

New Record-keeping Requirements for Private Corporations under the *Canada Business Corporations Act*

Effective June 13, 2019, private corporations regulated under the *Canada Business Corporations Act* are required to prepare and maintain a register of individuals with “significant control” over the corporation.

Previously, the *Canada Business Corporations Act* (the “CBCA”) required corporations to maintain a register of each person holding shares of the corporation, but did not require the corporation to list individuals who were the beneficial owners of such shares or who had direct or indirect control or direction over such shares.

1. Individual with Significant Control

The CBCA defines an “individual” as a natural person. For the purposes of the CBCA, an individual has significant control over a corporation where:

- (a) the individual is the registered holder of, the beneficial owner of, or has direct or indirect control or direction over a “significant number of shares of the corporation”; or
- (b) has any direct or indirect influence that, if exercised, would result in control in fact of the corporation.

For the purposes of the above, a “significant number of shares of a corporation” is: (a) any number of shares carrying 25% or more of the voting rights of the corporation’s outstanding voting shares, or (b) any number of shares equaling 25% or more of all of the corporation’s outstanding shares measured by fair market value. Two or more individuals will each be considered to be an individual with significant control if they jointly are the registered holders of, the beneficial owners of, or have direct or indirect control or direction over a “significant number of shares of the corporation”.

2. Record-Keeping Requirements

Subject to certain limited exceptions, all private corporations regulated under the CBCA will be required to prepare and maintain a register of individuals with significant control over the corporation that sets out:

- (a) the names, dates of birth and latest known address of each individual with significant control;

- (b) the jurisdiction of residence for tax purposes of each individual with significant control;
- (c) the day on which each individual became or ceased to be an individual with significant control;
- (d) a description of how each individual is an individual with significant control over the corporation, including, as applicable, a description of their interests and rights in respect of shares of the corporation;
- (e) certain other information prescribed in the future; and
- (f) a description of each step taken to comply with the corporation’s obligation to update the information each financial year of the corporation.

At least once during each financial year of the corporation, the corporation will be required to take *reasonable steps* to ensure that it has identified all individuals with significant control over the corporation and that the information in the register is accurate, complete and up-to-date. The corporation will also be required to update the register within fifteen (15) days of becoming aware of any changes to the information contained in the register.

It is unclear at this stage what constitutes “reasonable steps” or what actions a corporation will be required to take in order to comply with the foregoing obligations; however, our “best practice” recommendation is that the corporation review its register of shareholders annually and canvass shareholders to determine whether any individuals other than the shareholders could constitute individuals with significant control over the corporation.

3. Access to Register

The register of individuals with significant control over the corporation will not be available to the public; however, shareholders and creditors of the corporation can require the corporation to permit them access to the register during the usual business hours of the corporation.

In order to obtain access, the applicant will need to submit an affidavit setting out (a) the name and address of the applicant; (b) if the applicant is a corporation, the name and address for service of the corporation; and (c) a statement that any information from the register will not be used except in connection with (i) an effort to influence the voting of shareholders of the corporation, (ii) an offer to acquire securities of the corporation or (iii) any other matter relating to the affairs of the corporation. The restrictions on use of the information contained in the register is the same as the restrictions on use imposed on persons granted access to the information contain in a corporation's shareholder register.

4. Exemptions

The requirements to prepare and maintain a register of individuals with significant control over the corporation applies only to private corporations regulated under the CBCA. Reporting issuers and corporations listed on a designated stock exchange will be exempt from the new record keeping requirements as they are already subject to certain requirements obligating disclosure of beneficial ownership of their shares.

It is anticipated that similar requirements will be imposed under the provincial corporate statutes; however, at present, none of the provinces have instituted amendments to incorporate such requirements.

5. Consequences for Breach

A corporation that, without reasonable cause, fails to prepare and maintain a register of individuals with significant control over the corporation may be liable to a fine not exceeding five thousand dollars (\$5,000) and its directors and officers may be liable to a fine not exceeding two hundred thousand dollars (\$200,000) or to imprisonment for a term not exceeding six months, or to both. A shareholder of a corporation that refuses to provide information requested by a corporation to comply with its record keeping obligations in a timely manner may also be liable to a fine not exceeding two hundred thousand dollars (\$200,000) or to imprisonment for a term not exceeding six months, or to both.

The author would like to thank Modasir Rajabali, Student-at-Law, for his assistance in preparing this article.



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