

**PRIVATE ONTARIO CORPORATIONS
AND THE NEW JANUARY 1, 2023 REQUIREMENT FOR A
CORPORATE REGISTER OF INDIVIDUALS WITH
SIGNIFICANT CONTROL OVER A CORPORATION**

January 11, 2022

As a consequence of Ontario legislation (Schedule 2 to Build Ontario Act S.O. 2021, c. 40, assented to on December 9, 2021) as of January 1, 2023 all Ontario corporations must prepare and maintain a “register of individuals with significant control over the corporation”. Exceptions are made for offering corporations, corporations offering its securities to the public which are subject to provincial regulation, shares listed on designated stock exchanges, and wholly-owned subsidiaries of the foregoing.

The register must show:

- (a) the name, date of birth and latest known address of each individual with significant control;
- (b) the jurisdiction of residence, for tax purposes, of each individual with significant control;
- (c) the day on which each individual became and ceased to be an individual with significant control, as the case may be;
- (d) a description of how each individual is an individual with significant control, including, as applicable, a description of their interests and rights in respect of shares of the Corporation;
- (e) any other prescribed information; and,
- (f) a description of each step taken as required by subsection (3) to, at least once during each financial year of the Corporation, take reasonable steps, in accordance with the regulations, if any, to ensure that it has identified all individuals with significant control over the Corporation and that the information in the register is accurate, complete and up to date. (Section 140.2 (1))

Changes to the information must be recorded in the register within 15 days of the Corporation becoming aware of the change. (section 140.2 (4))

If a shareholder requests any of the information described in items (a) to (e) above from one of its shareholders, that shareholder is obliged to promptly and to the best of their knowledge reply accurately and neatly. (Subsection 140.2 (5))

Any and all of the above shareholder information must be disposed of by the Corporation within one year after the sixth anniversary after the date the individual ceases to be a shareholder, unless the law otherwise provides for a longer retention. (Section 140.2 (6))

The Corporation is obliged to respond for requests for disclosure of it the information in its register of individuals with significant control, where the request is for a police investigation, tax administration or enforcement, or from specified financial regulatory or policing body. (Subsection 140.2 (6)). Unlike most other registers, it is not open for inspection by shareholders. (section 145)

Enforcement of the new obligations including fines of not more than \$5000, and up to \$200,000 and a term of not more than six months, or both, to directors and officers of a Corporation that knowingly authorize or acquiesce in contravention of the new obligations, authorize or acquiesce in the recording of false information, or authorize or acquiesce in providing false information in relation to the register (subsection 258 (4) and (5)). A shareholder who knowingly supplies false information to the request of a Corporation is liable to a fine of not more than \$200,000 and imprisonment for a term of not more than six months, or both. (Subsection 140.2 (6))

A significant number of shares is any number of any class that carry 25% or more of all Voting rights of all classes of shares; or any number of shares equal to 25% or more of the fair market value of all of the Corporations outstanding shares. (Section 1.1 (1))

Any individual has significant control over a Corporation if:

- the individual is the registered holder and/or beneficial owner and/or has direct or indirect control or direction over a significant number of shares of the Corporation; or
- the individual has any direct or indirect influence that, if exercised, would result in control in fact of the Corporation by virtue of holding, directly or through bodies corporate, more than 50% of the shares of the Corporation carrying votes for the election of directors and are sufficient to elect a majority of the board. (Section 1.1 (2) 2. &). The latter characterization is nonetheless subject to our objective and subjective consideration which may direct otherwise (section 1.1 (5))

An individual with significant control also includes two or more individuals if:

- the related rights is/are held jointly by them;
- a related right or combination of rights is subject to an agreement¹ under which voting rights are exercised jointly or in concert by those individuals; or
- they are individually who are, with respect to the others, a “related person” as defined in the Act.

Putting aside the above specific citations of shareholder control the Act intends its reach to be broad and, in determining whether an individual has direct or indirect influence as to constitute control of the Corporation, all factors, objective and subjective, are considered (section 1.1 (5)).



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¹ Exception is made for a case where the Corporation and the individual are dealing with each other at arms length and the influences derive from an agreement, such as a franchise, license, lease, distribution, supplier management agreement or arrangement, the main purpose of which is to govern relations between the parties in which a business is carried on.

Annual Steps Taken per BCA S. 140.2 (3) to ensure that all individuals with significant control over the Corporation and related information in the register is accurate, complete and up to date

YEAR	DESCRIPTION OF STEPS TAKEN