary and the date that the person ceased to be an ultimate beneficiary will have to be disclosed in the declaration.

As well, in the case of a registrant that is a legal person, that registrant must provide a copy of a government-issued identification for each of its directors. All registrants must also provide the date of birth and domicile for each natural person it declares to the REQ. A professional address can be declared in addition to the person's domicile, where only the former will be viewable by the public (see below).

Who Can Consult the Information Registered at the REQ?

In general, the public can consult the information held by the REQ free of charge. As a result, for privacy reasons, certain information pertaining to ultimate beneficiaries that is recorded in the declaration will not be publicly accessible, including the date of birth and domicile of a natural person (but only if a professional address has been provided in its stead) and the names and domiciles of minors.

As of March 31, 2024, the amendments will allow the public to conduct a search using the name of a natural person, contrary to other analogous North American laws. 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 the information.

In 2022, the Federal government announced its objective to launch a publicly searchable beneficial ownership registry for CBCA companies, with the stated ambition of building a platform to which all provincial and territorial transparency regimes could attach so as to create a national, publicly searchable registry (see our [bulletin](#)). With the launch of the LPA's publicly accessible transparency register moving ahead, it remains to be seen whether Québec's expansive regime could be incorporated into a national registry, or if corporations subject to the transparency requirements of both the LPA and another provincial (or federal) statute will need to adapt to overlapping beneficial ownership reporting requirements.

What Do the Coming Amendments Mean for Registrants?

Annual registrant declarations filed by a registrant with the REQ on or after March 31, 2023 will need to include the required information in respect of the registrant's ultimate beneficiaries, as well as the additional disclosure discussed above under "What Information Must Be Declared to the REQ?" In many cases, collecting and preparing such information will require meaningful time commitments from registrants. Registrants seeking more time to prepare for the new disclosure requirements may file their upcoming annual declarations in advance of March 31, 2023 (provided, of course, such declarations are otherwise eligible to be filed at the time of submission), thereby deferring the requirement to collect and prepare the enhanced disclosure until the time of filing their subsequent declaration.

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.