

# New Canadian beneficial ownership reporting requirements affecting certain corporations may soon become law

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The Canadian federal government recently introduced Bill C-86, [Budget Implementation Act, 2018, No. 2](#) (Bill C-86) (the “Bill”). This Bill includes significant proposed changes to the Canada Business Corporations Act (“CBCA”) concerning the disclosure of beneficial ownership of shareholders of federal private corporations. If passed, the amendments to the CBCA will become legally effective six months after receiving Royal Assent.

The Federal Government first announced these changes as part of the 2017 Federal Budget which can be accessed [here](#). As we noted previously in our March 2017 blog:

*Many jurisdictions around the world are in the midst of updating their laws to require more transparency regarding the ownership of corporations and trusts, in order to prevent inappropriate cash flows and behaviors. For example, a number of European countries have put forward proposals requiring “trust registers” whereby certain trusts must publicly disclose their beneficiaries. The United States has recently, in certain jurisdictions, required more disclosure on LLCs so as to ensure money laundering is not being facilitated through various real estate acquisitions. One could debate forever the pros vs. cons of such initiatives, and many practitioners and academics have in recent years. As you may have read in our past blog (LINK), Finance has introduced new trust reporting rules in regards to the identity of beneficiaries, trustees, and settlors starting in taxation years ending after December 30, 2021. The Budget documents reveal the following:*

*The Government of Canada is committed to implementing strong standards for corporate and beneficial ownership transparency that provide safeguards against money laundering, terrorist financing, tax evasion and tax avoidance while continuing to facilitate the ease of doing business in Canada. Understanding the ownership and control of corporations is vital for good corporate governance and to protect the integrity of the tax and financial systems.*

*The Government will collaborate with provinces and territories to put in place a national strategy to strengthen the transparency of legal persons and legal arrangements and improve the availability of beneficial ownership information.*

*The Government is also examining ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information. These actions will ensure that law enforcement and other authorities have timely access to the information needed to crack down on money laundering, terrorist financing and tax evasion and to combat tax avoidance.*

*Standby... these changes could be a material shift in the Canadian disclosure landscape for corporations and trusts, but until we see the results of such efforts and study by the government, there is not much to comment on.*

Well, standby no longer! The landscape is indeed to undergo a SIGNIFICANT SHIFT.

Essentially, the Bill (in its current draft) amends the provisions of the CBCA by requiring affected corporations to collect and record specified beneficial ownership information. Particularly, the CBCA requires a corporation to maintain accurate records about individuals with “*significant control*” over it.

Under the Bill, the following individuals may have “*significant control*” over a corporation:

- An individual who has any of the following interests or rights or any combination of them, in respect of a “*significant number*” of shares of the corporation:
  - An individual who is the registered owner of shares;
  - An individual who is the beneficial owner of shares;
  - An individual that has direct or indirect control over shares;
- Individuals that have a direct or indirect influence, that if exercised, would result in control of fact of the corporation; and
- Individuals where “prescribed circumstances” apply.

“Significant Control” also includes interests or rights held by two or more individuals jointly or who are subject to an arrangement to exercise rights jointly or in concert, in respect of a significant number of corporate shares.

A “significant number” of shares is defined to mean any number of shares that carry 25 percent or more of the voting rights of the corporation’s shares **or** 25 percent or more of all of the corporation’s outstanding shares measured by fair market value.

The legislation indicates that only directors, shareholders, and creditors of the corporation may request access to the “register” to ascertain beneficial owners. It is uncertain to what extent the Canada Revenue Agency will attempt to use this as a method to obtain the identity of the beneficial owners of a corporation in a situation where they are a creditor.

Those thinking of taking a less-than pro-active approach to these new, significant requirements should think twice. These proposed amendments come with punitive penalties.

If a corporation does not comply with the requirement of the registry, it may be found guilty of an offence and subject to a fine not exceeding \$5,000. However, the penalties are much more punitive if the directors or officers “*knowingly authorizes, permits or acquiesces in the contravention*” of the new provisions. In this scenario, the director or officer would be found to have committed an offence and would be subject to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months. A similar penalty is provided for if false or misleading information is recorded in the registry.

This may be the first step in a mandated government registry that would have information relating to the beneficial ownership of all private corporations. In the Standing Committee on Finance report released November 8, 2018, the Committee recommended that the Government of Canada work with provinces to “*create a pan-Canadian beneficial ownership registry for all legal persons and entities, including trusts, who have significant control which is defined as those having at least 25% of total share ownership or ownership rights*”.<sup>[1]</sup> As previously mentioned, the Bill only impacts corporations formed under the Canada Business Corporation Act. However, it is just a matter of time until the provincial statutes are amended to reflect similar requirements.

Upon implementation, there is no doubt that compliance burdens and professional fees for affected corporations will increase significantly given that the consequences of non-compliance are steep. Practitioners and affected persons should carefully monitor these changes and prepare now to comply once the Bill becomes effective law.

[1] <http://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>