

Business

Quebec has enacted (but not put into force) corporate transparency rules

By **Daniel Frajman**

Daniel Frajman

(June 15, 2021, 8:42 AM EDT) -- The Quebec government enacted on June 3, 2021, Bill 78 to update the rules relating to the online Quebec Enterprise Register (REQ), which has the goal of promoting, in the terms of the bill, the “transparency of enterprises.” The Quebec government’s press release on the matter indicates that it wants to be a world leader in transparency.

This is the bill that in general terms will list ultimate beneficiaries (physical persons with a significant stake (25 per cent or more) in votes or value, or control in fact, after looking through holding companies, trusts, nominee agreements and shareholders agreements, among others) on the REQ for each company (other than public companies) or partnership or other REQ registrant, and allow searches on the REQ by name of physical persons who are ultimate beneficiaries, top voting shareholders, directors or officers.

The bill was first tabled in December 2020. The bill was amended at the end of May 2021 to apparently confirm for example that when a trust is a significant shareholder in votes or value, essentially all trust beneficiaries — even discretionary beneficiaries — are named on the REQ as ultimate beneficiaries. Perhaps future guidance from Quebec will limit reporting of discretionary trust beneficiaries. Trust beneficiaries whose rights are contingent on a death occurring will not have to be listed, nor will beneficiaries who are minors. Individuals with significant privacy concerns or a fear of being targeted may be given the ability to apply to not have their names listed. Notably, non-profits will also be exempt from this law, so it appears that for example private foundations and other charities will be exempt.

Though enacted, the bill will come into force on a future date to be determined by the Quebec government. Previous Quebec government statements were to the effect that it would let a year or so pass from the time of the June 3 enactment to allow there to be familiarity with the law, and also to allow the government to issue guidance and regulations to help apply the law, and the Quebec government appeared to reiterate in its news release of June 3 that it will be issuing guidance.

Notably, these new Quebec rules apply to every private corporation and partnership or other registrant with Quebec activity that therefore obliges them to be on the REQ, no matter where in the world the registrant has been formed, and the ultimate beneficiaries are publicly named on the public REQ website which is freely available to all, worldwide. Compare this to the more limited rules of the *Canada Business Corporations Act* (CBCA) in force since 2019, which apply only to CBCA corporations, provide for a private register internal to the corporation essentially accessible only to the Canada Revenue Agency, Revenu Québec or the police in the context of an investigation, and which likely does not include discretionary trust beneficiaries as persons to be listed as having significant control.

One potential penalty for non-compliance with the new Quebec rules once they are in force, is deregistration from the REQ register, which would prevent an entity from carrying on business in Quebec. This should be a motivation for compliance.

With the registration requirement applying to entities formed anywhere and with Quebec activity, it is probably accurate to refer to this forthcoming Quebec register as Canada’s de facto public corporate

beneficial ownership register, given no other Canadian (or North American, for that matter) jurisdiction has a register close to being as robust on this issue. This is a development of great interest for anyone whose practice touches on corporations or trusts.

Daniel Frajman, dfrajman@spiegelsohmer.com, is a partner at Spiegel Sohmer in Montreal. He practises in the firm's business law, non-profit/charity law and trust/tax law departments.

Photo credit / Prostock-Studio ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Peter Carter at peter.carter@lexisnexis.ca or call 647-776-6740.

© 2021, The Lawyer's Daily. All rights reserved.