

# inBrief

Canada edition



## Beneficial Ownership Registers for Ontario Corporations

By James Bowden | 20 January 2023

As of 1 January 2023, all privately held corporations in Ontario must maintain a register of their beneficial owners, namely individuals who exercise “significant control” over these corporations. The changes were introduced as amendments to the Business Corporations Act (Ontario)<sup>1</sup> which were introduced in Bill 43 (Build Ontario Act, Budget Measures, 2021). In this note we look at the implications of the new rules, both practically speaking and in the context of the global transparency movement.

### Backdrop

Like other OECD countries, Canada is making efforts to tackle money laundering and abusive tax structures by enhancing the transparency of ownership and control of Canadian corporate entities. The relative ease of establishing corporations anonymously in Canada was highlighted by Transparency International in 2015. In 2019, federally registered private corporations were required to begin keeping a register of individuals with significant control, to be made available to certain tax and law enforcement authorities upon request. Several provinces have followed suit in respect of provincially incorporated entities, Ontario being most recent. Importantly, the registries are not available to the public. The focus on beneficial ownership transparency in Canada and worldwide is being driven by OECD anti-money laundering and tax avoidance initiatives in recent years.<sup>2</sup> The establishment of beneficial ownership registers in particular reflects 2020 revisions and guidance to FATF Recommendations number 24 and number 25 (which relate to ensuring that accurate and up to date beneficial ownership information is available to appropriate authorities).

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<sup>1</sup> Implemented in sections 140.2, 140.3, 140.4 and 258.1 of the *Business Corporations Act (Ontario)*.

<sup>2</sup> In particular the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes (transparency focused); the Financial Action Task Force (FATF) (anti-money laundering focused); and, a third major work stream, known as the base erosion and profit shifting (BEPS) initiative, which is led by the OECD Committee on Fiscal Affairs (tax avoidance focused).

## **Ontario requirements**

Under the new rules, a person with “significant control” is someone who is the registered or beneficial owner of, or who has direct or indirect control or direction over 25 per cent of the corporation’s shares by votes or value. It also includes any individual who has any direct or indirect influence that if exercised would result in de facto control of the corporation as well as an individual whose circumstances meet the definition as set out in the regulations (not yet established). What is “direct or indirect control or direction over” shares, or “control in fact” are not defined but further guidance may be set out in the regulations; however, it is clear that joint ownership arrangements, ownership by family members, voting agreements and shareholders’ agreements and any comparable contractual arrangements will qualify.

The register must include names, birthdates, tax jurisdiction and a description of how the individual meets the definition of significant control. The corporation must ensure the register is kept up to date by taking steps to refresh the information in the register at least once every financial year. There are penalties (monetary and potential imprisonment) for directors and officers who knowingly allow the corporation to fail to maintain correct records and for shareholders who knowingly fail to provide accurate information in response to requests for information from the corporation. That is, Ontario corporations are required to request such information from their shareholders, and the shareholders are required to respond.

The register must be kept at the corporation’s registered office and be made available to requests from tax authorities, regulatory bodies and law enforcement.

It should be noted that no such similar requirements have been introduced in respect of partnerships or limited partnerships in Ontario as of the date of writing.

## **Are public registries next?**

Although the new Ontario rules place a greater burden on corporations to ensure that they hold accurate records about their beneficial owners, the fact that such information must be available to authorities upon request is not a particularly novel concept given the existing powers of such authorities to require disclosure from corporations. Pragmatically speaking, the new rules can be viewed as somewhat cosmetic. A far more dramatic and controversial issue is whether such records will be required to be made available to the public (and the press), but it seems unlikely for now that this will occur in Ontario (or other Canadian provinces, with the possible exception of Quebec) without substantial further debate and the allocation of significant funding from the federal and/or provincial budgets.

The federal government had previously announced a publicly accessible beneficial ownership registry of federally registered corporations to be established by end of 2023. However, it has yet to announce any details of when and how this will occur or to allocate the required budgeted funding. In the intervening years the controversy around making such beneficial ownership registers public has grown, as doing so raises potentially serious privacy concerns and questions about whether making such information public carries benefits that outweigh those concerns (particularly when such information is already available to relevant tax and law enforcement authorities). The UK was the first to implement such a public registry, which continues to operate now. On the other hand, a recent landmark ruling of the Court of Justice of the European Union<sup>3</sup> invalidated a provision of the EU Anti-Money Laundering Directive guaranteeing public access to beneficial ownership information on the basis that such public access violated privacy rights. While it is far from certain, it may be that the Canadian government and many others around the world will reconsider the establishment of such a public registry for similar reasons.

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<sup>3</sup> The full ruling can be found here:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=268059&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1291>

The implementation of publicly accessible beneficial ownership registries in Canada remains controversial and, for now, not imminent in the near term. ■

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