



Ontario Transparency Register: Changes for 2023

December 2022

As of January 1, 2023, private Ontario corporations will be required to create and maintain a register of “individuals with significant control” over the corporation (“**ISC Register**”). This requirement was introduced by the Ontario government as a measure to increase transparency of corporate ownership to prevent and detect illegal activities and tax evasion. The requirements are similar to those currently found under the *Canada Business Corporations Act* and several other Canadian provincial corporate statutes.

Individuals with Significant Control

Under the new rules, an “individual with significant control” over an Ontario corporation is an individual who:


- is the registered or beneficial owner of, or has direct or indirect control or direction over, any number of shares that:
 - carry 25 per cent or more of the voting rights attached to all of the corporation’s outstanding voting shares; or
 - is equal to 25 per cent or more of all of the corporation’s outstanding shares measured by fair market value.
- has any direct or indirect influence, that if exercised, would result in “control in fact” of the corporation.

If two or more individuals jointly hold rights or interests that meet the 25 per cent threshold, each individual will be considered an individual with significant control. Similarly, if two or more individuals have entered into a voting agreement or similar arrangement in which they agreed to exercise any rights they hold in the corporation “jointly or in concert,” and such rights collectively meet the 25 per cent threshold, all of the individuals will be considered an individual with significant control. Related persons (e.g., spouses and children) who collectively meet the 25 per cent threshold are also considered individuals with significant control.

What’s Required?

The ISC Register must be kept at the corporation’s registered office or at another location in Ontario designated by the directors, and must contain the following information for each individual with significant control:

- name, date of birth, and last known address;
- jurisdiction of residence for tax purposes;
- the date on which they obtained or ceased having significant control; and
- a description of how they have significant control, including a description of any interests and rights in the corporation’s shares.



The ISC Register must also include a description of the steps taken by the corporation to ensure that the information is accurate and up to date. A corporation is required to update the ISC Register at least once every financial year and within 15 days of becoming aware of any changes.

Disclosure and Penalties

While the ISC Register is not required to be disclosed publicly, nor submitted to any regulatory authority, a corporation will be required to disclose the information in the ISC Register upon request by tax authorities, law enforcement or certain designated regulators.

A corporation may be fined up to \$5,000 for failing to prepare and maintain an ISC Register or meeting its disclosure obligations. Similarly, directors and officers may be fined up to \$200,000 and face up to six months' imprisonment for knowingly authorizing, permitting or acquiescing in the corporation's failure to comply with its obligations. The new legislation requires shareholders to respond to the corporation's inquiries promptly and, to the best of their knowledge, provide accurate and complete information. The failure to do so would subject a shareholder to a fine of up to \$200,000 and up to six months' imprisonment.

We encourage you to reach out to your Aird & Berlis contacts ahead of January 1, 2023, as gathering the required information for the ISC Register can take time, depending on each corporation's particular circumstances.

Disclaimer: This article offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.

Contacts



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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Expert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.



Andrew Magnus

Partner

Andrew is a member of the firm's Capital Markets Group. He has experience in mergers and acquisitions, corporate finance and securities law. His practice spans a variety of industry sectors where he has participated in a variety of transactions, including public and private equity financing, debt financing, share and asset purchase transactions, corporate reorganizations and ongoing general corporate and commercial activities. Andrew frequently advises international clients on doing business in Canada.

Andrew's clients receive rapid, responsive service based on a thorough understanding of their needs. Clients trust his ability to analyze a potential course of action and avoid unintended consequences. Andrew provides business-minded advice to a wide range of clients from individual entrepreneurs to family businesses to multinational corporations.



Felix Ng

Associate

Felix is a dedicated corporate lawyer. He is committed to learning about the intricacies of his clients' businesses in order to help them reach their goals. Felix's clients appreciate his responsiveness and problem solving skills on a wide variety of corporate matters.

Felix is a member of the firm's Corporate/Commercial Group. His practice focuses on M&A transactions and advising international clients on expanding their businesses into Canada. Felix represents clients in a range of industries, including pharma, e-commerce, transportation, agriculture, food and beverage and construction.

Felix has passed Level III of the Chartered Financial Analyst (CFA) Program.

