Amendments to the Build Ontario Act: What You Need to Know

February 2022

The Ontario government proposed Bill 43, the *Build Ontario Act*, ("**Bill 43**") on November 4, 2021. Bill 43 proposes various legislative amendments, including changes to the *Business Corporations Act (Ontario)* ("**OBCA**") located in Schedule 2 of Bill 43. It is expected (but not confirmed) that these proposed amendments will come into force in 2023.

Proposed Amendments

The proposed amendments will require corporations to maintain in their corporate minute book a register of individuals who have significant control over them, similar to the requirements currently found under the *Canada Business Corporations Act* and the British Columbia *Business Corporations Act*.

Bill 43 defines an individual who has "significant control" over a corporation as an individual who:

- is the registered or beneficial owner of, or has direct or indirect control or direction over, any number of shares that:
    - (i) carry 25 per cent or more of the voting rights attached to all of the corporation's outstanding voting shares; or
    - (ii) 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; or
- is an individual to whom prescribed circumstances apply.

Register of Individuals with Significant Control

The register must contain the following information for each individual with significant control:

- Full name;
- Date of birth;
- Last known address;
- The jurisdiction of residence for tax purposes;
- The day each individual became or ceased to be an individual with significant control;
- 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; and
- Any other information as may be prescribed by the legislation from time to time.

Exemptions

Corporations are exempt from keeping a register if the corporation:

- is an offering corporation;
- is a corporation that offers its securities to the public and is subject to an Act of the legislature of a province relating to the regulation of securities;
- has shares listed on a designated stock exchange within the meaning of subsection 248(1) of the *Income Tax Act*; or
- is a wholly-owned subsidiary corporation of a corporation described above.

Other Information

This information should be recorded within 15 days after the corporation becomes aware of it and must be deleted within one year after the sixth anniversary of the day an individual stops having significant control of the corporation.

The register will not be publicly available nor is the information submitted to any regulatory authority. The corporation will be required to maintain the register and the information will only be made available upon request by tax and compliance authorities, and law enforcement.

Non-Compliance

For failure to comply with the Minister's request for the register, a corporation may be liable for a fine of not more than $5,000.

A director or officer of a corporation who knowingly authorizes, permits or acquiesces (i) in the corporation not maintaining the register; (ii) in recording false or misleading information in the register; or (iii) in providing any person or entity false or misleading information relating to the register, is guilty of an offence and is liable on conviction to a fine of not more than $200,000 or to imprisonment for a term of not more than six months, or to both.

A shareholder must promptly reply, accurately and completely, to the corporation's request for such information or otherwise is also guilty of an offense.

Next Steps

Aird & Berlis will monitor the upcoming changes and provide an update upon implementation of these amendments. For further information, feel free to contact the authors below or your usual Aird & Berlis contact.

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.

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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 Lexpert 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.



Jennifer Bishop
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Jennifer is a partner in the firm's Corporate/Commercial Group and Co-Chair of the Sports, Media & Entertainment Group. Her practice focuses on a broad range of corporate law matters, including mergers and acquisitions, reorganizations, divestitures and day-to-day corporate advice. Jennifer works with private sector clients across a variety of industries, including retail, packaged goods, hospitality, manufacturing, energy, transportation, technology, healthcare, insurance, sports and media.

Jennifer has been recognized as one of *Lexpert's Rising Stars: Leading Lawyers Under 40* and is listed in *Best Lawyers in Canada* for Corporate Law. She is a frequent speaker on matters relating to corporate law and governance, leadership and gender equity, and is an officer of the International Bar Association's Women's Leadership Group.



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.