

Goodmans^{LLP} Update

New CBCA Record Keeping Requirements on the Horizon

New record keeping requirements for private corporations incorporated under the *Canada Business Corporations Act* (CBCA) are coming into force on June 13, 2019. The new requirements will require those corporations to keep a register of certain information about individuals that, directly or indirectly, have “significant control” over the corporation. They are intended to enhance corporate transparency to prevent tax evasion, money laundering, corruption, financing of terrorism and other criminal activities.

Details of the New Requirements

The new requirements will generally apply to private CBCA corporations (i.e., those that have not distributed their shares to the public and whose shares are not listed on a stock exchange designated under the *Income Tax Act*).

Those corporations will need to keep a register of individuals with “significant control” of the corporation. An individual will be deemed to have significant control if he or she:

- is a registered or beneficial owner of, or has control or direction over, directly or indirectly, a “significant number of shares” of the corporation (being either (i) 25% or more of the outstanding number of voting shares of the corporation, or (ii) 25% or more of the outstanding shares of the corporation, measured by the fair market value of such outstanding shares);
- has any direct or indirect influence that, if exercised, would result in control in fact of the corporation; or
- is a person to be specified in regulations yet to be published.

In addition, each individual who is acting jointly or in concert with a group of shareholders who collectively own or control a significant number of shares of the corporation must also be included in the register.

At least once during each fiscal year of the corporation, the corporation must take “reasonable steps” to ensure it identified all individuals with significant control over the corporation and the information in the register is complete and accurate.

In addition to any other information that may be required under the applicable regulations (once published), the register must contain the following information about each individual with significant control of the corporation:

- name, birthdate and latest address;
- jurisdiction of residence for tax purposes;
- date when individual obtained significant control and ceased to hold significant control of the corporation;
- description of how the individual has significant control of the company;
- description of the reasonable steps taken by the corporation in each financial year to ensure the register is complete and accurate; and
- any other prescribed information as set forth in any regulations.

The form of the register and the manner of preparing and maintaining it will be set forth in the regulations relating to these requirements.

Corporations will be required to update the register within 15 days of becoming aware of any information required to be included in the register. Corporations will be entitled to request any of the required information from their shareholders, and shareholders will be required to respond to such requests to the best of their knowledge accurately and “as soon as feasible”. Within one year of the sixth anniversary of the day on which an individual ceases to have significant control over the corporation, the corporation shall (subject to applicable laws) dispose of that individual’s personal information (as defined in federal privacy legislation).

Any shareholder or creditor of the corporation will be entitled, upon complying with applicable requirements, to access and obtain an extract of the register for use in connection with any matter relating to the corporation's affairs.

Consequences of Non-Compliance

The consequences of non-compliance with the new regulations are serious, not only for directors and officers of corporations, but also for shareholders who fail to provide required information. For example, directors, officers, shareholders or corporations who knowingly contravene the new requirements will be guilty of an offence, punishable by a fine of up to \$200,000 and/or six months imprisonment.

Provincial Corporations

The finance ministers of the provinces and territories of Canada have agreed to pursue similar legislative changes as part of a coordinated effort to enhance transparency of corporate ownership. Accordingly, while these new requirements currently only apply to CBCA corporations, we expect provincial and territorial corporate legislation may eventually impose similar requirements.

For further information about these new requirements or assistance in complying with them, please contact any member of our [Corporate Finance and Securities Group](#).

Authors



Andrew Schipper
aschipper@goodmans.ca
416.849.6006



Chris Sunstrum
csunstrum@goodmans.ca
416.597.4270

All Updates are available at www.goodmans.ca. This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2019.