

BEHIND THE CORPORATE VEIL: NEW OWNERSHIP RECORD RULES IN CANADA

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The Canadian federal government has enacted legislation that will amend the Canada Business Corporations Act ("**CBCA**") to require private corporations to track and record individuals with significant control over the corporation. These amendments are expected to come into force in the summer of 2019.

Gowling WLG Focus

In December 2017, the provincial and federal Finance Ministers in Canada agreed to pursue legislative amendments to ensure corporations hold accurate and up to date information on beneficial owners. The objective was to "prevent the misuse of corporations and other legal entities for tax evasion and other criminal purposes, such as money laundering, corruption and the financing of terrorist activities."^[1] The federal government is the first to enact legislation to address these concerns.

Changes coming to the CBCA

On December 13, 2018, [Bill C-86](#) received royal assent. This Bill contains a series of amendments to the CBCA pertaining to the tracking and recording of "individuals with significant control" ("**ISCs**") over a corporation.

An ISC is defined as an individual who (i) is a registered or beneficial owner of, or (ii) has direct or indirect control over, a significant number of shares of the corporation. A significant number of shares is defined as (i) 25% or more of the outstanding shares of the corporation measured by fair market value or (ii) 25% or more of the voting rights

attached to all of the corporation's outstanding shares.

In addition, an ISC includes any individual who has any direct or indirect influence that, if exercised, would result in control in fact of the corporation. This could take a variety of forms and would include:

- each individual who, jointly with one or more other individuals, holds shares meeting the "significant number of shares" threshold;
- each individual who, by an agreement to act together with one or more other individuals, jointly meets the "significant number of shares" threshold; and
- individuals with the right to nominate or remove a majority of the board of directors (whether shareholders or not).

These examples are not an exhaustive list and it will be a question of fact in each case whether an individual has the necessary control or influence to be an ISC.

What this means for your corporation

New ISC Register. Certain CBCA corporations will be required to keep a register of ISCs which contains the following information with respect to each ISC:

- a. their name, date of birth, and latest address;
- b. jurisdiction of residence for tax purposes;
- c. the day when they became or ceased to be an ISC;
- d. a description of how they have significant control;
- e. any other "prescribed information".

These provisions only apply to private corporations. Reporting issuers, corporations listed on a designated stock exchange and corporations of a "prescribed class" are not required to comply.

The regulations have not yet been made public, so the meaning of "prescribed information," and "prescribed class" have yet to be defined.

Active investigation and inquiry. At least once during each financial year of the corporation, a CBCA corporation must take reasonable steps to ensure that it has identified all ISCs and that the register is up to date. Further, if at any time, a CBCA corporation becomes aware of relevant information pertaining to a new or existing ISC, they will have a period of 15 days to record that information. The ISC register must include a description of the steps the corporation has taken to comply with these

requirements.

Access. While the amendments do not make the ISC register available to the public, the information in the ISC register is available to all shareholders and creditors of a corporation who provide the corporation with an affidavit confirming that they will only use the information in connection with matters relating to the affairs of the corporation.

A CBCA corporation must also provide the information from the ISC register to the Canadian government upon request.

Non-Compliance. It remains to be seen how compliance will be audited, but the consequences of non-compliance are clear: every director, officer or shareholder who knowingly acts in contravention of these duties will be liable to a fine of up to \$200,000, or up to six months imprisonment, or both.

Considering the gravity of the consequences for non-compliance, CBCA corporations should make these requirements known to their shareholders and implement new protocols in their annual and ongoing reporting procedures to ensure that they are not caught unaware when the amendments come into force in the summer of 2019.

While the proposed amendments only currently apply to federally incorporated corporations, given the agreement of all Finance Ministers to pursue this type of legislation, it can be expected that that the provinces will soon follow suit.

[1] Agreement to Strengthen Beneficial Ownership Transparency at https://www.fin.gc.ca/n17/data/17-122_4-eng.asp

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