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New Record-Keeping Obligations for Ontario Corporations Are Coming

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A year ago, the Ontario Legislature passed the *Forfeited Corporate Property Act, 2015* and the *Escheats Act, 2015*. Both new statutes are scheduled to come into force on December 10, 2016.

Despite the arcane subject matter of these new enactments – namely, the modernization of the dusty doctrines of *escheat and bona vacantia* (i.e., the forfeiture of property to the Crown upon a corporate dissolution) – the regime introduced by these statutes will impose concrete and potentially onerous obligations on virtually all corporations created or continued under Ontario law.

New legal obligations for both new and existing Ontario corporations

The new *Forfeited Corporate Property Act, 2015* imposes novel record-keeping obligations on Ontario corporations by way of amendments to (a) the Ontario *Business Corporations Act* (OBCA); (b) the Ontario *Corporations Act*; and (c) when it comes into force, the Ontario *Not-for-Profit Corporations Act, 2010*.

Under the OBCA, these new record-keeping obligations:

- will apply as of December 10, 2016 (i.e., will apply immediately) to all corporations that are incorporated or continued under the OBCA on or after December 10, 2016; and
- will apply as of December 10, 2018 (i.e., two years after the amendments come into force) to all corporations that were incorporated or continued under the OBCA before December 10, 2016.

In both cases, the relevant corporation is required to create and to maintain at its registered office “a register of [the corporation’s] ownership interests in land in Ontario”. The phrase “ownership interest” is not defined, but potentially extends to both legal and beneficial ownership interests in real property.

The mandatory content of the register of “ownership interests”

Once the amended provisions become effective, they will require each corporation to maintain (and to continually update) a register that:

- identifies each property in Ontario in which the corporation possesses an “ownership interest”; and
- shows the date on which the corporation acquired the property and, if applicable, the date on which it disposed of it.

The corporation is also required to keep with the register “a copy of any deeds, transfers or similar documents” that contain any of the following information:

- the municipal address, if any, of each property listed on the register;
- the registry or land titles division and the property identifier number of each property listed on the register;
- the legal description of each property listed on the register; and

- the assessment roll number, if any, of each property listed on the register.

On its face, this record-keeping obligation does not extend to ownership interests in real property owned by an OBCA corporation if the real property is situated outside Ontario. Nor does the obligation extend to bodies corporate governed by other (non-Ontario) corporate statutes, even if such entities hold ownership interests in real property situated in Ontario.

Other changes introduced by the new legislative regime

In addition to the record-keeping obligations described above, the new statutes introduce a variety of further changes that affect the dissolution and/or revival of Ontario corporations and the forfeiture to the provincial Crown of both real and personal property owned by such corporations.

Conclusion

The management of existing Ontario corporations should be aware that, by December 10, 2018, the law will require them to prepare, and to thereafter maintain, a register of all ownership interests in Ontario land held by the corporation.

More imminently, any Ontario corporation that is created or continued on or after December 10, 2016 will need to comply with these obligations immediately following its incorporation or continuance.

The precise content and ramifications of these new record-keeping obligations should be discussed with your external counsel. Given the novelty of the new regime and the relative lack of attention that these changes have received to date, further guidance may yet emerge during the first months that the regime is in effect.

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