

New Ownership Transparency Requirements for Federal Corporations

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As a result of recently passed amendments to the federal *Canada Business Corporations Act* (CBCA), corporations incorporated under that statute will soon be required to maintain a register of individuals with "significant control" over the corporation (an ISC Register).

The enhanced transparency around the ultimate ownership and control of corporations is intended to assist law enforcement agencies in targeting money laundering and tax evasion.

The new rules come into effect June 13, 2019, and will apply to all CBCA corporations other than those that are reporting issuers or are listed on a designated stock exchange, effectively limiting the new requirement to privately held corporations.

Directors, officers, and shareholders who contravene the new rules may be subject to fines of up to \$200,000 or to imprisonment for up to six months.

Who is an "Individual with Significant Control"?

An individual with significant control is someone who:

(a) owns a "**significant number**" of shares of the corporation, which is defined as a number of shares that represents at least 25% of the voting rights attached to the corporation's shares, or 25% of the fair market value of the corporation's shares;

(b) controls or directs a significant number of shares;

(c) has "significant influence" over the corporation, without necessarily owning a significant number of shares; or

(d) has a combination of any of these factors.

Creating and maintaining the register will therefore require corporations to consider not only whether the threshold of share ownership is met, but whether there are individuals who, despite not holding a significant number of shares, are in a position to exercise "significant influence" over the corporation.

The new amendments do not define what constitutes having "significant influence" over a corporation. An individual that has significant contractual approval (in a shareholders agreement for example) over the business and operations of the corporation could be seen to have significant influence over the corporation. If the corporation is significantly indebted to an individual or relies on an individual for financing its operations, that individual may be regarded as having significant influence over the corporation. In time, Corporations Canada may provide additional guidance on which factors a corporation should consider in determining whether an individual has significant influence.

What Information Must the ISC Register Include?

For each individual with significant control, an ISC Register must include the following information:

- name
- date of birth
- last known address

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- jurisdiction for tax purposes
- date on which the individual acquired significant ownership or control
- date on which the individual ceased to have significant ownership or control
- description of how the individual meets the definition of significant control

A corporation must routinely update the information (at least once a year), and record any changes it becomes aware of during the year. The ISC Register must include a description of the steps the corporation has taken to meet these requirements. Regulations to be issued in the future may require the ISC Register to include additional information about an individual with significant control.

The requirement to maintain an ISC Register is in addition to the existing obligation under the CBCA to maintain a securities register.

Who Has Access to the ISC Register?

The ISC Register does not have to be provided to Corporations Canada, and it is not generally available to the public. However, the ISC Register must be kept with the other corporate records of the corporation at its registered office, and must be provided to Corporations Canada on request. Shareholders and creditors may also apply to the corporation for disclosure of the ISC Register if the information is required for the "affairs of the corporation," such as efforts to influence the voting of the shareholders or offers to acquire the corporation's securities.

What's Next?

There is no official grace period for compliance with the new ISC Register rules. However, at information sessions Corporations Canada has indicated that in the first 12 months following the rule coming into effect, its focus will be on educational efforts.

There are currently no regulations for the ISC Register, and Corporations Canada has advised that regulations are not likely to be issued for at least 18 months following the amendments coming into effect.

While these amendments only apply to CBCA corporations for now, the federal government has emphasized the importance of harmonizing these rules across Canada, and provincial and territorial governments have committed to implementing a similar register requirement in the near future.

For further information regarding this matter, please contact Luke Woolford or any member of the Business Law Group.

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