

Legislative Update:

New Disclosure Requirements Under the *Ontario Business Corporations Act*



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On November 4, 2021, the Ontario government introduced Bill 43, the *Build Ontario Act (Budget Measures), 2021*, which, among other things, proposed to amend the *Business Corporations Act (Ontario)* (the “Act”) to add new record-keeping requirements for certain businesses incorporated under the Act. On December 9, 2021, Bill 43 received Royal Assent, and the expected date for the amendments to come into force is January 1, 2023.

The New Requirements

The incoming amendments will require each private corporation incorporated under the Act (other than those corporations that are wholly-owned subsidiaries of publicly traded corporations) to prepare and maintain a register of individuals with significant control over such corporations.

The Act defines an “individual with significant control over a corporation” as an individual who:

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

Further, two individuals may be considered to be an individual with significant control under the Act if:

- (a) their shares are held jointly; or
- (b) if they are a party to an agreement under which the right or rights are to be exercised jointly or in concert by those individuals.

The register must be held at the corporation's head office or another place designated by the directors and must include the following information for each individual with significant control over the corporation:

- the name, date of birth, and latest known address of each individual with significant control;
- the jurisdiction of residence, for tax purposes, of each individual with significant control;
- the day on which each individual became and ceased to be an individual with significant control, as the case may be;
- a description of how each individual is an individual with significant control, including, as applicable, a description of their interests and rights in respect of shares of the corporation;
- any other prescribed information; and
- a description of each step taken to identify all individuals with significant control and confirm the information in the register is accurate, complete and up to date.

Additionally, at least once during each financial year of the corporation, the corporation must take reasonable steps to ensure that the register is updated. If the corporation becomes aware of any information required to be contained in the register, the corporation will need to record that information within 15 days of the date they became aware of it.

The amendments also set out the requirements for corporations to respond to certain requests for disclosure of their register. While the disclosure is generally not available to any ordinary member of the public, a corporation will be required to disclose the register for law enforcement, tax, and other regulatory purposes.

So What Does This All Mean for Ontario Businesses?

To ensure regulatory compliance, directors and officers of private Ontario corporations should begin planning and implementing processes for creating and maintaining the necessary register. There are consequences for failing to do so. Specifically, if a corporation contravenes the Act, without reasonable cause, by failing to (i) prepare and maintain the register, (ii) comply with a disclosure request, or (iii) respond to an inquiry by the Minister, it will be guilty of an offence and be liable to a fine up to \$5,000 if convicted. Additionally, directors, officers, and shareholders must ensure they record and provide true and accurate information for the register. Failing to comply may result in a fine of up to \$200,000, imprisonment for up to six months, or both.



The incoming changes mirror the amendments to the *Canada Business Corporations Act* that came into effect in June 2019. At that time, it was the Federal Government's position that the amendments came as a result of a push for increased corporate transparency. These register requirements will allow a corporation's beneficial owners to be identified, which the Government hopes will serve to reduce anonymity, put a name to those behind a corporation's transactions and activities, and ultimately combat illegal activities such as tax evasion, money laundering, and terrorism financing.

If you have questions or would like to discuss how these changes to the *Ontario Business Corporations Act* impact your business, please reach out to [Lee Abraham](mailto:labraham@mindengross.com), Business Law lawyer, at labraham@mindengross.com.