

## Public Disclosure of Private Company Control

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As of January earlier this year, for corporations formed under the *Canada Business Corporations Act* (“CBCA”) there is a requirement for the corporation to file along with their annual return the information pertaining to the ‘individuals of significant control’ (“ISC”).<sup>1</sup> These changes to the CBCA were made by Bill C-42, *An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts*.<sup>2</sup> Bill C-42 received Royal Assent from Parliament on November 2, 2023, and the ISC disclosure requirements came into force January 22, 2024.<sup>3</sup> This article will outline and discuss what information is required for the filing, as well as what information from that disclosure will be available to the public.

### What information is included in the ISC?

As of June, 2019, CBCA entities were required to maintain and keep an ISC in the corporate records. The information required in the ISC includes:<sup>4</sup>

- Legal name of the individual
- Date of birth
- Country of citizenship
- Resident country for tax purposes
- Home address
- Address for service
- Date control of the corporation was acquired;
- Date control of the corporation ceased; and
- A description of how the individual has control.

Filings are expected to be made within fifteen (15) days of a change in the control of the corporation, or along with the filing of the annual return.<sup>5</sup>

On filing, all of the above information is made available to the public, except for the citizenship, tax residency, and the home address for the individual, which the filer can elect to remain private. However, an address service at least must be provided for each individual, which can be the same as the registered office address for the corporation.

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<sup>1</sup> An overview of the ISC register requirements can be found at: <https://ised-isde.canada.ca/site/corporations-canada/en/individuals-significant-control>.

<sup>2</sup> <https://www.parl.ca/documentviewer/en/44-1/bill/C-42/royal-assent>

<sup>3</sup> *Canada Business Corporations Act*, R.S.C., 2022, c.10.

<sup>4</sup> *Canada Business Corporations Act*, R.S.C., 1985, c. 44, s. 21.1(1).

<sup>5</sup> *Canada Business Corporations Act*, R.S.C., 1985, c. 44, s. 21.1(3).

### What is an individual of significant control?

There are multiple ways in which an individual can be identified. It is first important to note that the CBCA requires that it indeed be an ‘natural person’.<sup>6</sup> As other entities, including, corporations, trusts, or partnerships may be shareholders of the corporation, these types of entities are not natural persons and therefore are not to be listed on the register. If it is not an individual who is a shareholder, and has control, the register requires a determination of who the ultimate controlling individual of the non-individual shareholders. If a client has many layers in their corporate structure, this may require a specific analysis of trustees, beneficiaries, and controlling voting rights of a particular entity.

The second piece of the analysis includes what type of control the individual has on the corporation. The control can lie with a single individual, be joint or in concert with more than one individual.<sup>7</sup> The CBCA has indicated that control is analyzed by considering the influence of the individual over the corporations, and whether that influence, be it direct or indirect, would result in ‘control in fact’.<sup>8</sup>

The third piece of the analysis, is what constitutes ‘significant’ in terms of shareholdings in the corporation. This CBCA provides guidance with 25% being the threshold for significance, either by fair market value or votes.

If there is no ability for the corporation to identify particular individuals of significant control, for example, where no party controls greater than 25% of the corporation, there is an option available in the filing to indicate that is the circumstance.

There are other jurisdictions, both in Canada and internationally, that require the disclosure of shareholders in private corporations.<sup>9</sup> The reasoning being put forward by Corporations Canada is that increased transparency can aid in the fight against money laundering, and provide information to prevent tax evasion.

### Penalties for Non-Compliance

In addition to providing for the disclosure requirements, Bill C-42 also increased the penalties associated with non-compliance. The penalty for contravening the requirements of filings vary depending on the particular offence. If a shareholder, director or officer provides, authorizes, permits, or acquiesces in the provision of false or misleading information, they can be subject to fines up to a maximum of one million dollars, and/or a prison term of up to five years.<sup>10</sup>

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<sup>6</sup> *Canada Business Corporations Act*, R.S.C., 1985, c. 44, s. 2(1).

<sup>7</sup> *Canada Business Corporations Act*, R.S.C., 1985, c. 44, s. 21.1(2).

<sup>8</sup> *Canada Business Corporations Act*, R.S.C., 1985, c. 44, s. 21.1(3).

<sup>9</sup> For example, Quebec introduced Bill 78 “An Act mainly to improve the transparency of enterprises, which was assented to in 2021 (<https://assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-78-42-1.html>); and the U.S. now requires all corporations doing business in the U.S. to file Beneficial Ownership disclosure with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (<https://www.fincen.gov/boi>).

<sup>10</sup> *Canada Business Corporations Act*, R.S.C., 1985, c. 44, s. 21.4(1)-(5).

**What does increased transparency mean for clients?**

Increased transparency for clients may mean that client's need to provide additional information to their counsel or other parties making the filings on their behalf. The increased disclosure will require more information sharing up front between a client and their lawyer and an increased vigilance in keeping up with filings if any changes in the ISC occur.

**What does increased transparency mean for lawyers?**

The advent of this disclosure and the hefty penalties provides corporate lawyers with an incentive to encourage clients with CBCA corporations to maintain their books and records. In practice, there is usually little delay on the part of Corporations Canada in their administrative dissolution of corporations who fail to file their annual returns in a timely fashion. Now that this additional ISC disclosure forms part of the annual return filing, and non-compliance can result in jail time or substantial fines, there will be potentially more motivation for clients to have more frequent discussions with their lawyers about any changes for the corporation. When filing through the online portal, there is no option to forego providing the ISC required details. It is important for lawyers to verify the information they are providing with the client prior to making any filings on their behalf.

Additionally, for corporations yet to be formed, this may be a factor in the decision for some clients on whether they choose the federal jurisdiction. As it stands in Ontario at this time, under the *Business Corporations Act* (Ontario), there is no public disclosure requirement of the ISC information required to be recorded in the books and records of Ontario corporations.<sup>11</sup> There is no guarantee, however, that Ontario will not follow suit and require some disclosure, especially given the more recent requirements around filing of annual returns.

While private corporations are separate and distinct from public corporations, the advent of the ISC disclosure and the greater regulatory framework around corporate records and maintenance, may be attempting to remove some of the anonymity around individuals behind corporations.

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<sup>11</sup> *Corporations Information Act* (Ontario), R.S.O. 1990, c. C.39; OReg 400/21, s. 4, 5.