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If You Are Subject to the *Canada Business Corporations Act*, Take Note of New Record-Keeping Obligations

Date: June 26, 2019

Effective June 13, 2019, corporations that are subject to the *Canada Business Corporations Act* (CBCA) must maintain and provide access to a register of individuals who, directly or indirectly, have “significant control” over the corporation.

These amendments to the CBCA were enacted by the *Budget Implementation Act, 2018, No. 2*. Reporting issuers and corporations listed on a designated stock exchange are exempt from the new requirement given their separate record-keeping and reporting obligations.

The federal government has stated that the purpose of this change is to enhance corporate transparency and curb tax evasion, money laundering, corruption, financing of terrorism and other criminal activities.

Who is an “Individual with Significant Control” (ISC)?

An individual will be considered to have significant control over a corporation where either:

1. The individual is the registered holder of, the beneficial owner of, or has direct or indirect control or direction over a “significant number of shares of the corporation,” which is established when the individual has:

25% or more of voting rights in the corporation; or
25% or more of fair market value of the corporation.

or

2. The individual has significant direct or indirect influence that, if exercised, would result in control of the corporation.

Two or more individuals will each be considered to be an ISC if they are jointly the registered holders of, the beneficial owners of, or have direct or indirect control or direction over a “significant number of shares of the corporation.” Note that regulations may be prescribed that could further expand the scope of individuals who will be considered ISCs.

Scope of information that must be recorded

In addition to any additional requirements that may be set out by regulation, the ISC register must contain the following information about each ISC of the corporation:

- a. the names, dates of birth and latest known address of each individual with significant control;
- b. the jurisdiction of residence for tax purposes of each ISC;
- c. the day on which each individual became or ceased to be an ISC;
- d. a description of how each individual is an ISC over the corporation, including, as applicable, a description of their interests and rights in respect of shares of the corporation;
- e. certain other information that may be prescribed; and
- f. a description of each step taken to comply with the corporation's obligation to update the information each financial year of the corporation.

Corporations are entitled to request any of the required information from their shareholders, and shareholders are required to respond to such requests to the best of their knowledge, accurately and "as soon as feasible".

Maintaining the ISC register

The ISC register must be maintained at the registered office of the corporation or at any other place in Canada designated by the directors. The corporation must update the register within 15 days of the date the corporation becomes aware of any changes to individuals with significant control over the corporation.

At least once during each financial year of the corporation, the corporation will be required to take reasonable steps to ensure that it has identified all individuals with significant control over the corporation and that the information in the register is accurate, complete and up-to-date.

The personal information of individuals who cease to be an ISC must be removed from the ISC register within one year after the sixth anniversary of the date on which the individual ceases to be an ISC.

Access to the ISC register

The ISC register will not be available to the public. However, any shareholder or creditor of the corporation will, upon complying with applicable requirements, be entitled to access the register for use in connection with any matter relating to the corporation's affairs. Corporations Canada is also entitled to access the ISC register upon request.

Consequences

A corporation that fails to maintain a register of individuals with significant control over the corporation may be liable, absent reasonable cause, to a maximum fine of \$5,000 and its directors and officers may be liable to a maximum fine of \$200,000 and/or to imprisonment for a maximum term of six months.

A shareholder of a corporation who refuses to provide information necessary to meet the ISC register reporting requirements in a timely manner is liable to be fined up to \$200,000 and/or to imprisonment for a term not exceeding six months

Conclusion

Corporations that are subject to the CBCA should review their policies and practices and ensure they maintain an ISC register that complies with this new record-keeping obligation, unless otherwise exempted.

Hicks Morley regularly assists private sector clients with their record-keeping obligations. If you would like our assistance to ensure statutory compliance, please contact a member of our [Information, Data Security and Privacy Practice Group](#).