

Manitoba Corporations - New Register Requirements of Individuals With “Significant Control” Now in Effect.

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Identifying the actual individuals involved in business activities is an essential component of Canada’s anti-money laundering and anti-terrorist financing regime. As part of Manitoba’s commitment to improve corporate transparency and to combat illegal activities such as financial crime, *The Business Registration, Supervision and Ownership Transparency Act*, 2019 (Part 3 of Bill 22), came into force on January 1, 2020 and amended *The Corporations Act* (Manitoba) (the “**Act**”). Effective as of April 8, 2020, most private Manitoba corporations must create and maintain a detailed register listing the individuals with “significant control” of the company.

The changes in Manitoba closely mirror the amendments to the *Canada Business Corporations Act* (the “**CBCA**”) effective June 13, 2019 which require most private, federally incorporated companies to maintain a similar register. For more information on the CBCA requirements, [please see our article on the topic](#).

Who do the register requirements apply to?

Most Manitoba corporations will be impacted with the following limited exceptions:

- A reporting issuer under *The Securities Act*;
- A corporation listed on a designated stock exchange, as defined in subsection 248(1) of the *Income Tax Act* (Canada);
- A corporation licensed as an insurer under *The Insurance Act*;
- A loan or a trust corporation, as those terms are defined in section 315 of *The Corporations Act*; or
- A corporation without share capital.

These requirements do not apply to extra-provincial corporations that are registered in Manitoba. These corporations should familiarize themselves with the obligations of their home jurisdiction. Other provinces have already or are in the process of harmonizing their legislation with the CBCA including British Columbia, Saskatchewan and Nova Scotia.

What is “significant control”?

An individual with “significant control” (an “**ISC**”) is a registered holder of, a beneficial owner of, or someone who has direct or indirect control or direction over, a “significant number of shares”. A “significant number of shares” is:

- any number of shares that carry 25% or more of the voting rights attached to all of the corporation’s issued and outstanding voting shares; or
- any number of shares that is equal to 25% or more of all of the corporation’s issued and outstanding shares measured by fair market value.

An ISC could also include someone who has any direct or indirect influence that, if exercised, would result in actual control of the operations of the corporation. For example, an individual can have the right or ability to elect, appoint or remove a majority of the directors of the company, which results in significant control of the company, without having a “significant number of shares”.

If a “significant number of shares” is held jointly by individuals, or if the above-referenced influence or rights are subject to any agreement or arrangement under which the right or rights are to be exercised jointly or in concert by those individuals (such as a unanimous shareholder agreement), each of those individuals will be considered to be an ISC.

Notes:

- The Act defines “beneficial ownership” as including ownership through a trustee, legal representative, agent or other intermediary. A common example is the use of spousal or family trusts where shares are beneficially held for children.
- The simplest example of someone having “indirect control” over shares is where an individual holds shares of a private company through a holding company rather than in their own name.
- The register must also detail any individual who has rights or interests that when combined (or added up) give the individual a significant number of shares. If a shareholder is a registered holder of 10% of the company’s shares and has indirect control or beneficial interest in another 15%, that person would be an ISC.

Maintaining Up-To-Date Registers

Corporations will need to identify ISCs and track them on a new securities register. The register must contain the following information for each ISC:

- the name, date of birth and last known address;
- the jurisdiction of residence for tax purposes;
- the date on which each individual became or ceased to be an ISC; and
- a description of how such individual qualifies as an ISC (for example, if an individual indirectly controls shares through a holding company).

Once each financial year, the corporation will be required to take reasonable steps to identify

all ISCs. Unfortunately, “reasonable steps” is not defined in the Act. In that regard, the register must also include a description of the steps taken by the corporation. If you are unable to provide all the information, complete the details that are available and then describe the attempts made to retrieve all missing information.

If through this process or by any other means, a corporation becomes aware of any information that is required to be recorded then the register must be updated within 15 days of the company becoming aware of it.

Although not available to the general public, any information in a register will be available to the Director appointed under the Act upon request. Shareholders and creditors of a corporation will be able to request access to the register but must provide an affidavit acknowledging to only use the information contained in the register for certain permitted purposes. The Act states that on payment of a reasonable fee, the corporation must provide the applicant with an extract of information from the register. Unfortunately, “a reasonable fee” is not defined in the legislation.

Non-Compliance and Penalties

A corporation found not to be maintaining its register may face a fine of up to \$5,000.00.

The changes to the Act are more punitive for directors, officers and shareholders of private corporations. Directors and officers may be personally liable and will have committed an offence if they knowingly authorize, permit or acquiesce in the corporation recording false or misleading information in the register or fail to maintain the required register. Further, a shareholder who knowingly contravenes its obligation to reply accurately, completely and in a timely manner to a request for information from the corporation commits an offence. Upon conviction of a previously stated offence, directors, officers or shareholders may face fines of up to \$200,000, up to six months of imprisonment, or both.

Further Changes and Clarity

Nearly one year since the changes to the federal legislation have come into force, much uncertainty remains surrounding how the register processes are to be implemented. Innovation, Science, and Economic Development Canada (ISED) has recently consulted with the public on whether to adopt regulations to clarify these obligations under the CBCA. The scope of the regulatory authority includes three issues:

- Whether to exempt certain additional types of corporations from the obligation to maintain a register;
- Whether to prescribe steps to follow if a corporation cannot find any ISCs; and
- Whether to prescribe “reasonable steps” that a corporation must take to update its register.

As Manitoba has harmonized its legislation with its federal counterpart, it is likely that the

introduction of CBCA regulations relating to the register requirements would also be adopted in this province in the future.

We will continue to monitor developments with respect to the CBCA, the Act and the forthcoming regulations.

Takeaway

Identifying ISCs may be a difficult process depending on the complexity of the corporate structure and may include a detailed review of the share ownership and certain corporate documents and instruments (such as the articles of incorporation, shareholder agreements or purchase agreements) that may reference a specified number of votes per class of share, options to purchase, veto rights, or contingent rights that would ultimately affect the control of the corporation. The investigation process needs to continue all the way up the corporation chain to be able to identify the natural person(s) who have significant control of a corporation.

While some of the ISC processes require further clarification, private, Manitoba corporations should notify their shareholders of the new requirements and institute processes to track information pertaining to ISCs to maintain an accurate and up to date register.

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