



## OBCA Requires Register of Individuals with Significant Control

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**Beginning January 1, 2023**, the **Business Corporations Act, R.S.O. 1990, c. B.16** ("OBCA") requires all private Ontario corporations to prepare and maintain a Register of Individuals with Significant Control (hereafter the "**Register**").

### The Test for Significant Control

An individual (a natural person) will be considered an individual with significant control (hereafter "**ISC**") of the Corporation if they meet either of the following tests:

- The individual holds a **25% or greater interest (directly or indirectly)** in the Corporation, either by votes or by fair market value; and/or
- The individual has **direct or indirect influence** that, if exercised, would give him or her "control in fact" of the Corporation.

### What Information is Required for the Register?

The Register must record the following information for each individual:

- name, date of birth and last known address;
- jurisdiction of residence for tax purposes;
- the date on which the individual became or ceased to be an ISC;
- a description of how the individual is an ISC (including a description of the ISC's rights and interests in respect of

- the Corporation's shares); and
- any other information that may be required under future regulations.

### **When Does the Register Need to be Updated?**

The Register must be reviewed and, if necessary, updated to reflect changes in a Corporation's ISCs or their required information **at least once during each financial year**. If new information is discovered, it must be recorded in the Register within 15 days of the date on which the Corporation becomes aware of it.

### **Who Will Have Access to the Register?**

Other than described below, the Register is not made publicly available.

Only the following entities may make requests to access a Corporation's Register:

- the Executive Council;
- police forces;
- tax authorities of Ontario and Canada; and
- certain specified regulators, including the Ontario Securities Commission, the Financial Services Regulatory Authority of Ontario and the Financial Transactions and Reports Analysis Centre of Canada.

### **What are the Penalties for Failure to Comply?**

The **Corporation** may be liable for fines of up to \$5,000 for failing to comply with any of the requirements to prepare and maintain a Register, respond to inquiries, or meet disclosure obligations under the legislation.

**Directors and Officers of the Corporation** may be liable for fines of up to \$200,000 and/or up to 6 months imprisonment for knowingly authorizing, permitting or acquiescing in a Corporation's failure to perform any of its duties relating to the creation, maintenance or disclosure of the Register, whether or not the Corporation has been prosecuted or found guilty.

**Shareholders of the Corporation** may be liable for fines of up to \$200,000 and/or up to 6 months imprisonment for knowingly

failing to reply to the Corporation's Register requests.

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