Blaney McMurtry LLP

PUBLICATION

Reminder: Starting June 13, 2019, Private CBCA Corporations will be Required to Maintain a New Register

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Introduction and Background:

On June 13, 2019, important changes are coming to the record keeping requirements applicable to private corporations incorporated pursuant to the *Canada Business Corporations Act*[1] (the "CBCA"). In an attempt to provide greater transparency over who owns and controls a corporation, and to assist law enforcement agencies in exposing activities like money laundering and tax evasion, all corporations incorporated under the CBCA, with the exception of some distributing corporations, will be required to create and maintain a new type of register in addition to the registers federal corporations currently maintain for shareholders and directors.[2]

The changes to the CBCA summarized herein come as a result of Bill C-86, the *Budget Implementation Act, 2018*, No. 2,[3] which received Royal Assent on December 13, 2018. The full text of the relevant part of Bill C-86 can be found here: http://www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent.

The New Register - Register of Individuals with Significant Control (the "ISC Register"):

The ISC Register will be a separate register of individuals with significant control of a private CBCA corporation. An individual has **significant control** if he or she meets any one or more of the following criteria:

- They are the owner (registered or beneficial) of a **significant number of shares**;
- They control or direct a **significant number of shares**;
- They have significant influence over the corporation without necessarily owning a **significant number of shares**; or
- They jointly own or control a **significant number of shares** with one or more other individuals.[4]

A **significant number of shares** is defined as 25% of the voting shares of the corporation, or 25% of all the shares based on the fair market value of the shares.

Contents of the ISC Register:

The ISC Register is a document that is to be kept at the registered office of the corporation, and which must include the following information about each individual that possesses significant control of the corporation:

- name;
- date of birth;
- last known address;
- jurisdiction for tax purposes;
- date on which the individual acquired significant ownership or control;
- date on which the individual ceased to have significant ownership or control;
- description of how the individual meets the definition of significant control; and
- steps taken by the corporation each year to update the required information listed above of each of the individuals that possess significant control of the corporation.[5]

Updating the ISC Register:

At least once during each financial year of the corporation, the corporation will have the responsibility of having to take reasonable steps to ensure that it has identified all individuals with significant control over the corporation and that the information in the ISC Register is accurate, complete and up-to-date.[6] If at any point the corporation becomes aware of a change that would affect the ISC Register, the corporation must record the new information in the ISC Register within 15 days.[7]

Impact of Changes to Shareholders:

If the corporation requests information from one of its shareholders to complete the ISC Register, the shareholder shall, to the best of their knowledge, reply accurately and completely as soon as feasible.[8]

Failure to Comply:

If a corporation, its directors, officers or shareholders, fail to meet the obligations for the ISC Register, they could be subject to penalties, including fines and imprisonment.[9]

Changes do not Apply to all CBCA Corporations:

The changes discussed herein do not apply to:

- a CBCA corporation that is a reporting issuer or an *émetteur assujetti* under a law of a province or territory relating to the regulation of securities; or
- a CBCA corporation that is listed on a designated stock exchange, as defined in subsection 248(1) of the *Income Tax Act*.[10]

The corporate/commercial group at Blaney McMurtry LLP maintains the records of 2500+ corporations and other business entities and can help companies satisfy these new register requirements.

Jonathan is an associate in Blaney's corporate/commercial law group. His developing corporate law practice is concentrated on corporate finance, mergers and acquisitions, and general corporate matters.

The information contained herein is not intended to provide legal advice and does not necessarily cover every matter. For complete information or for specific advice, please contact us.

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[1] *Canadian Business Corporations Act*, RSC 1985, c C-44 [CBCA].

[2] See Corporations Canada, "Register of individuals with significant control (ISC)" (2019-04-02), online: https://corporationscanada.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs08216.html [Corporations Canada].

[3] *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 [Bill C-86].

[4] See Corporations Canada, *supra* note 2. See also *Bill C-86*, *ibid* at cl 182 (establishing a new section 2.1 of the CBCA).

[5] See Corporations Canada, *supra* note 2. See also Bill C-86, supra note 3 at cl 183 (establishing a new section 21.1(1) of the *CBCA*).

[6] See *Bill C-86, supra* note 3 at cl 183 (establishing a new section 21.1(2) of the *CBCA*).

[7] *Ibid* (establishing a new section 21.1(3) of the *CBCA*).

[8] *Ibid* (establishing a new section 21.1(4) of the *CBCA*).

[9] See Corporations Canada, *supra* note 2. See also *Bill C-86, supra* note 3 at cl 183 (establishing a new section 21.4 of the *CBCA*).

[10] See *Bill C-86*, *supra* note 3 at cl 183 (establishing a new section 21.1(7) of the *CBCA*).