

Determining value for corporate beneficial ownership registers

By **Daniel Frajman and Catherine Tremblay**

Law360 Canada (August 19, 2025, 11:35 AM EDT) -- Recently enacted legislation requires additional reporting of beneficial ownership for private company shares, including as regards shareholders that are trusts. In order to comply, one criterion to determine is whether an ownership interest has sufficient value to be reported, an area where the legal rules combine with business valuation principles to arrive at the correct reporting position.

The legal rules

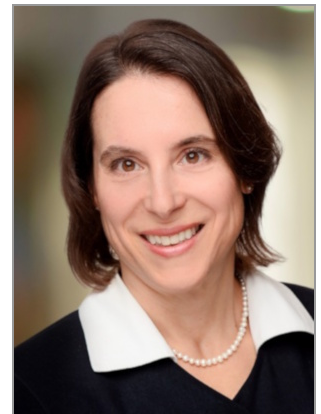
The legal rules are aimed at providing greater transparency of corporate ownership, by reporting who effectively owns or controls the shares in question. This will theoretically help to reduce tax evasion, unreasonable tax avoidance, money laundering and terrorist financing. In jurisdictions where the information is on a public register, the information also helps to level the economic playing field by providing the transparency to know who the counterparty is in a business or consumer transaction.



Daniel Frajman



Feodora Chiosea: ISTOCKPHOTO.COM



Catherine Tremblay

First, an understanding of the legal rules in Canada through a brief review is necessary. The rules for reporting beneficial ownership of private company shares go beyond beneficial ownership. The rules are generally aimed at looking through all the holding companies, trusts and nominee agreements in the corporation's structure to determine, and then report, the identity of all physical persons who hold at least 25 per cent of the votes or value of the corporation in question, or who have *de facto* control of the corporation as a whole. (British Columbia has some unique rules when determining such persons; for example, B.C. replaces the value criterion with reporting individuals holding over 25 per cent of the total issued shares, which may be misleading because non-voting classes of shares do not have the same degree of influence on corporate decision-making, and the actual number of shares held in a unique class may not reflect votes or value.)

The Canadian division of legislative powers allows corporations to be incorporated provincially or

territorially, or at the federal level, and currently all jurisdictions (other than Alberta, Northwest Territories and Nunavut, which have no such legislation, and Quebec, which has a different system) have beneficial ownership legislation with regard to corporate shares, as part of each jurisdiction's business corporations legislation. In other words, for the most part, this legislation in each Canadian jurisdiction is limited to corporations incorporated in that jurisdiction.

Quebec is an exception on this latter point, as its rules on this are in Quebec's provincial and extra-provincial corporate and partnership registration legislation (the *Act Respecting the Legal Publicity of Enterprises*, the so-called *Legal Publicity Act*), with the result that any corporation or partnership (and certain other entities) formed anywhere in the world, with activity in Quebec, would be subject to this reporting on Quebec's Enterprise Register. This wide-ranging requirement in effect makes the Quebec register Canada's *de facto* national public register for beneficial ownership of corporations and partnerships, including as regards their shareholders that are trusts.

The other Canadian provinces and territories with legislation on this matter do not publicly post the collected information, but require retention of the information in corporate records and available principally for government or police inspection, usually in the context of a serious investigation.

The Quebec and federal rules (and soon British Columbia), in contrast, each establish a public register that is freely accessible on the internet on each of their government sites (which, respectively, can be accessed by searching on the internet the term "Quebec corporate search" or "CBCA corporate search").

Valuation principles

The legal rules include a need to address the value of corporate interests. A representative reason for this in the legislation is at s. 2.1(1) of the *Canada Business Corporations Act* (CBCA), which for reporting purposes defines a beneficial owner (referred to in the CBCA as an individual with significant control) as including among others individuals, holding or controlling (after intervening entities are looked through) 25 per cent or more of the voting rights attached to all the corporation's outstanding voting shares, or 25 per cent or more of the corporation's outstanding shares measured by *fair market value* [emphasis added].

The need to determine fair market value regarding direct and indirect interests in the corporation's shares is therefore evident. For purposes of accurate reporting on the government register, this has to be done upon incorporation, and thereafter on an annual basis and within 15 or 30 days of changes to shareholdings or beneficial ownership. Penalties for non-compliance vary by jurisdiction, but fines, penalties and deregistration of the corporation are potentially applicable (deregistration for non-compliance is already occurring in Quebec, where the Enterprise Registrar has an obligation to take "reasonable measures to optimise the reliability of the information contained in the register," according to s. 3 of Quebec's *Legal Publicity Act*). The CBCA (at s. 21.1(2)) calls for the corporation to take all "reasonable steps" to identify the beneficial owners (called individuals with significant control), and Quebec (at s. 39.1 of the *Legal Publicity Act*) requires that a registrant take all "necessary measures" to identify beneficial owners (called ultimate beneficiaries).

A common example of the need to determine fair market value is after a standard estate freeze in a corporation that may provide a founding individual with voting preferred shares that have a set (frozen) value, and with future growth allocated to new non-voting common shares held by the next generation (either directly or often through a family trust). The new common shares have no value immediately after the freeze, but as time passes may exceed 25 per cent of the value of all shares in the corporation. In this situation, the principal persons relating to the trust (the trustees, and in some jurisdictions, all or some of the beneficiaries) then become reportable beneficial owners. One must therefore address how to practically value the shares on an ongoing basis.

Value is generally easily determined for preferred shares with a known redemption value, or for new common non-voting shares issued in conjunction with a freeze. Other than those situations, the value of a specific class of shares or interest is often unknown as the business value changes over time and shareholdings change.

When valuing shares, be aware that beneficial ownership legislation typically provides neither definition of value nor guidance to value the shares. For example, Corporations Canada's Glossary of

Terms for the CBCA refers to "fair market value" as "the amount an independent third person would pay to buy shares [when] both persons are informed, independent, and acting in their own self interest." The Quebec Enterprise Register, in its guide regarding how to establish ultimate beneficiaries, simply says that "an analysis of the fair market value of the shares must be carried out" [authors' translation from the original French].

Therefore, one must turn to business valuation principles when determining the fair market value of the subject shares. Fair market value is defined in the International Glossary of Business Valuation Terms as:

The highest price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.

This definition has been adopted by the Canadian Chartered Business Valuators Institute as well as the Canada Revenue Agency. In general terms, the definition strives to simulate the conditions in which an actual market transaction would take place, assuming the parties have competing interests and are not acting under duress, and where a reasonable due diligence exercise has taken place.

In corporate structures with several classes of shares, it is necessary to first determine the fair market value of the overall business to calculate the value of all of the issued and outstanding shares, viewed *en bloc*. While it is beyond the scope of this article to provide an in-depth analysis of business valuation methodology, the following are the three principal approaches:

1. The asset approach, which is based on a revaluation of assets and liabilities to current fair market values. This approach is generally applied for entities that hold investments or real estate and are not expected to have any goodwill or intangible value.
2. The income approach, which is based on the maintainable or the projected cash flows of the business, to which a valuation multiple is applied in order to arrive at fair market value. This approach is generally applied for businesses that are generating an adequate return on investment and reflects the value of both the tangible and intangible assets, including off-balance sheet assets or liabilities that are not necessarily recognized under accounting principles (e.g., internally generated goodwill, customer relationships, brands, intellectual property, etc.).
3. The market approach, which is based on market observed valuation multiples derived from actual mergers and acquisition transactions in the industry and/or comparable public-company financial information. These multiples are applied to the relevant metrics of the subject company to arrive at a value of the business operations.

In order to value a specific class of shares or a shareholding (as required for the disclosures to the provincial/federal corporate registers), a "waterfall" calculation is performed by which the *en bloc* value is allocated to the various classes of shares based on their characteristics. Value is first assigned to preferred shares based on their priority rights to the proceeds on a winding up or sale of the corporation. Preferred shares are frequently encountered in family-controlled companies with the objective of income splitting or estate freezing, as well as in situations where private equity investors have requested special rights to protect their investment. The characteristics of these shares could include the following:

1. Voting rights
2. Dividend rights, at a fixed or variable rate or as declared by the directors
3. Right to convert to another class of shares
4. Redeemable at the option of the shareholder and/or the company
5. Priority over other share classes for dividends or other distributions

The valuation of a private company's preferred shares must take all of these characteristics into account as well as the respective rights of all other share classes, as defined in the company's articles of incorporation. If there is a unanimous shareholders' agreement, the provisions of that agreement

need to be analyzed to understand the respective rights of each shareholder in order to determine the value of their interest.

Some preferred shares are issued with significant voting rights, sometimes even control of the company. Preferred shares that include enough voting rights may have a higher value than their redemption value when they confer control of the company. As such, an in-depth analysis of the characteristics of these shares, and of the other classes of shares issued, is required to determine their fair market value.

Once the *en bloc* equity value has been allocated among the various classes of preferred shares, the residual amount is attributed to the common shares. A pro rata value is first calculated to arrive at a per-share amount. Under a fair market value standard, shareholdings equal to or less than 50 per cent would generally include discounts from the pro rata value that can be referred to as minority discounts, to reflect factors such as a lack of control and lack of marketability.

Minority discounts typically do not apply in a family-owned business, assuming that relationships are harmonious, depending on the facts of the case. The Canadian income tax authorities have provided some guidance in this regard.

The quantum of a minority discount will depend on several considerations and will be based on the valuator's professional judgment and experience. Minority discounts can range from nil to 50 per cent or higher, depending on the facts and circumstances specific to each case.

The discount for lack of control reflects the inability of a non-controlling shareholder to make decisions regarding certain corporate actions such as paying out dividends, putting the business up for sale to a third-party buyer, determining the strategic direction of the company, entering into contracts with specific customers or suppliers, setting executive compensation, etc. A buyer would be willing to pay more, on a per-share basis, for a controlling block of shares than for a minority block of shares.

The discount for lack of marketability of a shareholding in a private company reflects its lesser marketability relative to a majority stake, because there would generally be fewer potential buyers for a minority position. The private shareholding can be contrasted with a position in public company shares that are freely tradable and thus fully marketable and liquid.

After having regard to all of these considerations, the values of the different shareholdings can be determined in order to ensure compliance with the thresholds of the beneficial ownership disclosure requirements. Determinations can be updated as required by the beneficial ownership legislation (annually or upon changes in shareholdings or other control).

In conclusion, many corporations may be unaware of new legislation on beneficial ownership disclosure requirements to the federal and provincial corporate registrars concerning private company shares, including as regards shareholders that are trusts, and unaware of the implications of these requirements based on share values. The valuation of a specific shareholding may require specialized expertise in complex corporate structures and for minority interests. We recommend that companies consult with their legal and accounting professionals to ensure that they comply with the recently enacted legislation.

Daniel Frajman, dfrajman@spiegelsohmer.com, is a partner at the law firm Spiegel Ryan LLP in Montreal. He practices financing, M&A, business real estate and tax law including the law of non-profit organizations/charities.

Catherine Tremblay, catherine.tremblay@mnp.ca, is a partner at the accounting and consulting firm MNP LLP in Montreal. She specializes in business valuation in various contexts including tax planning, M&A, litigation and financial reporting.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, LexisNexis Canada, Law360 Canada or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.

All Content © 2003-2025, Law360 Canada