

## NEW RECORD KEEPING REQUIREMENT FOR PRIVATE CBCA CORPORATIONS

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### A. INTRODUCTION

On June 13, 2019, various new provisions introduced by *Budget Implementation Act, 2018, No. 2*<sup>1</sup> to the *Canada Business Corporations Act*<sup>2</sup> (“CBCA”) will come into force.<sup>3</sup> The new provisions will require private CBCA corporations to maintain a register of individuals with “significant control” over the corporation. An individual with significant control is defined as one who is the registered holder, beneficial owner or has direct or indirect control or direction, as well as “influence” which would result in “control in fact”, in respect of any number of shares that represent 25% or more of the voting rights of all outstanding voting shares of the corporation or 25% or more of its fair market value. These thresholds will also be applicable with respect to two or more individuals who jointly hold or exercise significant control over the corporation.

### B. RECORD OF INDIVIDUALS WITH SIGNIFICANT CONTROL

When the new provisions come into force, private corporations under the CBCA will be required to maintain a register containing the following information about each individual with significant control:

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<sup>1</sup> 2018, c. 27, ss 182-186.

<sup>2</sup> RSC 1985, c C-44.

<sup>3</sup> As per s 186 of *Budget Implementation Act, 2018, No. 2*, which received Royal Assent on December 13, 2018, provides that the new provisions “come into force on the day that, in the sixth month after the month in which this Act receives royal assent, has the same calendar number as the day on which it receives royal assent [...]”. See also, 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>

- a) the names, the dates of birth and the latest known address;
- b) the jurisdiction of residence for tax purposes;
- c) the day on which each individual became or ceased to be an individual with significant control, as the case may be;
- d) a description of how each individual is an individual with significant control over the corporation, including, as applicable, a description of their interests and rights in respect of shares of the corporation;
- e) any other prescribed information; and
- f) a description of the steps taken every year to ensure that the corporation has identified all individuals with significant control over the corporation and that the information in the register is accurate, complete and up-to-date.

Further, the corporation must record any new information in the register within 15 days of becoming aware of it. The corporation will be required to maintain the information on the record until one year after the sixth anniversary of the day on which an individual ceases to be an individual with significant control over the corporation.

Shareholders will be obligated to respond, to the best of their knowledge, accurately and completely, and as soon as possible, to a request from the corporation involving information relevant to the register. The new provisions of the CBCA will also permit shareholders and creditors of the corporation to request access to the register, provided certain requirements are met.

## **C. CONSEQUENCES OF NON-COMPLIANCE**

Failure to comply with the requirement to maintain and update the register may result in a fine payable by the corporation not exceeding \$5,000.00.

Harsher penalties are imposed on shareholders, directors and officers who knowingly offend these provisions. Every director or officer of a corporation who knowingly authorizes, permits or acquiesces to a breach of the obligation to maintain the register, whether or not the corporation is prosecuted or convicted, or to the recording of false or misleading information in the register, or to the provision of false or misleading information in relation to the register, may be subject to a fine not exceeding \$200,000.00 or imprisonment for a term not exceeding 6 months or both. Similarly, a shareholder who knowingly fails to respond to a request for information from the corporation with regard to the register, may also be subject to the same penalties.

## D. CONTEXT

This new record-keeping requirement is consistent with the recommendations of the report by the House of Commons Standing Committee on Finance entitled: “Confronting Money Laundering and Terrorist Financing: Moving Canada Forward”, discussed in [AML/ATF and Charity Law Alert No. 48](#), as well as the discussion paper by the Department of Finance Canada entitled “Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime”, discussed in the February 2018 [Anti-Terrorism/Money Laundering Update](#), regarding the possible creation of a pan-Canadian or central registry of beneficial ownership information that would include details of individuals with “significant control” in all legal entities, even trusts.

As the issue of beneficial ownership continues to draw attention from federal and provincial authorities in the context of Canada’s reputation as a destination for “snow-washing”, these new CBCA provisions are an important step in the right direction. At the time of writing, only British Columbia has introduced comparable amendments with *Bill 24, Business Corporations Amendment Act, 2019*.