

## CHANGE IN CONTROL INFORMATION BULLETIN

### Background

Inquiries have been made to the Office of the BC Container Trucking Commissioner (OBCCTC) about amendments made to the change in control language found at Section 6.18 of the 2016/2017 Container Trucking Services Licence.

The recently issued Licence contains new language relating to changes of control of a licenced company. Under the previous Licence, and former Acting Commissioner's Interim Policy (since cancelled in March 2016), changes in control automatically resulted in the cancellation of the licence. Under the new license changes in control are now permitted with the express consent of the OBCCTC.

### Interpretation

The new section 6.18 of the Container Trucking Services Licence applies to business or legal arrangements that are designed to change the control of a licensee.

Section 6.18 states:

Unless the Commissioner expressly consents, the Licence terminates on change of control of the Licensee, which occurs by the transfer by sale, assignment, transmission on death, mortgage, trust, or any of means of any shares, voting rights, or interest which results in either:

- a) a change of beneficial ownership of one or more of the parties that comprise the Licensee; or
- b) a change of the identity of a person who is the directing mind of the Licensee.

Subject to the discretion of the Commissioner, and provided the Applicant obtains the approval and consent of the OBCCTC in advance, changes in control are now permitted.

### Criteria

1. An Applicant may now apply to the OBCCTC for its approval and consent to a change in control under section 6.18 of the licence. Any such application must be accompanied by documentation and records sufficient to allow the OBCTC to make a reasoned and informed decision with respect to the request for approval and consent. In exercising its discretion and making its decision, the OBCCTC will consider all relevant factors including the following:
  - Did the Applicant seek the Commissioner's consent before completion of the proposed change in control?;
  - Is the proposed change in control is a *bona fide* transaction?;
  - Does the proposed new beneficial owner or directing mind currently hold an interest in another entity which currently holds a valid container trucking services license? If so what is that interest?
  - Does the proposed new beneficial owner or directing mind hold an interest in another entity which currently holds a valid access agreement with the Vancouver Fraser Port Authority?; If so, what is that interest?
  - Is the Licensee in compliance with the *Container Trucking Act and Regulation*?

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- If the proposed **new** beneficial owner or directing mind holds an interest in another entity which currently holds a valid container trucking license, is that entity in compliance with the *Container Trucking Act and Regulation*?
- Does either the Licensee or the proposed beneficial owner or directing mind have any history of non-compliance in the industry?

In addition to the above, the Commissioner may consider any further factors that the Commissioner deems appropriate.

Process

Any Applicant seeking the OBCCTC's consent to a change in control must submit a formal written application and all supporting documentation to the OBCCTC. The Application must include a full and complete description of the proposed manner, method or process resulting in a change in control and must include:

- A current copy of the Shareholder record and a description of how that record would change, post-change in control or beneficial ownership;
- Drafts of all transaction documents including those which will effect the sale, assignment, transmission on death, mortgage, trust, or transfer by any other means of any shares, voting rights, or interest, relevant corporate records, or any other documents that are relevant to the proposed change in control;
- Information about the identity of the person who is obtaining the beneficial ownership of a licensee or becoming the directing mind of a licensee and if that person has any ownership interest in any other TLS licenced company, including the full name, address of the new beneficial owner or controlling mind;
- Information regarding any current or anticipated role in the licenced company of the new beneficial owner or controlling mind (e.g. President, Director, employee, I/O etc.); and
- Evidence that the licenced company is in good standing under its Container Trucking Services Licence.

The Commissioner retains the right to request additional information if required.

If the Commissioner provides conditional consent to the Application, final approval and consent will not be given until the following occurs:

- The Applicant provides a written statement prepared by a Canadian chartered bank, a British Columbia credit union or a person authorized under the *Financial Institutions Act* carry on insurance business in British Columbia confirming that if the proposed change in control takes place the bank, credit union or person intends to issue or intends to continue, on behalf of the licensee, security in the amount and form required by the *Container Trucking Regulation* or the Commissioner.
- The proposed beneficial owner or directing mind provides to the OBCCTC a statutory declaration on behalf of the licensee as required by section 8(2)(b) of the *Container Trucking Regulation*.
- The Applicant provides such additional documentation as may be required by the OBCCTC as a condition of its granting consent.

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**WARNING:**

Unless the Commissioner expressly consents, a Container Trucking Services License automatically terminates upon a change of control of the Licensee.

This Bulletin will come into effect on September 14, 2016