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CHAPTER 20
(Bill No. 34)

An Act to Amend the Business Corporations Act

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

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CHAPTER 20

AN ACT TO AMEND THE BUSINESS CORPORATIONS ACT

(Assented to November 28, 2019)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. The *Business Corporations Act* R.S.P.E.I. 1988, Cap. B-6.01, is amended by the addition of the following after section 2:

2.1 Individual with significant control

- (1) For the purposes of this Act, each of the following individuals is an individual with significant control over a corporation:
- (a) an individual who has any of the following interests or rights, or any combination of them, in respect of a significant number of shares of the corporation:
 - (i) the individual is the registered holder of them,
 - (ii) the individual is the beneficial owner of them,
 - (iii) the individual has direct or indirect control or direction over them;
 - (b) an individual who has any direct or indirect influence that, if exercised, would result in control in fact of the corporation;
 - (c) an individual to whom prescribed circumstances apply.

Joint ownership or control

- (2) Two or more individuals are each considered to be an individual with significant control over a corporation if, in respect of a significant number of shares of the corporation,
- (a) an interest or right, or a combination of interests or rights, referred to in clause (1)(a) is held jointly by those individuals; or
 - (b) a right, or combination of rights referred to in clause (1)(a), is subject to any agreement or arrangement under which the right or rights are to be exercised jointly or in concert by those individuals.

Significant number of shares

- (3) For the purposes of this section, a significant number of shares of a corporation is
- (a) any number of shares that carry 25 per cent or more of the voting rights attached to all of the corporation's outstanding voting shares; or
 - (b) any number of shares that is equal to 25 per cent or more of all of the corporation's outstanding shares measured by fair market value.

2. The Act is amended by the addition of the following after section 28:

28.1 Register

- (1) A corporation shall prepare and maintain, at its registered office or at another place in Prince Edward Island designated by the directors, a register of individuals with significant control over the corporation, that contains
- (a) the name, date of birth and latest known address of each individual with significant control;
 - (b) the jurisdiction of residence for tax purposes of each individual with significant control;
 - (c) the day on which each individual became or ceased to be an individual with significant control, as the case may be;
 - (d) a description of how each individual is an individual with significant control over the corporation, including, as applicable, a description of the individual's interests and rights in respect of shares of the corporation;
 - (e) any other prescribed information; and
 - (f) a description of each step taken in accordance with subsection (2).

Updating of information

- (2) At least once during each financial year of a corporation, the corporation shall take reasonable steps to ensure that it has identified all individuals with significant control over the corporation and that the information in the register is accurate, complete and up-to-date.

Recording of information

- (3) Where a corporation becomes aware of any information referred to in clauses (1)(a) to (e) as a result of steps taken in accordance with subsection (2) or through any other means, the corporation shall record that information in the register within 15 days of becoming aware of it.

Information from shareholders

- (4) Where a corporation requests information referred to in any of clauses (1)(a) to (e) from one of its shareholders, the shareholder shall, to the best of the shareholder's knowledge, reply accurately and completely as soon as feasible.

Disposal of personal information

- (5) Within one year after the sixth anniversary of the day on which an individual ceases to be an individual with significant control over the corporation, the corporation shall, subject to an Act of the Parliament of Canada or the legislature that provides for a longer retention period, dispose of any of that individual's personal information, as defined in subsection 2(1) of the *Personal Information Protection and Electronic Documents Act* (Canada), that is recorded in the register.

Offence

- (6) A corporation that, without reasonable cause, contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.



Non-application

- (7) This section does not apply to a corporation that is
- (a) a distributing corporation; or
 - (b) a member of a prescribed class.

28.2 Inability to identify individuals

A corporation to which section 28.1 applies shall take steps in accordance with the regulations, if any, if it is unable to identify individuals with significant control over the corporation.

28.3 Disclosure to Director

- (1) A corporation to which section 28.1 applies shall disclose to the Director, on request and within the time period required by the Director, any information in its register of individuals with significant control.

Access - statutory declaration

- (2) Shareholders and creditors of the corporation or their personal representatives, on sending to the corporation or its agent the statutory declaration referred to in subsection (3), may on application require the corporation or its agent to allow the applicant access to the register of the corporation referred to in subsection 28.1(1) during the usual business hours of the corporation and, on payment of a reasonable fee, provide the applicant with an extract from that register.

Statutory declaration

- (3) The statutory declaration required under subsection (2) shall contain
- (a) the name and address of the applicant;
 - (b) the name and address for service of the body corporate, if the applicant is a body corporate; and
 - (c) a statement that any information obtained under subsection (2) shall not be used except as permitted under subsection (5).

Application by body corporate

- (4) Where the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

Use of information

- (5) Information obtained under subsection (2) shall not be used by any person except in connection with
- (a) an effort to influence the voting of shareholders of the corporation;
 - (b) an offer to acquire securities of the corporation; or
 - (c) any other matter relating to the affairs of the corporation.

Offence

- (6) A person who, without reasonable cause, contravenes subsection (5) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months, or to both.

28.4 Definition, investigative bodies

- (1) In this section,
- (a) “**investigative body**” means a police service, taxing authority or regulator;
 - (b) “**police service**” means a police service within the meaning of the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1;
 - (c) “**taxing authority**” means the Canada Revenue Agency or the portion of the government of Prince Edward Island that is responsible for administering or enforcing a law of Prince Edward Island that provides for the imposition or collection of a tax, royalty or duty;
 - (d) “**regulator**” means:
 - (i) the Island Regulatory and Appeals Commission established under the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11,
 - (ii) the Superintendent of Securities established under the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1,
 - (iii) the Financial Transactions and Reports Analysis Centre of Canada established under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada),
 - (iv) a prescribed public officer, corporation, agency or other entity whose authority to regulate is based on a law of Prince Edward Island or Canada.

Disclosure to investigative bodies

- (2) On request by an investigative body, a corporation to which section 28.1 applies shall, as soon as feasible after the request is served on the corporation or is deemed to be received by it, and in the manner specified by the investigative body,
- (a) provide the investigative body with a copy of the corporation’s register of individuals with significant control; or
 - (b) disclose to the investigative body any information specified by the investigative body that is in the corporation’s register of individuals with significant control.

Requirement, for law enforcement purposes

- (3) A police service may make a request under subsection (2) only for the following purposes:
- (a) conducting an investigation in Canada
 - (i) that is undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
 - (b) policing and criminal intelligence operations in Canada;
 - (c) assisting another law enforcement agency in Canada for a purpose described in clause (a) or (b);
 - (d) providing information contained in the register to a law enforcement agency in a jurisdiction outside of Canada to assist the agency in a law enforcement proceeding if this assistance is authorized under an arrangement, written agreement, treaty or law of Prince Edward Island or Canada.

Requirement, for tax purposes

- (4) A taxing authority may make a request under subsection (2) only for the following purposes:
- (a) administering or enforcing
 - (i) a law of Prince Edward Island or Canada that provides for the imposition or collection of a tax, royalty or duty, or

- (ii) a prescribed law of Prince Edward Island or Canada that is related to a law referred to in subclause (i);
- (b) providing information contained in the register to another jurisdiction in or outside of Canada to assist the jurisdiction in the administration or enforcement of a law of that jurisdiction that provides for the imposition or collection of a tax, royalty or duty if this assistance is authorized under an arrangement, written agreement, treaty or law of Prince Edward Island or Canada.

Requirement, for regulatory purposes

- (5) A regulator may make a request under subsection (2) only for the following purposes:
 - (a) administering or enforcing a law for which the regulator is responsible;
 - (b) assisting another agency in Canada in the administration or enforcement of a law that is similar to a law for which the regulator is responsible;
 - (c) providing information contained in the register to an agency outside of Canada to assist the agency in the administration or enforcement of a law that is similar to a law for which the regulator is responsible if this assistance is authorized under an arrangement, written agreement, treaty or law of Prince Edward Island or Canada.

Service or sending of request

- (6) A request by an investigative body under subsection (2) shall be served on the corporation by leaving the request at the corporation's registered office as shown in the last notice filed under section 26 or sent to the corporation by registered mail to that registered office and, where so sent, is deemed to be received at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the corporation did not receive the request at that time or at all.

Offence

- (7) A corporation that, without reasonable cause, contravenes subsection (2) is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000.

28.5 Offence - contravention of subsection 28.1(1) or 28.4(2)

- (1) Every director or officer of a corporation who knowingly authorizes, permits or acquiesces in the contravention of subsection 28.1(1) or 28.4(2) by that corporation commits an offence, whether or not the corporation has been prosecuted or convicted for the contravention.

Offence - recording of false or misleading information

- (2) Every director or officer of a corporation who knowingly records or knowingly authorizes, permits or acquiesces in the recording of false or misleading information in the register of the corporation referred to in subsection 28.1(1) commits an offence.

Offence - provision of false or misleading information

- (3) Every director or officer of a corporation who knowingly provides or knowingly authorizes, permits or acquiesces in the provision to any person or entity of false or misleading information in relation to the register of the corporation referred to in subsection 28.1(1) commits an offence.

Offence - information from shareholders

- (4) Every shareholder who knowingly contravenes subsection 28.1(4) commits an offence.

Penalty

- (5) A person who commits an offence under any of subsections (1) to (4) is liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

3. The Act is amended by the addition of the following after section 36:

36.1 Restriction regarding bearer shares

- (1) Despite section 36, a corporation shall not issue, in bearer form, a certificate, warrant or other evidence of a conversion privilege, option or right to acquire a share of the corporation.

Replacement

- (2) A corporation shall, on the request of a holder of a certificate, warrant or other evidence of a conversion privilege, option or right to acquire a share of the corporation that is in bearer form and that was issued before the coming into force of this section, issue in exchange to that holder, in registered form, a certificate, warrant or other evidence, as the case may be.

4. Subsection 43(1) of the Act is repealed and the following substituted:

43. Redemption of shares

- (1) Notwithstanding subsection 41(2) or 42(3), but subject to subsection (2) and to its articles, a corporation may purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price stated in the articles or bylaws or calculated according to a formula stated in the articles or bylaws.

5. (1) Subsection 53(10) of the Act is repealed and the following substituted:

Fractional share

- (10) A corporation may issue, for each fractional share, a certificate in registered form or scrip certificates in registered form that entitle the holder to receive a certificate for a full share in exchange for scrip certificates equalling a full share.

(2) Section 53 of the Act is amended by the addition of the following after subsection (10):

Replacement

- (10.1) On the request of a holder of a certificate for a fractional share or of a scrip certificate, a corporation shall, if the certificate is in bearer form and was issued before the coming into force of this subsection, issue in exchange to that holder, in registered form, a certificate for a fractional share or a scrip certificate, as the case may be.

6. (1) Subsection 156(3) of the Act is repealed and the following substituted:

Articles of continuance

- (3) Articles of continuance in the form approved by the Director shall be sent to the Director together with the documents required by sections 26 and 81.



(2) Subsections 156(8) and (9) of the Act are repealed and the following substituted:

Issued shares

- (8) Subject to the *Securities Transfer Act* and subsection (9), a share of a body corporate that was issued before the body corporate was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and continuance under this section does not deprive a holder of any right or privilege that the holder claims under, or relieve the holder of any liability in respect of, an issued share.

Convertible shares

- (9) Where a corporation continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to bearer form, the corporation shall not, if a holder of the share certificate exercises the conversion privilege attached to the certificate, issue a share certificate in bearer form.

7. Subsection 157(1) of the Act is repealed and the following substituted:

157. Continuance - other jurisdictions

- (1) Subject to subsection (9), a corporation may apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction if the corporation
- (a) is authorized by the shareholders in accordance with this section to make the application; and
 - (b) establishes that its proposed continuance in the other jurisdiction will not adversely affect creditors or shareholders of the corporation.

8. Subsection 160(4) of the Act is repealed and the following substituted:

Articles of reorganization

- (4) After an order referred to in subsection (1) has been made, articles of reorganization in the form approved by the Director shall be sent to the Director together with the documents required by sections 26 and 88, if applicable.

9. Subsection 161(5) of the Act is repealed and the following substituted:

Articles of arrangement

- (5) After an order referred to in clause (4)(e) has been made, articles of arrangement in the form approved by the Director shall be sent to the Director together with the documents required by sections 26 and 88, if applicable.

10. Section 203 of the Act is amended by addition of the following after subsection (3):

Register of individuals with significant control

- (4) For greater certainty, a register referred to in subsection 28.1(1) or an extract from it is not a report, return, notice or other document for the purposes of this section.

11. Subsection 220(1) of the Act is amended

- (a) in clause (h), by the deletion of the word “and” after the semicolon;
- (b) in clause (i), by the deletion of the period and the substitution of a semicolon; and
- (c) by addition of the following after clause (i):
 - (j) prescribing information to be included in the register in subsection 28.1(1);
 - (k) respecting steps to be taken by a corporation under subsection 28.1(2);
 - (l) prescribing one or more classes of corporations for the purpose of subsection 28.1(7);
 - (m) respecting steps to be taken by a corporation under section 28.2;
 - (n) prescribing, for the purposes of subclause 28.4(1)(d)(iv) a public officer, corporation, agency or other entity;
 - (o) prescribing, for the purposes of subsection 28.4(4), a law that provides for the imposition or collection of a tax, royalty or duty.

12. Subsection 223(2) of the Act is repealed and the following substituted:

Authority to sign notices

- (2) The notices referred to in subsections 26(2) and (4) and subsections 81(1) and 88(1), and the annual return referred to in section 224, may be signed by any individual who has the relevant knowledge of the corporation and who is authorized to do so by the directors, or, in the case of the notice referred to in subsection 81(1), the incorporators.

13. The Act is amended by the addition of the following after section 224:

224.1 Shareholder information

- (1) Every corporation, other than a distributing corporation, shall send to the Director with the annual return referred to in section 224 a list, in the form approved by the Director, of all persons who were shareholders of the corporation on the date of the annual return, setting out the full name and address of each shareholder and the number and class of shares held by each shareholder, and the Director shall file the list.

Initial shareholder information

- (2) Every corporation that is incorporated or continued under this Act after the coming into force of this section, other than a distributing corporation, shall send to the Director, in the form approved by the Director, within 60 days after the date shown on the certificate of incorporation or continuance, as the case may be, an initial list of all shareholders of the corporation as shown in the corporation’s records, setting out the full name and address of each shareholder and the number and class of shares held by each shareholder, and the Director shall file the initial list.

14. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.



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<i>Assent:</i>	November 28, 2019

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Colin LaVie, Speaker

Joseph Jeffrey, Clerk

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

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