

PRELIMINARY VERSION

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Legislative Summary

BILL C-42: AN ACT TO AMEND THE CANADA BUSINESS CORPORATIONS ACT AND TO MAKE CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER ACTS

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Legislative Summary of Bill C-42
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-42:
AN ACT TO AMEND
THE CANADA BUSINESS CORPORATIONS ACT
AND TO MAKE CONSEQUENTIAL
AND RELATED AMENDMENTS TO OTHER ACTS

1 BACKGROUND

1.1 INTRODUCTION

Bill C-42, An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts was introduced in the House of Commons on 22 March 2023 and received second reading on 31 March 2023.¹ The act furthers the government’s commitment to the implementation of a publicly accessible beneficial ownership registry of corporations governed under the *Canada Business Corporations Act* (CBCA)² in furtherance of its commitments to bolster Canada’s anti-money laundering and anti-terrorist financing regime. In addition to the CBCA, the bill makes amendments to the *Access to Information Act*,³ the *Income Tax Act*,⁴ the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,⁵ and the *Budget Implementation Act, 2022, No. 1*.⁶

1.2 BENEFICIAL OWNERSHIP

A “legal owner” of an asset holds the legal title to that asset in their own name, while a “beneficial owner” possesses certain benefits of ownership even if they do not appear on its legal title. For example, someone who is not the legal owner of a corporation might directly or indirectly have the power to influence the actions of that company and may therefore be considered its beneficial owner. Notably, legal and beneficial ownership are not mutually exclusive.

Corporations – which are considered legal persons in Canada – can be convenient vehicles for money laundering activity since they can obscure the owner’s identity. A business operating in Canada can be incorporated federally under the CBCA or under the provincial/territorial incorporation regime in which the business operates. Certain corporate information is collected and is made publicly accessible when a business is incorporated, including the names and addresses of the corporation’s directors. However, the directors of a corporation may not be its legal or beneficial owners and are often employed by the corporation to administer its day-to-day operations. This corporate information is kept by the jurisdiction under which the incorporation took place. Therefore, there is no central registry of corporate directors and, generally, no beneficial ownership information is recorded.

The Financial Action Task Force (FATF) is an intergovernmental body that is established by the Ministers of its Member jurisdictions, including Canada. According to FATF, its objective is to set standards and promote the effective implementation of legal, regulatory and operational measures for combatting money laundering, terrorist financing and other related threats to the integrity of the international financial system.

FATF has issued recommendations, which are recognized as the international standard and “set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction.”⁷ Beneficial ownership transparency is one element addressed by these recommendations. For example, FATF Recommendation 10 provides that financial institutions should be required to undertake customer due diligence measures at certain times, which measures include

[i]dentifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.⁸

International jurisdictions set differing thresholds for what they consider a “beneficial owner” based on the extent to which an individual possesses the benefits of ownership. FATF does not mandate such a threshold but has found a 25% threshold of control to be acceptable.⁹ This control can be via ownership interest (holding corporate shares), voting rights, or the ability to remove and replace corporate board members.

1.3 FEDERAL BENEFICIAL OWNERSHIP EFFORTS

As announced on 11 December 2017 the federal and provincial/territorial ministers of Finance agreed to pursue legislative amendments to their jurisdiction’s respective corporate statutes to ensure that corporations hold accurate and up-to-date information on beneficial owners, and that such information will be available to law enforcement, tax and other authorities.¹⁰ A number of such amendments have been introduced at the federal level from 2018 onwards. As a result, the CBCA now requires most federally incorporated businesses¹¹ to create and maintain a list of “individuals with significant control” (ISCs).

Section 2.1(1) of the CBCA defines an ISC as:

(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 them,
- (ii) the individual is the beneficial owner of them, or
- (iii) the individual has direct or indirect control or direction over them;

(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.

Section 2.1(3) of the CBCA defines the term “significant number of shares” as any number of shares that carry 25% or more of all voting rights or that is equal to 25% or more of all the outstanding shares measured by fair market value.

Section 21.1 of the CBCA details the register of individuals with significant control over the corporation that the corporation itself must create and maintain (the ISC Register). In particular, the ISC Register must contain, for each ISC, their:

- name;
- date of birth;
- latest known address;
- jurisdiction of residence for tax purposes;
- the day on which the individual became or ceased to be an individual with significant control;
- a description of how each individual is an ISC, which includes a description of interests and rights in respect of shares of the corporation; and
- any other information that may be prescribed in regulation.

In addition, the corporation must take reasonable steps to ensure that it has identified all such individuals, and that the information in the ISC Register is accurate, complete and up-to-date. It must also record the steps taken in doing so.

Sections 21.3 and 21.31 of the CBCA provides that information from the ISC Register must be disclosed by the corporation to the Director of Corporations Canada (the Director) and investigative bodies – including law enforcement and tax authorities – upon request, as well as to shareholders and creditors of the corporation on sending an affidavit.

2 DESCRIPTION AND ANALYSIS

2.1 AMENDMENTS TO THE *CANADA BUSINESS CORPORATIONS ACT*

Clause 1(1) amends section 21.1(1)(a) of the CBCA in order to expand the information collected within the ISC Register to include the ISC’s citizenship and address for service. Clause 1(2) amends section 21.1(2) of the CBCA to require corporations to update their ISC Register on the request of the Director and as prescribed, as well as on an annual basis.

Clause 2 amends section 21.21 of the CBCA to allow the Director to determine what information contained in the ISC Registers must be provided by corporations and creates an offence for any corporation in contravention of doing so, liable on summary conviction to a fine not exceeding \$5,000. Clause 6(2) amends section 212(3.1) of the act to allow the Director to dissolve a corporation that has not complied with section 21.21 of the act.

Clause 3 repeals sections 21.3(2) to 21.3(6) of the CBCA, which allowed shareholders and creditors of the corporation with ISC Registers, or their personal representatives, to access the information contained in the corporation’s ISC Register.

The publicly accessible beneficial ownership registry of corporations governed under CBCA is created through clause 4(1), which adds new section 21.303(1) to the act to require the Director to make the following information concerning ISC’s public:

- their name;
- their address for service, if it has been provided to the corporation;
- their residential address, if their address for service has not been provided to the corporation;
- the information referred to in paragraphs 21.1(1)(c) and 21.1(1)(d); and
- any other prescribed information.

Clause 4(1) also adds new section 21.302 to allow the Director to provide ISC information to a provincial corporate registry or a provincial government department or agency that is responsible for corporations in that province. Clause 4(2) would exempt the publication of ISC information on the register of prescribed individuals, or those who are less than 18 years of age. Clause 4(3) would allow an ISC to apply to the Director to have their information not made public if it would present a “serious threat” to the safety of the individual, they are incapable, the information is to be kept confidential under subsection 27(8) of the *Conflict of Interest Act*,¹² a similar provision of an act of the legislature of a province, or in prescribed circumstances.

Clause 7 amends section 237 to empower the Director to require any person to provide any records or other documents or information relating to compliance with the CBCA.

Clause 10 amends section 261(1) of the Act to empower the Governor in Council to prescribe what constitutes “direct influence,” “indirect influence,” or “control in fact” for the purposes of defining an ISC under sections 2.1(1)(b) and 21.31(3)(c).

Clause 15 creates whistleblower protections through new section 266.1 for those that provide the Director with information related to the commission of wrongdoing that contravenes the CBCA, relates to the formation of a corporation for a fraudulent or unlawful purpose or any fraudulent or dishonest actions of persons concerned with a corporation. The Director will not make the identity of such individuals public without their consent and may forward such information to law enforcement or tax authorities, as well as the Financial Transactions and Reports Analysis Centre of Canada and any prescribed body.

Consequential or co-ordinating amendments – as well as those that expand the Director’s ability to request documents to also include requests for other information – are made by clauses 5, 6(1), 8, 9, 11, 12, 13 and 14 to sections 21.4(1), 212(1)(a)(iii), 258.1, 259(1), 261.1, 262.2, 263.1 and 266(1) of the CBCA, respectively.

2.2 CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER ACTS

Clause 16 makes consequential amendments to Schedule II of the *Access to Information Act*.

Clause 17 adds new section 241(4)(u) to the *Income Tax Act* to authorize the communication of certain taxpayer information to an official of the Department of Industry, solely for the purpose of verifying and validating the data that must be filed by certain private corporations under section 21.21 of the CBCA in relation to the corporate beneficial ownership registry.

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Clause 18 amends section 73(1)(c) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to expand the Governor in Council's ability to make regulations concerning the reporting of any discrepancies in information on the beneficial ownership or control of an entity to government institutions or agencies.

Clauses 19 and 20 make consequential amendments to section 266 of the CBCA.

The provisions of this act come into force on a day or days to be fixed by order of the Governor in Council.

NOTES

1. [Bill C-42, An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts](#), 44th Parliament, 1st Session.
2. [Canada Business Corporations Act](#), R.S.C. 1985, c. C-44.
3. [Access to Information Act](#), R.S.C. 1985, c. A-1.
4. [Income Tax Act](#), R.S.C. 1985, c. 1.
5. [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#), S.C. 2000, c. 17.
6. [Budget Implementation Act, 2022, No. 1](#), S.C. 2022, c. 10.
7. Financial Action Task Force (FATF), [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations](#), p. 7.
8. For the full text of the recommendation, see FATF, [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations](#), p. 14. See also the related interpretive note at p. 64.
9. As a result, it is widely used, for example in the Organisation for Economic Co-operation and Development's Automatic Exchange of Information Standard and the European Union's Fourth Anti-Money Laundering Directive. Inter-American Development Bank and the Organisation for Economic Co-operation and Development, [A Beneficial Ownership Implementation Toolkit](#), March 2019, p. 14.
10. Department of Finance Canada, [Finance Ministers Reach Agreements on Behalf of All Canadians](#), News release, 11 December 2017.
11. With the exception of corporations listed in section 21.1(7) of the *Canada Business Corporations Act* (generally public corporations).
12. [Conflict of Interest Act](#), S.C. 2006, c. 9, s. 2.