

STARTING IN JUNE 2019, PRIVATE CBCA CORPORATIONS REQUIRED TO GATHER AND RECORD DETAILED INFORMATION ABOUT THEIR SHAREHOLDERS

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Introduction

Bill C-86, the *Budget Implementation Act, 2018, No. 2*,^[1] received Royal Assent on December 13, 2018. Among the many legislative initiatives included in the Bill are amendments to the *Canada Business Corporations Act* (“**CBCA**”) that require *CBCA* corporations to keep a detailed register of information about the individuals who directly or indirectly have an interest in more than 25% of the shares of the corporation.

New record keeping requirement

Starting in June 2019, **private** *CBCA* corporations (reporting issuers are exempt) will be required to maintain a register of “individual[s] with significant control” over shares of the corporation. This includes both registered holders and beneficial owners of:

- shares representing 25% or more of a corporation’s voting rights, and
- any number of shares that is equal to 25% or more of all of the corporation’s issued and outstanding shares measured by fair market value,

as well as individuals who have “direct or indirect control or direction” over such shares. Importantly, an “individual” with significant control can also be multiple people in certain circumstances, such as when the shares are held jointly.

The register must contain the name, date of birth, address, residence for tax purposes, and other prescribed information for each relevant individual.

Corporations must take reasonable steps to update the register annually. They must also update the register within 15 days of becoming aware of any information that is required to be recorded in the register.

Obligation of shareholders to provide information

If a corporation requests any of the required information from a shareholder, the amended CBCA will require the shareholder, to the best of its knowledge, to reply accurately and completely to the request “as soon as feasible”. This is notable because the CBCA does not otherwise impose obligations on shareholders except in special circumstances.

Fines and penalties for non-compliance

Any director or officer of a corporation who knowingly authorizes, permits or acquiesces in the corporation’s failure to maintain the required register, to the recording of false or misleading information in the register, or in the provision to any person or entity of false or misleading information in relation to the register commits an offense. Similarly, a shareholder who knowingly contravenes its obligation to reply accurately and completely to a request for information from the corporation commits an offense. Upon conviction of an offence, directors, officers and shareholders are liable to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

Third party access to the register

The new register will not be available to the public. However, corporations will have to disclose the register to the Director under the CBCA upon request. In addition, shareholders and creditors can request access to the register and obtain an extract of it.

Coming into force

The *CBCA* amendments will come into force on June 13, 2019, the six month anniversary of the date upon which the Bill received Royal Assent.

A trend towards transparency

While we will need to wait for new regulations to get a complete picture of this new register system, these amendments can be viewed as part of a wider push for greater corporate transparency. Indeed, these amendments follow a December 11, 2017 pledge made by both Federal and provincial finance ministers to pursue greater transparency in the beneficial ownership of corporations by seeking amendments to corporate legislation.^[2] It is possible that the *CBCA* will now serve as a model for future amendments to provincial legislation.

And, this may only be the first step in a larger move towards a central registry of such beneficial ownership information. The information required under these provisions tracks closely with the recommendations in the House of Commons Standing Committee on Finance’s recent report on the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* for a “pan-Canadian beneficial ownership registry”.^[3] Given this

context, it is reasonable to expect enactment of further transparency measures in the future.

[1] C-86, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 27, 2018 and Other Measures*, 1st Sess, 42nd Parl, 2018, Division 6.[ps2id id='1' target='']

[2] Canada, Department of Finance, *Agreement to Strengthen Beneficial Ownership Transparency* (11 December 2017), online: < https://www.fin.gc.ca/n17/data/17-122_4-eng.asp>.[ps2id id='2' target='']

[3] House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward: Report of the Standing Committee on Finance* (November 2018) (Chair: Hon. Wayne Easter) at 28.[ps2id id='3' target='']

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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