

NEW REQUIREMENTS PROPOSED FOR PRIVATE ONTARIO CORPORATIONS TO MAINTAIN REGISTER OF INDIVIDUALS WITH “SIGNIFICANT CONTROL”

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On November 4, 2021, the Ontario government introduced [Bill 43, the Build Ontario Act \(Budget Measures\), 2021.](#)^[1] Among other legislative changes, the Bill proposes to amend the *Business Corporations Act* (Ontario) (“**OBCA**”) to require corporations to prepare and maintain a register of individuals with “significant control” over such corporations. If the Bill is passed (as expected), the *OBCA* amendments will come into force on January 1, 2023.

Individuals with Significant Control

The amendments will require **private** *OBCA* corporations to prepare and maintain a register of individuals that hold “significant control” over the corporation. The Bill defines an individual who has “significant control” over a corporation as an individual who:

- is the registered or beneficial owner of, or has direct or indirect control or direction over, any number of shares that carry 25 per cent or more of the voting rights attached to all of the corporation’s outstanding voting shares;
- is the registered or beneficial owner of, or has direct or indirect control or direction over, any number of shares that is equal to 25 per cent or more of all of the corporation’s outstanding shares measured by fair market value;
- has any direct or indirect influence that, if exercised, would result in control in fact of the corporation; or
- is an individual to whom prescribed circumstances apply.

Whether an individual has direct or indirect influence that, if exercised, would result in “control in fact” of the corporation is determined by taking into consideration all relevant factors in the circumstances. The Bill does not identify what those relevant factors might be.

Importantly, two or more individuals may be considered an “individual” with significant control if (i) an ownership interest or right in respect of shares is held jointly by those individuals; or (ii) a right in respect of

shares is exercised jointly or in concert by those individuals.

Register of Individuals With Significant Control

A corporation's register of individuals with significant control must contain the following information for each individual:

- name, date of birth and address;
- jurisdiction of residence for tax purposes;
- the date on which the individual became (and if applicable, ceased to be) an individual with significant control;
- a description of how the individual is an individual with "significant control";
- any other prescribed information to be set out in forthcoming regulations; and
- a description of the steps taken to identify all individuals with significant control and to ensure that the information in the register is accurate, complete and up to date.

Subject to forthcoming regulations that will set out how the register is prepared and maintained, corporations will be required to update the register at least once during each financial year, and within 15 days of becoming aware of any information that is required to be in the register or the change of information already included on the register.

To assist corporations to gather the information required for a register, the Bill requires that shareholders who receive a request from the corporation for any of the required information to provide an accurate and complete reply "promptly and to the best of their knowledge".

Failure to Comply

Any director or officer of a corporation who knowingly authorizes, permits or acquiesces in the corporation's failure to maintain the register, in the recording of false or misleading information in the register, or provides any person or entity false or misleading information relating to the register, is considered to have committed an offense under the OBCA. Similarly, a shareholder who knowingly contravenes its obligation to reply accurately and completely to a request for information from the corporation commits an offense under the OBCA. Upon conviction of such offence, the director, officer or shareholder, as applicable, is liable to a fine not exceeding \$200,000, or to imprisonment for a term not exceeding six months, or both.

Third Party Access and Personal Information

The register will not be available to the public, however, the amendments permit disclosure of a corporation's register to a number of inspecting officials, including law enforcement officers, tax officials and certain

regulators.

In accordance with the *Personal Information Protection and Electronic Documents Act*, corporations must dispose of personal information contained in the register within one year after the sixth anniversary of the day on which an individual ceases to hold “significant control”.

Outlook

In December 2017, the federal and provincial governments committed to an “Agreement to Strengthen Beneficial Ownership” in response to calls for greater transparency in the beneficial ownership of corporations.^[2] The *OBCA* amendments signal yet another statutory commitment to mitigating corporate criminal activity after similar changes were introduced for federally incorporated private corporations under the *Canada Business Corporations Act* and private companies under the provincial laws of British Columbia.

We will continue to monitor the progress of Bill 43 and will provide further updates as they become available.

[1] Bill 43, the *Build Ontario Act (Budget Measures)*, 2021, 2nd Sess, 42nd Parl, 2021.

[2] Canada, Department of Finance, *Agreement to Strengthen Beneficial Ownership Transparency* (11 December 2017), [online](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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