

NEW CORPORATE TRANSPARENCY REQUIREMENTS FOR FEDERAL CORPORATIONS

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Introduction

Effective January 22, 2024, federal corporations are required to file with Corporations Canada certain information on individuals with significant control. It is anticipated some of this information will eventually be made publicly available, but at this time, this information remains limited to a corporation's directors and shareholders as well as investigative authorities.

Background

As discussed in our previous [bulletin](#), since June 2019, the *Canada Business Corporations Act* ("**CBCA**") has required corporations to maintain a register of individuals with significant control (an "**ISC Register**") to provide greater transparency about who owns and controls Canadian corporations and to assist enforcement agencies in exposing activities like money laundering and tax evasion. An individual with significant control (an "**ISC**") is someone who owns or controls a corporation. This individual:

- a. owns, controls, or directs 25% or more of shares individually, jointly, or in concert with one or more individuals;
- b. has control in fact over the corporation without owning any shares; or
- c. meets a combination of any of these factors.

There are also specific rules with respect to trust arrangements. If a trust owns or controls more than 25% of the corporation's shares, the individuals in control of the trust are each considered to be ISCs and must be listed in the ISC Register. Individuals in control of a trust are those with a specific role, including the trustee, the beneficiaries, and any other individual who has authority to control or does control the trust. The test for determining control over a trust includes having authority to (a) direct or influence the management of the trust; (b) appoint or remove trustees; (c) make financial or investment decisions for the trust; or (d) terminate or amend the trust agreement.

The ISC Register is not currently public information, and investigative bodies including the police and tax

agencies, may request it when they have reasonable grounds to suspect its relevance to certain offences. The amendments to the CBCA, which come into force on January 22, 2024, will require certain information in the ISC Register to be filed with Corporations Canada. It is anticipated that some of this information will also be publicly accessible and searchable, while sensitive personal information, such as date of birth and citizenship, will still be limited to law enforcement and certain authorized entities. Details of when this information will be available publicly have not yet been released.

The Update and What This Means for You

a. Compliance

Starting on January 22, 2024, corporations formed under the CBCA will be required to file with Corporations Canada information on ISCs as part of their compliance obligations.

b. What to file

The information to be filed includes the individual's full legal name, date of becoming and ceasing to be an individual with significant control, a description of the individual's significant control, and a residential address or address for service. The residential address of the ISC becomes publicly accessible only in cases where no address for service is provided, otherwise, only the address for service will be on the public record.

ISC information must be filed online through Corporations Canada's website in accordance with the specific filing event and timeline as noted below:

- each year together with filing the corporation's annual return;
- within 15 days of any change made in its ISC Register;
- during incorporation;
- within 30 days of filing an amalgamation; and
- within 30 days of filing a continuance (import) into the federal jurisdiction.

c. Exceptions

All CBCA corporations are subject to these new requirements unless an exception applies. A corporation, or its wholly-owned subsidiary, is not required to file ISC information if it is (a) a reporting issuer under the securities regulations of a province or territory; (b) a corporation listed on a designated stock exchange; or (c) a Crown corporation. However, these corporations will need to file a notification with Corporations Canada to confirm their exception.

Under the CBCA amendments, public disclosure of ISC information by Corporations Canada will not apply to:

- a. individuals who are less than 18 years of age;
- b. on application by the ISC, if Corporations Canada is satisfied, such individual is incapable, or the information must be kept confidential under the *Conflict of Interest Act* (i.e., public officials); or
- c. on application by the ISC, if Corporations Canada reasonably believes such information available presents or would present a serious threat to the safety of the individual.

Failure to Comply

It is an offence for a director or officer of a corporation to knowingly authorize, permit, or acquiesce in violations of the corporation's obligations to file ISC information with Corporations Canada. Penalties for failing to comply with these obligations may result in a fine of up to \$1,000,000 or imprisonment for a term not exceeding five years, or both.

Corporations Canada may refuse certificates of existence for CBCA corporations that are not in compliance with their ISC filing obligations. Additionally, CBCA corporations in default of their filing obligations for over a year run the risk of dissolution. When a corporation is dissolved, the legal entity is officially terminated, and it loses its ability to conduct business.

Conclusion

The upcoming changes to the CBCA represent a significant shift towards greater corporate transparency and accountability. Businesses must begin to prepare to meet these new requirements to ensure compliance.

If you have any questions regarding your obligations under the CBCA, how the new requirements impact your corporation, or if you need assistance in preparing or reviewing your corporation's ISC Register and filing the ISC information with Corporations Canada, please contact us.

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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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