



New CBCA Reporting Requirements for Individuals with Significant Control of Federally Incorporated Private Corporations

January 2024 Corporate Alert

Starting on January 22, 2024, the **Canada Business Corporations Act, R.S.C., 1985, c. C-44** ("**CBCA**") will require all federally incorporated private corporations to file personal information pertaining to individuals with significant control (hereafter "**ISC**"). Qualifying corporations will be required to satisfy their reporting obligations annually, within 15 days of any changes in the ISC register, and following any incorporation, amalgamation, or continuance under the CBCA.

What is an ISC?

An individual will be considered an ISC if their influence over the corporation amounts to de facto control. Specifically, an ISC is anyone who:

- owns, controls or directs 25% or more of shares individually, jointly or in concert with one or more individuals;
- has control in fact over the corporation without owning any shares; or
- meets a combination of any of these factors.

Information about ISCs that will be made public

The following information will be made publicly accessible by Corporations Canada:

- full legal name;
- date the individual became an ISC;
- date the individual ceased to be an ISC, if applicable;

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- description of the ISC's significant control;
- address for service, if provided; and
- residential address, if no address for service is provided.

Information about ISCs that will not be made public

The following information will **not** be made publicly accessible by Corporations Canada:

- date of birth;
- country/countries of citizenship; and
- country/countries where the ISC is considered a resident for tax purposes.

Please note that, although the information identified under this heading will not be made public, it will be made accessible to law enforcement and to FINTRAC.

Exemptions

There are a limited number of exemptions from the reporting requirements. Any ISC who is less than 18 years of age will be exempt from the publication of personal information.

All other ISCs must apply to the Director of Corporations Canada to have reported information not made publicly available. The Director may choose not to make this information publicly available if:

- the Director reasonably believes that the public availability of this information would "present a serious threat to the safety of the individual"; or
- the Director is satisfied that:
 - the ISC lacks capacity;
 - the information is to be kept confidential through operation of legislation pertaining to conflicts of interest; or
 - prescribed circumstances apply (Corporations Canada has yet to identify or define the content of 'prescribed circumstances').

If a corporation is unable to identify any ISCs, the corporation must nonetheless maintain an ISC register and include therein:

- A statement attesting that,
 - the corporation has determined that it is unable to identify any ISCs over the corporation;
 - there are no ISCs over the corporation; and
- A summary of steps taken by the corporation to identify any ISCs.

Non-compliance

Failing to comply with the new ISC reporting requirements may result in criminal and administrative penalties. A **corporation** may be liable for fines of up to \$100,000 for failing to comply with the reporting requirements. Any **director or officer of a corporation** who knowingly authorizes, permits or acquiesces the corporation to contravene the filing requirements may be subject to a fine of up to \$1,000,000 or imprisonment for a term not exceeding five years. After January 22, 2024, any corporation that fails to make an ISC filing within 30 days of amalgamating or continuing under the CBCA may be administratively dissolved.

In closing

The new CBCA reporting requirements will help bolster corporate transparency and accountability. The implementation of these changes, however, could greatly impact the intended composition and operation of privately held federal corporations. As a starting point, ensure that corporate leadership is aware of the corporation's obligations under the new reporting requirements to identify ISCs and collect their information. Corporations should also keep ISCs apprised that this information will be made publicly available.

Contact us

If you want to ensure that your business will be compliant with the new reporting requirements, or would like more information or assistance regarding these matters, [please contact our firm](#).

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