

Required Disclosure of Significant Control under the OBCA

December 6, 2021

On November 4, 2021, the Ontario government introduced [Bill 43, the *Build Ontario Act \(Budget Measures\), 2021*](#) (“**Bill 43**”), which includes amendments to the *Business Corporations Act* (Ontario) (the “**OBCA**”). The amendments aim at improving corporate transparency and combatting financial crime.

Included in these amendments is a requirement for certain corporations incorporated under the OBCA (“**Ontario Corporations**”) to prepare and maintain a register of individuals with “significant control”.

Both the *Canada Business Corporations Act* and the British Columbia *Business Corporations Act* already include similar requirements. However, Ontario Corporations have been free of such requirements to date. Presuming these requirements come into force, this will create new record keeping, filing and disclosure requirements for certain Ontario Corporations.

These new requirements are discussed below.

Proposed Amendments to the OBCA

(1) Register of Individuals with Significant Control

Under the proposed amendments, Ontario Corporations will be required to prepare and maintain a register of individuals with “significant control”.

Significant Control

Bill 43 defines an individual who has “significant control” as an individual:

- who is the registered or beneficial owner of, or has direct or indirect control or direction over, any number of shares that:
 1. carry 25 per cent or more of the voting rights attached to all of the corporation’s outstanding voting shares; or
 2. is equal to 25 per cent or more of all of the corporation’s outstanding shares measured by fair market value;
- who has any direct or indirect influence that, if exercised, would result in control in fact of the corporation, regardless of the number of shares owned; and
- to whom circumstances prescribed by regulations apply.

Two or more individuals may be considered an “individual” with significant control if they have certain joint, shared or related interests, some of which are detailed in Bill 43 with other defined joint/shared interests to be outlined in regulations.

Required Information

The register of individuals with significant control ("**Control Persons**") must include the following information:

- name, date of birth and latest known address;
- jurisdiction of residence for tax purposes;
- the day on which each individual became (and ceased to be) an individual with significant control;
- a description of how the individual is an individual with significant control, including, as applicable, a description of their interests and rights in respect of shares; and
- any other prescribed information set out in regulations.

Ontario Corporations must ensure that the information in the register is accurate, complete and up to date. The register must be updated at least once during each financial year, and within fifteen (15) days of becoming aware of any information that is required to be contained in the register. Further requirements for the preparation and maintenance of the register may be prescribed in as yet undrafted regulations.

Finally, Ontario Corporations will also need to prepare and maintain a description of the steps taken to comply with this legislation, including how it identified Control Persons.

In light of these requirements, shareholders will have a duty to respond promptly and accurately (to the best of their knowledge) to any request from an Ontario Corporation for the required information.

(2) Access to and Retention of Beneficial Ownership Information

Given the policy reasons for requiring the preparation and maintenance of a register of Control Persons, these registers will not be publicly available. But these registers must be available on request by law enforcement, tax compliance and regulatory officials. We expect that the process of request and disclosure, including each side's obligations, will be further detailed in as yet undrafted regulations.

The information in the register will not be kept in perpetuity. Corporations will be required to dispose of a Control Person's "personal information"^[1] in the register within seven (7) years of the day the individual ceases to have significant control over the corporation.

(3) Non-Compliance

An Ontario Corporation that fails to maintain or disclose a register of Control Persons will be guilty of an offence and liable to a fine of up to \$5,000.

Individual directors, officers and shareholders all will have a vested personal interest in ensuring compliance with these disclosure requirements, and each face significant personal liability for their failure to do so.

Under the current version of the legislation, any director or officer of a corporation who knowingly authorizes, permits or acquiesces in (i) the corporation's failure to maintain and disclose the register; (ii) in the recording of false or misleading information in the register; or (iii) provides any person or entity false or misleading information relating to the register will be guilty of an offence and liable for a fine of up to \$200,000, to imprisonment for a term not exceeding six months, or both.

Similarly, any shareholder who knowingly contravenes its obligation to reply accurately and completely to a request for information from the corporation will also be guilty of an offence and liable for a fine of up to \$200,000, to imprisonment for a term not exceeding six months, or both.

Exempt Ontario Corporations

Certain Ontario Corporations will be exempt from these new disclosure requirements:

(a) any offering corporation;

(b) any corporation that offers its securities to the public and is subject to an Act of the legislature of a province relating to the regulation of securities;

(c) any corporation whose shares are listed on a designated stock exchange within the meaning of subsection 248(1) of the *Income Tax Act*; or

(d) any corporation that is a wholly-owned subsidiary corporation of a corporation described in (a), (b) or (c).

In general, these exempt corporations are already required to maintain and disclose this information under other legislation.

Next Steps

We expect that Bill 43 will be passed in the near future and will come into force on January 1, 2023. As such, any Ontario Corporations that are not included in the above exemptions need to begin preparing to comply with these new record keeping and disclosure requirements. This may include identifying potential Control Persons and gathering information on same.

For further questions regarding whether Bill 43 affects your business, the requirements discussed above, or how to comply, please contact [Dana](#), or one of the other lawyers in our [Private Equity Group](#), and we will be happy to assist.

WeirFoulds will continue to monitor these proposed amendments to the OBCA and will keep you updated of any changes or proposed regulations.

[\[1\]](#) as defined in the *Personal Information Protection and Electronic Documents Act*.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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