

Government Imposing Enhanced Record Keeping Requirements Pertaining to Corporate Property

On December 10th, the manner in which corporations manage their property will be altered in a number of important ways. Perhaps most significantly, ongoing reporting requirements will be implemented that require all corporations to maintain an updated register of any and all interests in land that belong to the corporation. The rationale for these changes is explored in further detail below. However, the key takeaway for any corporate owner is that they must be cognizant of these new reporting requirements, or face the possibility of fines from the government as a consequence of non-compliance.

The Point of Origin: Bill 144

The impending changes to Ontario's corporate reporting system are being introduced by Bill 144: the *Budget Measures Act*, 2015. Upon coming into force on December 10th, 2016, it will enact five new statutes, including the *Forfeited Corporate Property Act* (the "*FCPA*"), whilst simultaneously amending a number of related business statutes (the "*Corporate Acts*"). These statutes and related amendments stand to fundamentally modify not only the manner in which corporate property must be maintained and regulated, but also the ways in which forfeited corporate property will be dealt with by the province. While the broad potential impact of Bill 144 remains an open question, one side effect is easily predicted: it will place fresh burdens on the day-to-day management of corporations.

1. Our Focus: the Ongoing Reporting of Corporate Property

Certain amendments to the Corporate Acts will require all corporations to maintain an updated register of their various interests in land, which must be stored at their registered office(s) or another location, as determined by the director(s). Specifically, a corporation's register must catalogue a number of things, including each interest that the corporation has in land, the date the interest was acquired and the date the interest was sold or transferred (if applicable). A corporation's obligations do not end there, as it must also maintain in its register any deeds, transfers and other documents that contain information relating to the interest listed, including: (i) the property's municipal address and legal description; (ii) the registry or land titles division; (iii) the property identifier number; or (iv) the property's assessment roll number. While the purpose of these requirements is to simplify the government's administration of using and/or selling forfeited properties, they will undoubtedly complicate the daily operation and management of a corporation.

For corporations incorporated on or after December 10th, 2016, these requirements apply immediately. For corporations incorporated prior to December 10th, 2016, these requirements will come not come into

effect until December 10th, 2018, giving such corporations 2 years to modify their policies to meet the burdens imposed by the new system. Precisely how corporate owners choose to modify their corporate practices will depend to a large extent on the manner in which they wish to maintain their records. For example, if a corporation elects to maintain its own records, it must independently ensure that all relevant documents are identified and properly stored at the appropriate location – that is, either its registered office(s) or a location formally chosen by the director(s). Alternatively, where a corporation retains a law firm to maintain this register, it is the corporation's obligation to ensure the law firm has been provided the requisite documentation to be input. Therefore, you should contact your legal counsel (or whomever you utilize as your custodial record keeper) immediately to discuss your corporation's interests in real property and the appropriate steps that must be taken in order to secure those interests into the future.

2. Bill 144's Intended Impact: Altering Corporate Forfeiture

On top of the above noted changes to corporate regulation and reporting, the Ontario Ministry of Finance has suggested that the primary combined effect of Bill 144's implementation will be to:

- 1) reduce the rate of corporate forfeiture to the government; and
- 2) return forfeited property to productive use more efficiently.

In theory, these are laudable goals. However, it remains unclear whether these goals will be realized. As with most instances of statutory reform, there will be numerous side effects – some of which will benefit our provincial community and some of which may be potentially harmful in certain respects. For example, it is a trite observation that by reducing the overall forfeiture of corporate property – property that must normally be dealt with by the province via government coffers – taxpayer risk could be mitigated. Conversely, in order to promote the new system's efficacy, regulatory requirements – including those pertaining to corporate reporting – will be heightened. Yet perhaps more pointed is the fact that precisely

how corporate forfeiture will be reduced is not apparent based on the proposed changes. In fact, the changes could very well have the opposite effect. When corporations are dissolved and residual corporate property exists, that property can become subject to possible forfeiture to the government. Under the current rules enshrined in the Corporate Acts, owners of a dissolved corporation are granted a 20-year grace period during which they may apply to revive the corporation and recover its assets. The *FCPA* will change this, ultimately reducing the grace period to 3 years following dissolution. Additionally, the *FCPA* will establish that such “forfeitable property” includes not only real property (i.e., land) but also any personal property left in, on, or under forfeited real property, regardless of who owns said personal property. Thus, the scope of the *FCPA* goes beyond considerations of land ownership and may involve a plethora of property interests that reach outside the parties comprising the direct membership of the corporation itself.

Moving forward, this added breadth, particularly when viewed in conjunction with the accelerated deadline for corporate revival, is more likely to increase, not reduce, the amount of corporate property that may be rendered forfeitable to the government.

3. A Final Note on Liability

As a final note, the *FCPA* also provides that the Minister of Government and Consumer Services may determine that debts are owed to the government in connection with the disposition of forfeited property. Specifically, the *FCPA* codifies that a court order may be obtained by the Minister that requires a former officer or director of the prior corporate owner to pay some or all such

amounts. The broad language employed in the *FCPA* may signify that the *FCPA* will expand potential liability for directors and officers beyond the legislative framework presently in place (associated with, for example, criminal and/or environmental concerns). The ambit of such liability will be subject only to the discretion of the Minister (in deciding to launch an application) and the ruling of a particular judge. While the extent to which these orders may be issued against former officers and directors is unclear, officers and directors should at the very least be aware of these incoming provisions and their possible impact on corporate governance. If nothing else, their introduction should incentivize all corporate actors to proactively ensure compliance with corporate legislation as a means of mitigating their risk.

Conclusion: be Aware of your Corporate Obligations

The modified corporate forfeiture regime ushered in by Bill 144 is important in two ways: first, it modifies procedural requirements in terms of both reporting and timing mechanisms; and second, it alters potential consequences for non-compliance, not only for corporations themselves but also the individuals comprising them. Directors and officers alike should take note of the impending changes discussed above in order to ensure their corporate practices promote the long term viability of their respective corporations. As ever, non-compliance carries with it the possibility of initiating an unintended chain reaction of events, culminating in the possibility of corporate assets being permanently lost. To avoid this possibility, do not hesitate to contact us to discuss how Bill 144 may affect you directly.



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