Bill 78 and the notion of ultimate beneficiary

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Bill 78 was introduced in December 2020 by Minister Jean Boulet and given assent on June 8, 2021. It amends the *Act respecting the legal publicity of enterprises* (the "**Act**") and its regulation, the *Regulation respecting the application of the Act respecting the legal publicity of enterprises* (the "**Regulation**"). This legislative amendment is part of a process to prevent and fight tax evasion, money laundering and corruption, and will now require registrants to disclose more of their information.

Disclosure of information relating to *ultimate beneficiaries*

The amendments set out new requirements for corporate transparency and now require registrants to disclose information about the natural persons who are their *ultimate beneficiaries*, including their names, domiciles and dates of birth, in order to prevent the use of nominees for tax evasion, among other things.

It should be noted that the obligation to disclose the ultimate beneficiary's domicile can be circumvented by disclosing a professional address instead. New section 35.2 of the Bill provides that "a registrant who must declare the domicile of a natural person under a provision of this Bill may also declare a professional address for the natural person." If such an address is declared, the information relating to the domicile of that person may not be consulted.

Under the Bill, a "registrant" means a person or group of persons registered voluntarily or any person, trust or partnership required to be registered.

The Bill specifies that "ultimate beneficiary" means a natural person who meets any of the following conditions in respect of a registrant[1]:

> Is the 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;
> Is the holder, even indirectly, or beneficiary of a number of shares or units the value of which corresponds to 25%

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or more of the fair market value of all the shares or units issued by the registrant;
Exercises control in fact of the registrant; or
Is a general partner of a limited partnership.

The Bill also provides that where natural persons holding shares or units of the registrant have agreed to jointly exercise the voting rights attached to the shares or units and the agreement confers on them, together, the power to exercise 25% or more of those voting rights, each of those natural persons is considered to be an ultimate beneficiary of the registrant. Lastly, it provides that a natural person operating a sole proprietorship is presumed to be the only ultimate beneficiary of the sole proprietorship, unless he or she declares otherwise.

Notwithstanding this definition of ultimate beneficiary, it is important to note that the government may make regulations determining other conditions according to which a natural person is considered to be an ultimate beneficiary.

Search by name of an *ultimate beneficiary*

The Bill provides that a natural person's name may be part of a compilation of information or serve as the basis for a compilation, and may be used as a search term for the purposes of a search in the enterprise register. This will allow the public to identify all corporations with which a natural person is associated, where such a person has been named the ultimate beneficiary of a registrant. However, information that may not be consulted may not be part of such a compilation or serve as the basis for one.

It should be noted that the Bill also allows the government to make regulations determining the information contained in the enterprise register that may not be consulted.

Conclusion

This legislative amendment, particularly with the addition of the notion of ultimate beneficiary, will considerably increase disclosure requirements for corporations that are already required to communicate certain types of information to the Registraire des entreprises du Québec.

We can only hope that at the end of this legislative process, the government will implement a clear and effective information disclosure system, making it easier for registrants and their advisors to manage the information that they disclose.

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1. The new section 0.3 will now be part of the new Chapter 0.1 "Purposes and definitions."

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