New corporate transparency requirements in Canada, Québec and the U.S. – What Canadian and Québec companies need to know

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Over the last several years, member countries of the OECD, including Canada and the U.S., have committed to various international undertakings dealing with corporate governance.

In keeping with these commitments, since 2019, the *Canada Business Corporations Act* (CBCA) has required business corporations incorporated under the CBCA to prepare and maintain a register of individuals with significant control over the corporation. Nearly all Canadian provinces, including Québec, have also amended their legislation to make control of companies incorporated in their jurisdiction more transparent. For instance, since March 31, 2023, companies registered with the Québec Enterprise Register (REQ) must report their ultimate beneficiaries to the REQ.

Providing greater transparency in the control of Canadian businesses is a continuing process, and additional provisions that apply to federal business corporations came into force on January 22, 2024, and others, applicable to businesses registered with the REQ, will come into force on July 31, 2024. The provisions of the *Corporate Transparency Act* of the United States requiring companies to report beneficial ownership information came into force on January 1, 2024; some of these provisions are of interest for Canadian companies.

Canada – Public register of individuals with significant control

Since June 2019, business corporations incorporated under the *Canada Business Corporations Act* have been required to maintain a register of “individuals with significant control” (ISCs) containing the following information:

- the name, date of birth and last known personal address of each ISC
- the citizenship, country or countries where the ISCs are residents for tax purposes

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the date on which each of these individuals became an ISC
the manner in which the individual is an ISC and any other information required by the regulation.[1]

Although federal corporations must make this register accessible to the Director tasked with administering the *Canada Business Corporations Act*, to shareholders and creditors of the corporation and to investigative bodies, the register was not accessible to the public until recently.

On November 2, 2023, the federal legislator amended the provisions of the *Canada Business Corporations Act* to, among others:

allow ISCs to provide an address for service in addition to their personal address
provide that a portion of the ISC information compiled by federally incorporated businesses must be sent to the Director tasked with administering the CBCA
provide that the Director must make the following information on ISCs accessible to the public:
their name
their address for reporting purposes if such an address is provided or, failing which, their personal address
the date on which they became an individual with significant control and a description of the manner in which each one is an individual with significant control

Note that even if the date of birth, citizenship, country or countries where the ISC is a resident for tax purposes and their personal address (if they provided an address for reporting purposes) must be provided to the Director overseeing the *Canada Business Corporations Act*, this information will not be made public.

The Director may, however, in turn provide to any police force, the Canada Revenue Agency and any provincial body that has responsibilities similar to those of the Canada Revenue Agency, bodies that have investigative powers in relation to certain offences, a provincial enterprise register or provincial agency enforcing corporate law in that province all or part of a corporation's ISC information, which goes beyond the information it makes available to the public.

A corporation must send its ISC information electronically through the Corporations Canada website, at incorporation (if incorporated after January 22, 2024), annually and concurrently with the filing of its annual declaration, within 30 days following its merger with another CBCA corporation, within 30 days of the date on which it becomes subject to the CBCA after incorporating under the laws of another jurisdiction, and within 15 days following any changes made to its register of ISCs.

These amendments came into force on January 22, 2024.

To assist federal corporations in drawing up a list of their ISCs, the Director tasked with administering the *Canada Business Corporations Act* posted a letter template on its website that federal corporations may send to their shareholders, their ISCs and to anyone who could reasonably be expected to have the relevant knowledge to identify their ISCs.[2] The purpose of that letter is to help the corporation in identifying its ISCs. It is mandatory for shareholders to respond to the corporation's request and failure to respond may result in significant fines and even imprisonment.

Québec – Search a natural person by last name and first name

Since April 1, 2023, most private businesses that required to register in Québec must report to the *Registre des entreprises du Québec* the names, residential address and date of birth of each of their ultimate beneficiaries, and the type of control exercised by them or the percentage of shares or units of the corporation owned by these ultimate beneficiaries or of which they are the beneficiaries.

In general, an ultimate beneficiary of a business is a natural person who owns or is the beneficiary of 25% or more of the voting rights for that business, who owns or is the beneficiary of 25% or more of its fair market value or who has an influence that could result in de facto control over the business.

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The information reported on ultimate beneficiaries is accessible to the public and free for anyone consulting the REQ.

The requirement to report ultimate beneficiaries applies to almost all businesses registered in Québec and is not limited to businesses incorporated under Québec law nor to business corporations. Therefore, any foreign legal person that is required to register in Québec must report its ultimate beneficiaries. The same applies to partnerships, such as general partnerships and limited partnerships, and some trusts.

As of July 31, 2024, it will be possible to search the REQ using the last name and first name of a natural person. Accordingly, from that date, it will be possible to obtain the list of all businesses registered in the REQ of which a person is a director, officer, one of the three shareholders controlling the greatest number of votes and an ultimate beneficiary by searching by his or her last name and first name. The last and first name of the natural person and his or her residential address will appear in the search results. However, if a work address was reported to the register for that person, only the work address will appear.

Federally incorporated businesses registered with the REQ

A federally incorporated business that does business in Québec must maintain a register of its ISCs under the *Canada Business Corporations Act* and report information on its ultimate beneficiaries to the REQ. Although most ISCs of a federally incorporated business will also be the ultimate beneficiaries under the *Act respecting the legal publicity of enterprises* and vice versa, the two acts do not define an ISC and ultimate beneficiary in exactly the same way. A person may be an ultimate beneficiary under the *Act respecting the legal publicity of enterprises* without necessarily being an ISC under the *Canada Business Corporations Act* (and vice versa). Consequently, the content of the register of ISCs for a federally incorporated business — and thus information it will have reported to the Director in charge of the *Canada Business Corporations Act* — may not be identical to the ultimate beneficiary information it will have reported to the REQ.

However, federally incorporated businesses that do not do business in Québec are not required to register under the *Act respecting the legal publicity of enterprises*. All other provinces, except for Alberta,[3] have now incorporated provisions into their business corporations legislation requiring corporations registered under the laws of that province to maintain a register of individuals with significant control. As a result, these provisions only apply to business corporations incorporated under the law of the province and, therefore, do not apply to business corporations incorporated under the *Canada Business Corporations Act* or under the business corporation act of another province.

Corporate Transparency Act in the United States coming into force – Impact on Canadian businesses

On January 1, 2021, the *Corporate Transparency Act,* part of the U.S. *Anti-Money Laundering Act* of 2020, came into force.

Just like the amendments made to the *Canada Business Corporations Act* and to the *Act respecting the legal publicity of enterprises* (Québec), the aim of the *Corporate Transparency Act* is to prevent and fight against money laundering, terrorism financing, corruption, tax fraud and other illicit activities, among others, by increasing the transparency of private companies incorporated in or registered in the United States.

On January 1, 2024, the reporting requirements in the *Corporate Transparency Act* to identify “beneficial owners,” which are basically equivalent to ISCs under the *Canada Business Corporations Act* and “ultimate beneficiaries” under the *Act respecting the legal publicity of enterprises* (Québec), came into force.

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Businesses covered by the act and incorporated before January 1, 2024, have until January 1, 2025, to file their first *Beneficial Ownership Information Report*. Businesses incorporated after that date must file their first report no later than 30 days after the date they first register with a U.S. government authority.

Reports on beneficial ownership of businesses are filed with the Financial Crimes Enforcement Network, an agency of the U.S. Department of the Treasury, better known by its acronym FinCEN. Reporting businesses must submit an updated report within 30 days of any change in information previously reported to FinCEN.

Reports on beneficial ownership are not accessible to the public and are not subject to the U.S. *Freedom of Information Act*. The information contained in these reports will be, however, generally accessible to United States law enforcement agencies and United States federal tax authorities. Foreign law enforcement authorities may also be granted access in certain circumstances through United States federal intermediary agencies. Provided they have received the consent of their clients, financial institutions will also have access to the information to facilitate compliance with customer due diligence requirements under applicable law.

All corporations incorporated in the U.S. must file beneficial ownership information reports unless they are legally exempt. Exempt businesses include:

> most businesses whose securities are registered under the *Securities Act of 1934*
> large businesses, i.e., businesses with more than 20 full-time employees in the U.S., having a facility in the U.S., and having reported over U.S.$5 million in gross revenues or sales in the previous reporting period.

It follows that in most cases, unless it is exempted, usually because it will qualify as a “large business” due to the number of its employees and its revenues, a U.S. subsidiary of a Canadian corporation will have to comply with the act and report the identity of its Canadian beneficial owners.

A reporting business must, among other things, report the full name, the date of birth and the address of all its beneficial owners. The U.S. subsidiary of a Canadian corporation must also submit a copy of the Canadian passport (or from the country of citizenship of the person in question) for each of its beneficial owners.

A person is deemed a beneficial owner of a corporation if he or she is a natural person who, directly or indirectly, exercises substantial control over the reporting corporation, or owns or controls at least 25% of the corporation’s ownership interests (shares, units or others), in voting rights or in value.

The definition of “substantial control” for the purposes of the *Corporate Transparency Act* is much broader and more specific than what is found in equivalent Canadian legislation. An individual has “substantial control” over a reporting corporation under the *Corporate Transparency Act* if such individual (i) is a senior officer in the corporation, (ii) has authority to appoint or remove certain officers or a majority of the directors (or similar body) of the reporting corporation, (iii) is an important decision maker of the reporting corporation or (iv) has any other form of substantial control over the reporting corporation.

The *Corporate Transparency Act* imposes serious penalties on individuals who willfully fail to file or update beneficial ownership information or who willfully file false information. These penalties include civil penalties of up to U.S.$500 per day of violation, fines of up to U.S.$10,000, as well as potential; imprisonment for a period up to two years. Note that the act contains a presumption against senior officers in respect to reported information that is false, incomplete or not up to date. These officers could therefore be held personally held liable for civil penalties and fines and could be subject to imprisonment if the reported information proves to be false or incomplete or not up to date. Senior officers must therefore be especially vigilant and ensure that the reporting requirements under the *Corporate Transparency Act* are met.

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1. The Director tasked with administering the *Canada Business Corporations Act* has posted a template for the register of ISCs on its website. This register can be found at: https://ised-isde.canada.ca/site/corporations-canada/sites/default/files/documents/2023-12/04.3_isc-register-template_en.xlsx
2. This template can be found at: This template can be found at: https://ised-isde.canada.ca/site/corporations-canada/sites/default/files/documents/2023-12/06.1_request_for_information_template_isc_en.pdf
3. The three territories, Yukon, Northwest Territories and Nunavut, still have yet to amend their legislation to require a register of individuals with significant control to be maintained for business corporations incorporated under the business corporation acts of those territories.

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