

## Greater Corporate Transparency on the Horizon: Non-Public CBCA Corporations to be Required to Keep Securities Register of Individuals With "Significant Control"

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Bill C-86, *Budget Implementation Act, 2018, No. 2* is amending the *Canada Business Corporations Act* ("CBCA") to require **private federal corporations** to maintain a register of "individuals with significant control" over the issued capital of the corporation. Failure to implement the regime imposed by these amendments could expose officers, directors and shareholders of the corporation to fines of up to \$200,000. It is imperative that directors, officers, and shareholders are aware of and understand how their duties, obligations, and potential exposure to personal liability is about to change. These amendments come into force on **June 13th, 2019**.

### OVERVIEW

Consistent with global efforts to curb the misuse of corporate vehicles for illicit purposes, Bill C-86 amends the CBCA to create greater transparency and disclosure of individuals who possess "significant control" over private federal corporations (private corporations incorporated under the CBCA) ("**Private Federal Corporations**"). Public corporations are exempt from these requirements. Additionally, these requirements do not apply to corporations incorporated under the *Business Corporations Act* (Ontario). Bill C-86's amendments to the CBCA expand current record keeping obligations for Private Federal Corporations, now requiring them to maintain a register of "individuals with significant control".

### REGISTER OF "INDIVIDUALS WITH SIGNIFICANT CONTROL"

Beginning June 13th, 2019, Private Federal Corporations will be required to create and maintain a securities register of individuals with "significant control" over the corporation. Under the new section 2.1, the term "Individual" refers to any individual person, or any group of individuals acting jointly or in concert that holds registered or beneficial title to shares in the corporation, either directly or indirectly. The term "significant control" refers to the ownership or control of 25% or more of the voting rights attached to the corporation's shares, or 25% or more of the corporation's shares by value. Each Private Federal Corporation must maintain a register of individuals with significant control over the corporation, effective as of June 13th, 2019.

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## NEW RECORD-KEEPING REQUIREMENTS

The following is a summary of the amendments to the CBCA:

1. **Components of the Register of Individuals with Significant Control** – While the precise form of the securities register is yet to be finalized, the amendments state that the register must contain the following information with respect to each individual with significant control of the corporation:
  - Name, date of birth, and latest known address;
  - Jurisdiction of residence for tax purposes;
  - The day which the individual obtained or ceased to have significant control;
  - A description of how the individual has "significant control", including a description of the individual's interests and rights in respect to the shares of the corporation; and
  - A description of the steps taken by the corporation to ensure the securities register is accurate, complete, and up-to-date.
2. **Maintenance of Securities Register** – Private Federal Corporations are obligated to take reasonable steps at least once every financial year to ensure that the securities register is accurate, complete and up-to-date. If a corporation becomes aware of any amendments that must be made to the securities register, it will have 15 days to make the appropriate changes. If a corporation is unable to identify any individuals with significant control over the corporation, the corporation must follow the prescribed steps that will be set out in the regulation.
3. **Obligations of Shareholders** – Individual shareholders have an obligation to respond to the best of their knowledge, accurately and completely as soon as feasible to a corporation's request for information to be recorded in the securities register.
4. **Access to Securities Register** – On application, shareholders and creditors of the corporation are entitled access to the securities register for certain purposes.
5. **The Corporation: Penalties for Non-Compliance** – Failure of a corporation to comply with the reporting obligations without reasonable cause can result in the corporation being liable on summary conviction to a fine not exceeding \$5,000.
6. **Directors, Officers and Shareholders: Penalties for Non-Compliance** – Similarly, directors, officers, or shareholders who knowingly authorize, permit or acquiesce in a contravention of these provisions or the recording of false or misleading information in

the register can be subject to fines of up to \$200,000 or imprisonment for a term of up to six months (or both).

Be prepared for the implementation of these amendments by June 13, 2019 to ensure compliance and prevent exposure to liability.