

In-House Counsel

Ontario proposes private corporation register of those with 'significant control'

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(November 24, 2021, 9:53 AM EST) -- On Nov. 4, 2021, the Ontario government introduced Bill 43, the *Build Ontario Act (Budget Measures), 2021*. The bill, among other legislative initiatives, proposes to amend the *Ontario Business Corporations Act (OBCA)* to require corporations to prepare and maintain a register of individuals with "significant control" over such corporations. The purpose of these amendments is to further align Ontario with federal and other provincial initiatives towards greater corporate transparency. If the bill is passed (as expected), the OBCA amendments will come into force on Jan. 1, 2023.

Individuals with significant control

The bill amends the OBCA to 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:



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- 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.

Notably, 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;



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- 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.

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 in the register. If a corporation requests any of the information in the register from a shareholder, the bill requires that shareholders provide an accurate and complete reply "promptly and to the best of their knowledge." It is expected that forthcoming regulations will further govern how the register is prepared and maintained.

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 commits an offence 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 offence 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 OBCA 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. 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.

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