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Private Federal Corporations Must Track Controlling Shareholders Beginning in June 2019

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Bill C-86 introduces significant changes to the *Canada Business Corporations Act* (CBCA) that will come into effect on June 13, 2019. Corporations governed by the CBCA (excluding corporations that are reporting issuers or are listed on a "designated stock exchange" as defined in the *Income Tax Act* (Canada)) will now have to prepare and maintain a *register of individuals with significant control*. Canadian provinces are expected to adopt similar provisions in their corporate statutes in the near future as part of a coordinated effort of the federal and provincial governments to enhance transparency in the ownership of corporations. These changes reflect international efforts to prevent tax evasion, money laundering and terrorist financing. The United Kingdom has already implemented a public register of persons and entities having significant control that applies not only to corporations but also to partnerships and trusts.

An *individual with significant control* is defined as follows:

a. 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:
    i. the individual is the registered holder of the shares,
    ii. the individual is the beneficial owner of the shares, or
    iii. the individual has direct or indirect control or direction over the shares;
b. an individual who has any direct or indirect influence that, if exercised, would result in control in fact of the corporation; or
c. an individual to whom prescribed circumstances apply (to be determined by regulations not yet published).

The definition also addresses joint ownership of shares and joint exercise of control provided for in an agreement or arrangement.

A *significant number of shares* is defined as follows:

a. any number of shares that carry 25% or more of the voting rights attached to all of the corporation's outstanding voting shares; or
b. any number of shares that is equal to 25% or more of all of the corporation's outstanding shares measured by fair market value.

The register must contain the following information:

a. the names, dates of birth and latest known address of each individual with significant control;
b. the jurisdiction of residence for tax purposes of each individual with significant control;
c. the day on which each individual became or ceased to be an individual with significant control, as the case may be;
d. a description of how each individual is an individual with significant control over the corporation, including a description of their interests and rights in respect of shares of the corporation;
e. any other information to be prescribed by regulations; and

f. a description of each step that must be undertaken at least once during each financial year of the corporation to update the register and ensure that it is accurate and complete.

Corporations will also be required to update the register within 15 days of becoming aware of any information that must be declared in the register. Corporations may request from their shareholders any information necessary for completion of the register and such shareholders must, to the best of their knowledge, reply accurately and completely as soon as feasible. A corporation that is unable to identify any individuals with significant control over the corporation will have to follow the steps determined by the regulations.

The register may be consulted by shareholders and creditors of the corporation and may have to be disclosed to the Director of Corporations Canada upon request.

The offences for non-compliance carry serious penalties – a fine of up to $200,000 and/or six months' imprisonment – and apply to corporations and their directors, officers or shareholders who knowingly contravene the new requirements.

Corporations should start gathering information in order to ensure compliance by June 13, 2019. Additional information on the application of the new rules and the format of the register will be provided as soon as available.

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