

Ontario Corporations: Transparency Requirements

July 7, 2023

On January 1, 2023, amendments to the Ontario *Business Corporations Act* (“OBCA”) came into effect. Most notably, the OBCA now requires that private corporations in Ontario create and maintain a register of all “individuals with significant control” of the corporation, known as a Transparency Register. The OBCA amendments will assist regulatory and tax bodies and law enforcement with detecting corporate crimes such as money laundering, tax evasion and other illegal financial activities. The requirement to maintain a Transparency Register brings Ontario in line with other Canadian jurisdictions that have already or are in the process of adopting similar requirements.

Exemptions

The new transparency requirements apply to all privately held corporations in Ontario, Canada, including those in existence prior to January 1, 2023. The requirements do not apply to public corporations and wholly owned subsidiaries of public corporations.

Defining “Individual with Significant Control”

The following individuals are “individuals with significant control”:

1. individuals holding shares that amount to at least 25% of the voting shares or 25% of the value of all the corporation’s outstanding shares measured by fair market value. This includes registered shareholders, beneficial owners, and/or individuals with direct or indirect control or direction over the shares; or
2. an individual who has any direct or indirect influence that, if exercised, would result in “control in fact” of the corporation. The OBCA requires corporations to consider “all factors that are relevant in the circumstances” in determining whether an individual is in “control in fact” of the corporation. Whether the individual has the ability to change the board of directors or exercise influence over the shareholder is not conclusive in determining whether an individual is in “control in fact”.

Information Required to be Disclosed

The Transparency Register must include the following information about the “individuals with significant control”:

1. name, date of birth and last known address;
2. jurisdiction of residence for tax purposes;
3. the day on which each individual became and ceased to be an individual with significant control (if applicable);
4. a description of how the individual is an “individual with significant control,” including a description of his or her interests and rights in respect of shares of the corporation; and
5. a description of each reasonable step the corporation took 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.

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Maintaining the Transparency Register

A corporation must maintain the Transparency Register at the corporation's registered office address in Ontario. At least once per fiscal year, the corporation must 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. The Transparency Register must be updated within 15 days of the corporation becoming aware of new or updated information.

Accessing the Transparency Register

Transparency Registers will not be publicly available. The Transparency Register is available only to requests made by law enforcement and for tax and regulatory purposes. The amendments do not create an obligation of the corporation to disclose the Transparency Register to shareholders, nor does it provide shareholders with an avenue to request said information.

Penalties for Non-Compliance

A corporation that fails to maintain or disclose its Transparency Register without reasonable cause may be liable to fines of up to \$5,000. Directors, officers and shareholders who fail to comply with the Transparency Register requirements may be liable to fines up to \$200,000 and/or up to six months imprisonment.

Please note that this bulletin is intended for informational purposes only and does not constitute legal advice. We encourage you to contact your Miller Canfield lawyer or one of the authors of this alert if you have questions regarding a corporation's obligation to create and maintain a Transparency Register.