

October 24, 2023

## A brief recap

**As discussed** in a previous insight, the *Canada Business Corporations Act* (CBCA) was amended in June 2019 to require that certain federally incorporated companies keep a register of the following matters in respect of individuals with significant control (ISCs):

- Name, date of birth and latest known address;
- Jurisdiction for tax purposes;
- The day on which s/he acquired or ceased to have significant control;
- A description of how control is maintained; and
- A description of steps taken to update the record.

The requirement for ISC registers was implemented in order to target money laundering and other financial crimes and to bring Canada in line with its international partners in preventing financial crimes.

## Who has significant control?

- An “individual with significant control” over a company is a person holding “a significant number of shares,” either directly or indirectly, or an individual with direct or indirect influence that, if exercised, would result in control in fact of a company.
- A “significant number of shares” means (1) shares that carry 25% or more of the voting rights attached to all of a company’s outstanding voting shares; or (2) that represent 25% or more of all of the company’s outstanding shares as measured by fair market value.

As discussed in our previous **insight** dated June 6, 2023, we noted that the requirements imposed by Bill C-86 *Budget implementation Act 2018, No. 2* (Act) were unclear and therefore the Act fell short in addressing certain procedures to identify said ISCs. This uncertainty, stakeholders believed, would open the door to applying the provisions inconsistently. As such, on May 4, 2023, the regulations related to the Act came into force, thus providing stakeholders further directions with respect of meeting the requirements regarding ISCs.

## Requirement to file

A new update is set to arrive early next year affecting the information collected on ISCs. Corporations Canada issued a notice earlier this month to notify federal businesses incorporated under the CBCA that, effective January 22, 2024, certain CBCA companies will be required to file information on individuals with significant control. Therefore, certain CBCA companies not only have a duty to collect the information on ISCs, but to file this information with Corporations Canada:

- With their annual return;
- Within 15 days of any change made in their ISC register;
- During incorporation;
- After amalgamation; and
- After continuance (import) to a federal jurisdiction.

## Bill C-42: Making ISC information public

A further possible update is likely to come into force once Bill C-42, *An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts* (Bill C-42), receives royal assent and becomes law. Bill C-42 is currently before the Senate, and if passed, among other amendments, requires that some of the filed ISC information set out above be made available to the public on the Corporations Canada website. The **text of Bill C-42** sets out the cases in which this information may be made public by the Director (as defined in the CBCA).

In addition to the existing potential for fines and sanctions for non-compliance, Corporations Canada may refuse to issue certificates of existence and certificates of compliance for CBCA corporations that do not comply with their ISC filing requirements. Bill C-42 will, if passed in its current form, also provide Corporations Canada with authority to make inquiries of any person regarding compliance with the disclosure of ISCs or require verification of information in a ISC Register by affidavit or statutory declaration. Further, Corporations Canada may dissolve private CBCA corporations that are in default of their ISC filing obligations for more than one year.

## Our reminder

It is clear that the identification for ISCs in a federally incorporated company is an important task that should not be overlooked. As such, CBCA companies subject to the ISC requirements should continue to identify their ISCs and collect the relevant information. Additionally, given the upcoming changes and potential changes from Bill C-42, CBCA companies should let their ISCs know that their information must be filed with Corporations Canada effective January 22, 2024, and, if Bill C-42 is enacted, their information could be made public on Corporations Canada's website.

For more information or assistance with the requirements, please contact Dentons Canada LLP **Corporate leads** and **James Côté, Daniela Acevedo, Jaskaran Grewal, Jaspal Nagra** or **Anthony Berlingieri**.

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