

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 169

, Approved and Ordered

April 6, 2020



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- (a) B.C. Reg. 209/2019 is repealed,
- (b) effective October 1, 2020, sections 1, 2, 5 to 9 and 11 to 15 of the *Business Corporations Amendment Act, 2019*, S.B.C. 2019, c. 15, are brought into force, and
- (b) effective October 1, 2020, the Business Corporations Regulation, B.C. Reg. 65/2004, is amended as set out in the attached Appendix.



Minister of Finance and Deputy Premier



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Business Corporations Amendment Act, 2019*, S.B.C. 2019, c. 15, s. 16;
Business Corporations Act, S.B.C. 2002, c. 57, s. 432 (2) (y) and (9.2)

Other: OIC 201/2004

R30385450

APPENDIX

- 1 *Section 28 of the Business Corporations Regulation, B.C. Reg. 65/2004, is repealed and the following substituted:*

Maximum fee for copies – dissolved company

- 28 The fee prescribed for a copy of records or the transparency register under section 352 (1) (b), (1.1) (b) or (2) (b) of the Act is \$0.50 per page.

- 2 *The following Part is added:*

PART 18 – TRANSPARENCY REGISTER

Definitions

- 46 In this Part:
- “**chain of intermediaries**”, in relation to a private company, means a chain of intermediaries described in section 50;
 - “**control**” means control determined in accordance with the rules set out in section 51;
 - “**intermediary**” means a corporation, partnership, agent, trustee or personal or other legal representative;
 - “**private company**” has the same meaning as in section 119.1 of the Act.

Exclusions – private companies

- 47 The prescribed classes of companies for the purposes of paragraph (d) of the definition of “private company” in section 119.1 of the Act are the following:
- (a) a company that is a wholly owned subsidiary of a corporation that is
 - (i) a reporting issuer,
 - (ii) a reporting issuer equivalent, or
 - (iii) listed on a designated stock exchange within the meaning of section 248 (1) of the *Income Tax Act* (Canada);
 - (b) an insurance company with the meaning of paragraph (a), (c), (d), (e) or (f) of the definition of “insurance company” in section 1 (1) of the *Financial Institutions Act*;
 - (c) a trust company within the meaning of paragraph (a) or (c) of the definition of “trust company” in section 1 (1) of the *Financial Institutions Act*;
 - (d) a government corporation as defined in section 1 of the *Financial Administration Act*;
 - (e) a company that is a wholly owned subsidiary of a corporation incorporated, continued or amalgamated by an enactment;
 - (f) a company incorporated or wholly owned by a municipality under section 185 of the *Community Charter*;
 - (g) a company incorporated or wholly owned by a regional district under section 265 of the *Local Government Act*;

- (h) a company that operates an independent school as defined in section 1 (1) of the *Independent School Act*;
- (i) a company that results from the conversion of a corporation incorporated under Part 6.1 of the *School Act*;
- (j) a company that is wholly owned by one or more Indigenous nations as defined in section 1 of the *Land Owner Transparency Act*.

Indirect control – shares

- 48**
- (1) This section sets out the meaning of indirect control of one or more of the shares of a private company for the purposes of section 119.11 (2) (a) (iii) of the Act.
 - (2) An individual has indirect control of one or more of the shares of a private company if the individual, who is not an intermediary,
 - (a) controls an intermediary that is the registered owner of the shares, or
 - (b) controls a chain of intermediaries, the last of which is the registered owner of the shares.
 - (3) In addition to any individual who has indirect control under subsection (2) (b), an individual has indirect control of one or more of the shares of a private company if the individual is a trustee or personal or other legal representative in a chain of intermediaries, the last of which is the registered owner of the shares.
 - (4) This section is subject to section 52.

Indirect control – rights relating to directors

- 49**
- (1) This section sets out the meaning of indirect control of the right to elect, appoint or remove one or more of the directors of a private company for the purposes of section 119.11 (2) (b) (ii) of the Act.
 - (2) An individual has indirect control of the right to elect, appoint or remove one or more of the directors of a private company if the individual, who is not an intermediary,
 - (a) controls an intermediary that has that right, or
 - (b) controls a chain of intermediaries, the last of which has that right.
 - (3) In addition to any individual who has indirect control under subsection (2) (b), an individual has indirect control of the right to elect, appoint or remove one or more of the directors of a private company if the individual is a trustee or personal or other legal representative in a chain of intermediaries, the last of which has that right.
 - (4) This section is subject to section 52.

Chain of intermediaries

- 50**
- A chain of intermediaries, in relation to a private company, is a group of 2 or more intermediaries having a hierarchal relationship to each other in which
- (a) each intermediary in the chain controls the intermediary below it, and
 - (b) the last intermediary in the chain

- (i) is the registered owner of one or more of the shares of the private company, or
- (ii) has the right to elect, appoint or remove one or more of the directors of the private company.

Control

- 51**
- (1) Subject to subsections (2) and (3), control of an intermediary that is a corporation, partnership or agent is determined in accordance with the following rules:
 - (a) a person controls a corporation if the person has the right to elect or appoint a majority of the directors of the corporation;
 - (b) a person controls a partnership if the person is a partner in the partnership;
 - (c) a person controls an agent if the person is the principal of the agent.
 - (2) Control of an intermediary that is a trustee, including an intermediary that is a corporation, partnership or agent that is a trustee, is determined in accordance with the following rules:
 - (a) a person controls a trustee that is the registered owner of one or more of the shares of a private company if the person has, under the terms of the trust, the power to direct how the trustee is to exercise any of the rights that are attached to the shares;
 - (b) a person controls a trustee that has the right to elect, appoint or remove one or more of the directors of a private company if the person has, under the terms of the trust, the power to direct how the trustee is to exercise that right;
 - (c) a person controls a trustee that controls an intermediary if the person has, under the terms of the trust, the power to direct how the trustee is to exercise control over the intermediary;
 - (d) if the trustee is a corporation, partnership or agent, other than a trust company or an extraprovincial trust corporation as those terms are defined in section 1 (1) of the *Financial Institutions Act*, and no person controls the trustee within the meaning of paragraphs (a), (b) or (c) of this subsection, the rules in subsection (1) apply in determining who controls the corporation, partnership or agent.
 - (3) Control of an intermediary that is a personal or other legal representative, including an intermediary that is a corporation, partnership or agent that is a personal or other legal representative, is determined in accordance with the following rules:
 - (a) a person controls a representative that is the registered owner of one or more of the shares of a private company if the person has the legal authority to direct how the representative is to exercise any of the rights that are attached to the shares;
 - (b) a person controls a representative that has the right to elect, appoint or remove one or more of the directors of a private company if the person has the legal authority to direct how the representative is to exercise that right;

- (c) a person controls a representative that controls an intermediary if the person has the legal authority to direct how the representative is to exercise control over the intermediary;
 - (d) if the representative is a corporation, partnership or agent and no person controls the representative within the meaning of paragraphs (a), (b) or (c) of this subsection, the rules in subsection (1) apply in determining who controls the corporation, partnership or agent.
- (4) An individual controls a chain of intermediaries if the individual controls the first intermediary in the chain.

Exclusions for special intermediaries

- 52** (1) In this section, “**special intermediary**” means an intermediary that is any of the following:
- (a) an intermediary that is
 - (i) a reporting issuer,
 - (ii) a reporting issuer equivalent, or
 - (iii) listed on a designated stock exchange within the meaning of section 248 (1) of the *Income Tax Act* (Canada);
 - (b) a corporation that is a wholly owned subsidiary of a corporation that is an intermediary referred to in paragraph (a);
 - (c) a credit union or an extraprovincial credit union as those terms are defined in section 1 (1) of the *Financial Institutions Act*;
 - (d) an insurance company or an extraprovincial insurance corporation as those terms are defined in section 1 (1) of the *Financial Institutions Act*;
 - (e) a trust company or an extraprovincial trust corporation as those terms are defined in section 1 (1) of the *Financial Institutions Act*;
 - (f) a government corporation as defined in section 1 of the *Financial Administration Act*;
 - (g) a corporation
 - (i) that is, under an Act of Canada or a province, an agent of Canada or a province,
 - (ii) of which Canada or a province directly owns more than 50% of the issued voting shares, or
 - (iii) that is controlled by the government of Canada or a province and, for the purpose of this subparagraph, a corporation is controlled by the government when a majority of the members of the corporation or of its board of directors or board of management consists of either or both of the following:
 - (A) persons appointed as members by an executive legislative body of the government, by a minister of the government or by an Act of Canada or a province;
 - (B) public officers acting as public officers;
 - (h) a corporation incorporated, continued or amalgamated by

- (i) an enactment, or
 - (ii) an Act of Canada or a province;
 - (i) a corporation that is a wholly owned subsidiary of a corporation referred to in paragraph (h);
 - (j) a corporation incorporated or wholly owned by a municipality under section 185 of the *Community Charter*;
 - (k) a corporation incorporated or wholly owned by a regional district under section 265 of the *Local Government Act*;
 - (l) an authority as defined in section 1 (1) of the *Independent School Act* that operates an independent school as defined in that section;
 - (m) a corporation incorporated under Part 6.1 of the *School Act*;
 - (n) a company that results from the conversion of a corporation incorporated under Part 6.1 of the *School Act*;
 - (o) a corporation that is wholly owned by one or more Indigenous nations as defined in section 1 of the *Land Owner Transparency Act*;
 - (p) a trustee of a testamentary trust;
 - (q) the Public Guardian and Trustee;
 - (r) a public officer or corporation sole that has functions similar to those of the Public Guardian and Trustee and that is created under an Act of Canada or a province.
- (2) Subject to subsection (3), no individual has for the purposes of section 119.11 (2) (a) (iii) of the Act indirect control of the following shares:
- (a) a share of a private company of which a special intermediary is the registered owner;
 - (b) a share of a private company of which the last intermediary in a chain of intermediaries is the registered owner of the share and a special intermediary is in the chain of intermediaries.
- (3) Subsection (2) does not apply to a share of a private company if
- (a) the special intermediary referred to in subsection (2) is a trust company or an extraprovincial trust corporation as those terms are defined in section 1 (1) of the *Financial Institutions Act*, and
 - (b) a person controls the special intermediary within the meaning of section 51 (2) (a) or (c).
- (4) Subject to subsection (5), no individual has for the purposes of section 119.11 (2) (b) (ii) of the Act indirect control of the following rights:
- (a) a right to elect, appoint or remove one or more of the directors of a private company that is held by a special intermediary;
 - (b) a right to elect, appoint or remove one or more of the directors of a private company that is held by the last intermediary in a chain of intermediaries and a special intermediary is in the chain of intermediaries.
- (5) Subsection (4) does not apply to a right to elect, appoint or remove one or more of the directors of a private company if

- (a) the special intermediary referred to in subsection (4) is a trust company or an extraprovincial trust corporation as those terms are defined in section 1 (1) of the *Financial Institutions Act*, and
- (b) a person controls the special intermediary within the meaning of section 51 (2) (b) or (c).

Maximum copying fee

- 53** The prescribed maximum copying fee for the purposes of section 119.91 (2) of the Act is \$0.50 per page.