

EXPLANATORY NOTES

B I L L

No. 191

An Act to amend *The Business Corporations Act*

Clause of Bill

1 *The Business Corporations Amendment Act, 2019*

2 *The Business Corporations Act*

3 **Existing Provision**

None.

Explanation

Proposed new section 2.1 sets out the rules for establishing if an individual is an individual with significant control over a corporation. The proposed provisions mirror the language of new section 2.1 of the *Canada Business Corporations Act*.

Proposed subsection (1) provides that an individual has significant control over a corporation if that individual:

- Is the registered owner, beneficial owner or has direct or indirect control over a significant number (25%) of shares of the corporation;
- Has any direct or indirect influence that, if exercised, would result in factual control of the corporation; or
- Meets any other prescribed circumstances.

Proposed subsection (2) sets out certain instances where two or more individuals with joint rights or ownership of shares are deemed to be considered an individual with significant control over a corporation.

Proposed subsection (3) provides that a “significant number of shares” of a corporation means:

- Shares that carry 25% or more of the total voting rights attached to all of the voting shares of the corporation; or
- Shares that are equal to 25% or more of all the shares of the corporation, measured by fair market value.

4 **Existing Provision**

Corporate records

20(1) A corporation shall prepare and maintain, at its registered office or at any other place in Saskatchewan designated by the directors, records containing:

...

(e) the financial statements of the corporation required by subsection 149(1);
and

(f) the statements of disclosure made by the directors pursuant to section 115.

1976-77, c.10, s.20; R.S.S. 1978, c.B-10, s.20;
1992, c.44, s.10; 2005, c.6, s.4.

Explanation

The proposed amendments to section 20 update the record-keeping requirements for corporations by requiring corporations to keep a register of individuals with significant control in accordance with proposed new section 21.1.

5 **Existing Provision**

None.

Explanation

Proposed new section 21.1 requires corporations, other than distributing corporations, to maintain a register of individuals with significant control. The proposed language is based on the language under new section 21.1 of the *Canada Business Corporations Act*.

Proposed subsection (1) requires a corporation to maintain a register of individuals with significant control, and sets out the categories of information that must be included within the register.

Proposed subsection (2) requires corporate directors to take reasonable steps each financial year to ensure that the corporation has identified all individuals with significant control over the corporation, and to comply with the record keeping requirements of this section.

Proposed subsection (3) requires a corporation to update its register within 15 days of becoming aware of a new individual with significant control that is not

contained in the register, or any other changes to the information that is required to be included in the register.

Proposed subsection (4) requires shareholders, at the request of a corporation, to provide any information that is required in a register under subsection (1).

Proposed subsection (5) requires a corporation to dispose of personal information respecting persons with significant control six years after they cease to be a person with significant control.

Proposed subsection (6) creates an offence for failure to comply with section 21.1. The \$5,000 maximum penalty aligns with the current penalty under section 20 of the Act.

Proposed subsection (7) exempts distributing corporations from the requirement to maintain a register under section 21.1, together with any other prescribed class of corporation.

Proposed section 21.2 requires a corporation to take any steps that are prescribed in the regulations if it is unable to identify any individuals with significant control over the corporation. This section mirrors new section 21.2 of the *Canada Business Corporations Act*.

Proposed section 21.3 contains provisions respecting the sharing of information from a register of individuals with significant control. This section mirrors new section 21.3 of the *Canada Business Corporations Act*.

Proposed subsection (1) allows the Director of Corporations to require a corporation to disclose information from its register of individuals with significant control.

Proposed subsection (2) allows the shareholders and creditors of a corporation to access the register of individuals with significant control, by sending an affidavit to the corporation.

Proposed subsection (3) sets out the required contents of an affidavit for the purposes of an application under subsection (2).

Proposed subsection (4) provides that, if an applicant is a corporation, the affidavit shall be made by a director or officer of the corporation.

Proposed subsection (5) provides that information obtained through an application under subsection (2) shall only be used in connection with:

- Influencing the voting of shareholders;

- Making an offer to acquire securities of the corporation; or
- Other matters relating to the affairs of the corporation.

Proposed section 21.4 creates further offences for persons who are in breach of the rules respecting registers of individuals with significant control. This section is based on new section 21.4 of the *Canada Business Corporations Act*.

Proposed subsections (1) to (3) create offences for any director or officer who authorizes or takes part in:

- a contravention of the requirement to prepare and maintain a register of persons with significant control;
- the recording of false information in a register of persons with significant control; or
- the provision of false or misleading information to any person in relation to a register of persons with significant control.

Proposed subsection (4) creates an offence for shareholders who contravene the requirement to provide information to a corporation under subsection 21.1(4).

Proposed subsection (5) creates an offence for a person who contravenes subsection 21.3(5) respecting the use of information obtained from a register of individuals with significant control.

Proposed subsection (6) sets out the penalties for persons who commit an offence under this section, being a fine not exceeding \$5,000, imprisonment for up to six months, or both. These penalties are aligned with other penalties throughout the Act.

6 Existing Provision

Regulations

304 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations that are ancillary to and are not inconsistent with this Act, and every regulation made under this section has the force of law and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations:

...

1976-77, c.10, s.304; R.S.S. 1978, c.B-10, s.304; 1992, c.44, s.36; 1995, c.4, s.9; 2005, c.6, s.18; 2012, c.21, s.4; 2013, c.O-4.2, s.37; 2015, c.21, s.6 and 64.

Explanation

The proposed amendments to section 304 create regulation-making powers respecting registers of persons with significant control, including prescribing:

- additional circumstances under which an individual is considered a person with significant control;
- the form of the register;
- additional information that is to be included in a register of persons with significant control;
- classes of corporations who are not required to prepare a register of persons with significant control; and
- any steps a corporation must take to update information, or that are required when no persons with significant control are identified.

7 Coming into force.

Prepared by the Ministry of Justice