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# CORPORATE LAW UPDATES - 2023



**The Ontario Government has introduced Bill 43, the Build Ontario Act (Budget Measures), 2021 (the “Act”), adding new record-keeping requirements for certain businesses incorporated under the Ontario Business Corporations Act (“OBCA”). As of January 1, 2023, private Ontario corporations will be required to prepare and maintain a register of individuals with significant control over a corporation.**

The new section 1.1 of the OBCA provides interpretive rules for determining which individuals are considered individuals with significant control over a corporation.

**Individuals with “significant control” are individuals who:**

1. directly or indirectly, carry 25% or more of the voting rights attached to all of the corporation's outstanding voting shares;
2. are the registered or beneficial owners, directly or indirectly, of 25% or more of all of the corporation's outstanding shares measured by fair market value;
3. have any direct or indirect influence that, if exercised, would result in control in fact of the corporation, regardless of the number of shares owned; or
4. to whom circumstances prescribed by regulations apply.

**Two or more individuals can be considered an “individual” with significant control if:**

1. an interest or right, or a combination of rights, in respect of shares is held jointly by those individuals;
2. a right or a combination of rights, subject to an agreement or arrangement, in respect of the shares is exercised jointly or in concert by those individuals; or
3. an interest or right, or a combination of rights, held by two individuals who meet the definition of “related persons” under the OBCA, which includes spouses, children, and other relatives if they live in the same family home.

The Act does not provide any further interpretation or guidance on the determination of individuals with “control in fact” of the corporation but it sets out that all relevant factors are to be taken into consideration. However, the Act expressly excludes the following factors:

- a legally enforceable right or ability to effect a change in the board of directors or the corporation, or its powers, or to exercise influence over the shareholders who have that right or ability; and
- where the corporation and the individual are dealing with each other at arm’s length and an influence is derived from a franchise, lease, management agreement or other similar agreement or arrangement, the corporation shall not be considered to be controlled by the individual by reason only of that agreement or arrangement.

The new section 140.2 of the OBCA sets out the rules in respect of the information that must be included in the register of individuals with significant control. The register must include all of the following information:

- name, date of birth and address;
- jurisdiction of residence for tax purposes;
- the day on which the individual became (and ceased to become) an individual with significant control;
- a description of how the individual is an individual with significant control; and
- a description of the steps taken to identify all such individuals.

Private Ontario corporations are required to update the register at least once every fiscal year, or fifteen (15) days from the date of being made aware of any information that ought to be included or changed in the register.

The Act further introduced new rules regarding the disposal of personal information, reflected in section 140.2(6) of the OBCA. Within one year after the sixth anniversary of the day on which an individual ceases to be an individual with significant control of the corporation, the corporation shall dispose of any of that individual's personal information, as defined

in subsection 2(1) of the Personal Information Protection and Electronic Documents Act (Canada).

The new section 140.4 of the OBCA governs disclosure requirements of the information in the register for law enforcement, tax compliance or regulatory purposes. The Act authorizes a member of the police force, a First Nations Constable, a member of the Royal Mounted Police, an official of the government of Ontario or Canada, or a regulatory body (the Commission, the Financial Services Regulatory Authority of Ontario, the Financial Transactions and Reports Analysis Centre of Canada, a prescribed public officer, corporation, agency or other entity whose authority to regulate is based on the law of Ontario or Canada) to request disclosure of the register. The Corporation is required to respond to such request within the time period specified in the request.

Failure to comply with the above requirements, without reasonable cause, may result to a fine of no more than \$200,000 or to imprisonment for a term of no more than six months, or both.

