

ISC filing and transparency requirements: what CBCA corporations need to know for 2024

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In June 2019, amendments to the *Canada Business Corporations Act* (the CBCA) came into effect, requiring most non-publicly traded CBCA corporations to prepare and maintain a register (the ISC Register) of individuals with significant control over the corporation (ISCs). [Review our previous bulletin](#) for additional background regarding CBCA ISC requirements.

We discuss two recent (and significant) developments to this register and its related requirements. First, Corporations Canada has announced that, commencing January 22, 2024, CBCA corporations subject to the ISC Register requirements must file information regarding their ISCs with Corporations Canada. Second, new legislation to amend the CBCA (Bill C-42) is expected to come into force shortly, which will result in some of the ISC information that is required to be filed being made publicly available by Corporations Canada on a website that is expected to go live in January 2024. These developments represent a watershed moment for corporate transparency in Canada.

For the purposes of this update, we have summarized the regime as it currently exists, but we expect there may be changes as Corporations Canada refines and revises the filing and publication process.

ISC Register filing and publication requirements

Filing requirements

Starting January 22, 2024, all CBCA corporations—including corporations that are exempt from the requirement to maintain an ISC Register—will have to file either ISC information or a confirmation that they are exempt from the requirements with Corporations Canada, as follows:

- **Annually.** An ISC filing must be made with the annual return, which is due on the anniversary date of incorporation or continuance under the CBCA. The annual return will not be capable of being filed without the completed ISC filing. Note that historical ISC information before January 22, 2024 will not need to be filed.
- **Non-exempt corporations.** Existing corporations will be required to file ISC information (which includes the information in the section below) when they file an annual return after January 22, 2024.
- **Exempt corporations.** Exempt corporations will have to file a confirmation that they are exempt and provide the basis for their exemption when they file an annual return after January 22, 2024.

- **Within 15 days of any change.** Upon becoming aware of any change to the ISC Register, a filing must be made to update ISC information.
- **Non-exempt corporations.** If there is a change in a corporation's ISC Register after January 22, 2024 but before its annual return is due, it will have to file its ISC information (reflecting the changed information) within 15 days of the change.
- **Exempt corporations.** If an exempt corporation ceases to be exempt from the ISC requirements, it will have to file its ISC information within 15 days of that change.
- **Incorporation.** As of January 22, 2024, to incorporate, a filing of ISC information or confirmation of exemption will be required. An incorporation cannot be completed without the contemporaneous ISC filing.
- **Amalgamation and continuance.** A filing of ISC information or confirmation of exemption must be made within 30 days of an amalgamation or continuance under the CBCA that is completed after January 22, 2024. Corporations that do not file within the 30-day window may be subject to involuntary dissolution.

An exempt corporation is any CBCA corporation that is:

- a reporting issuer under provincial securities law or a wholly owned subsidiary of such a corporation;
- a public corporation that trades its securities on a Canadian or foreign stock exchange designated by the *Income Tax Act* or a wholly owned subsidiary of such a corporation; or
- a member of a prescribed class (Corporations Canada has indicated that this currently includes Crown corporations or a wholly owned subsidiary of a Crown corporation).

Information required to be filed

Non-exempt corporations are required to file the following information regarding each ISC with Corporations Canada:

- full legal name;
- date the individual became an ISC or ceased to be an ISC, as applicable;
- description of the ISC's significant control;
- residential address;
- address for service (if one is provided as an alternative to a residential address);
- date of birth;
- country (or countries) of citizenship; and
- country (or countries) where the ISC is considered a resident for tax purposes.

Accordingly, ISCs and their related CBCA corporations should consider including an address for service with the ISC filing to avoid disclosure of residential addresses. The address for service can be any address where the ISC can receive mail and does not require a formal appointment of an agent.

What will be published

All of the filed information referred to above will be made public, **except:**

- date of birth;
- country (or countries) of citizenship;

- country (or countries) where the ISC is considered a resident for tax purposes; and
- residential address (but **only** if an address for service is provided).

Exemptions from publication

Bill C-42 provides for limited exemptions from the publication requirement, including:

- where an ISC is under the age of 18; and
- upon application to the Director of Corporations Canada (the Director):
 - where there is a reasonable belief that making the information available would present “a serious threat to the safety of the individual”;
 - where the ISC lacks decision-making capacity;
 - where the information is to be kept confidential pursuant to obligations under legislation governing conflicts of interest; and
 - where prescribed circumstances apply to the individual (none have yet been proposed by Corporations Canada).

It is not yet clear in what circumstances these exemptions from publication will apply or how Corporations Canada will interpret them and evaluate any applications. The provisions give broad discretion to the Director to impose terms and conditions on any exemptions that they grant.

Powers to gather and disclose information and whistleblower protection

The new CBCA amendments broaden the power of Corporations Canada to make inquiries to any person regarding compliance and to request any records, documents or information.

In circumstances where a person provides information regarding wrongdoing (defined as non-compliance with the CBCA, fraudulent formation of a corporation or fraudulent activity involving persons concerned with the formation, business or affairs of a CBCA corporation), the Director is prohibited from disclosing information that would reveal the identity of, or the information provided by, the whistleblower without consent of the whistleblower. The identity of the whistleblower and information provided by them can, however, be provided by the Director to investigative authorities without consent of the whistleblower.

Offences and penalties

The CBCA amendments also increase the penalties for committing an offence under the new ISC filing requirements. A corporation that, without reasonable cause, violates the filing requirements is subject to a fine of up to \$100,000. In addition, a person who commits an offence is liable on summary conviction to a fine not exceeding \$1 million, to imprisonment for a term not exceeding five years, or both. This latter penalty provision applies to directors and officers of a corporation who knowingly authorize, acquiesce or permit a CBCA corporation to contravene the filing requirements.

Anticipated impacts

Implementation of the new CBCA requirements will have various impacts on both corporations and advisors engaged in business transactions:

- **Timelines.** The ability to incorporate a new CBCA corporation, submit an annual return or obtain a certificate of compliance will be impacted by these new filing requirements. Failure to properly file ISC information will prevent the completion of an incorporation and receipt of a certificate of compliance. It is crucial to have this information readily available and filed to avert any potential delays, particularly in a time-sensitive transaction scenario.
- **Potential dissolution and other sanctions.** Corporations Canada now has broad discretion to involuntarily dissolve corporations that neglect to file ISC information. In addition, contravention of the new requirements may result in significant penalties.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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