

# Corporate Brief

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## CANADA BUSINESS CORPORATIONS ACT NEW FILING REQUIREMENT AND U.S. CORPORATE TRANSPARENCY ACT COMING INTO EFFECT IN 2024

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Beneficial ownership reporting, also known as corporate transparency reporting, is the practice of disclosing certain personal information about the people who ultimately own and/or control a corporation. The purpose of requiring such reporting is to increase transparency in corporate ownership in order to combat money laundering, terrorist financing, and other financial crimes.

In Canada, the requirement for private Canada Business Corporations Act (CBCA)<sup>[1]</sup> incorporated companies to create and maintain a detailed record of individuals with significant control (ISCs), was introduced in 2019. Earlier this year, the Canada Business Corporations Regulations (CBCA Regulations)<sup>[2]</sup> were amended to provide clarity in the requirements, following several years of complaints that the rules were too vague. On January 22, 2024, a new filing requirement will come into effect, whereby subject companies will have to submit their ISC Registers (as defined below) to Corporations Canada.

The U.S. recently passed similar legislation, thereby creating a new corporate transparency reporting requirement for companies doing business south of the border. The Corporate Transparency Act (CTA),<sup>[3]</sup> initially passed in 2021, came into effect on January 1, 2024. The CTA creates a requirement for companies formed or registered to do business in a U.S. state to report Beneficial Ownership Information (BOI) to the Financial Crimes Enforcement Network (FinCEN).

Below we answer a series of frequently asked questions, providing a high-level overview regarding some of the more common concerns about the form, depth and particulars of the reporting requirements under the CBCA and the CTA, respectively.

### What is the report called in the legislation?

- CBCA: Register of Individuals with Significant Control (ISC Register).<sup>[4]</sup>
- CTA: Beneficial Ownership Information Reporting (BOI Report).<sup>[5]</sup>

### Who is required to create an ISC Register/BOI Report?

- CBCA: CBCA-incorporated corporations (including a company or other body corporate),<sup>[6]</sup> subject to certain exceptions, set out below.

- CTA: Corporations (and limited liability companies, and other similar entities) formed in the U.S. or formed elsewhere but registered to do business in the U.S.,<sup>[7]</sup> subject to certain exceptions, set out below.

## Who is exempt from creating an ISC Register/BOI Report?

- CBCA: Public companies (i.e., reporting issuers or issuers that have securities listed on a stock exchange)<sup>[8]</sup> and members of a “prescribed class”, which includes wholly-owned subsidiaries of public companies, Crown corporations, and certain ‘Crown-like’ corporations (i.e., corporations wholly owned by the Crown or wholly-owned subsidiaries of such corporations).<sup>[9]</sup>
- CTA: Public companies, large companies (as described in the CTA), companies that exercise governmental authority, banks, credit unions, brokers/dealers, exchanges/clearing agencies, other entities registered with the Securities Exchange Commission, among others (there is an extensive list of exempt entities).<sup>[10]</sup>

## Who are the target individuals that need to be identified?

- CBCA: Any individual with significant control, meaning a natural person with 25% or more control over the corporation, direct or indirect.<sup>[11]</sup>
- CTA: Any applicant (meaning a person who creates or registers a company after January 1, 2024) and any beneficial owner, meaning an individual who exercises substantial control over the entity or owns or controls 25% or more of the ownership interest of the entity, subject to certain exceptions.<sup>[12]</sup>

## What must an ISC Register/BOI Report include?

- CBCA: With respect to the ISCs:
  - the name, birth date and latest known address of each ISC;
  - the jurisdiction of residence for tax purposes of each ISC;
  - the day on which each individual became or ceased to be an ISC;
  - a description of how each individual is an ISC, including their interests and rights in the shares of the corporation;
  - any other prescribed information; and
  - a description of each step taken in accordance with updating the ISC Register.<sup>[13]</sup>
- CTA: Corporate information and background, including the legal name, address, jurisdiction under which the company was formed, etc.<sup>[14]</sup> With respect to the BOI:
  - the full legal name, birth date, and residential or business address; and
  - the unique identifying number from an acceptable identification document (e.g., a passport, driver’s license, etc.) as well as an image of the identifying document,<sup>[15]</sup> or the individual’s FinCEN identifier (being an identifier that FinCEN has provided to a previously identified individual).<sup>[16]</sup>

## What steps must the corporation take in order to identify the ISCs/BOI?

- CBCA: The corporation must take “reasonable steps” to identify ISCs, meaning sending a request for information to:
  - individuals listed in the ISC Register for any change to the information in the register about them;

- shareholders of the corporation to confirm as to whether or not they have become an individual with significant control over the corporation; and
- any other person that may have either relevant knowledge of an ISC, or knowledge of another person who has relevant knowledge of an ISC, for any contact information that they have with respect to an ISC or another person that may have relevant knowledge about such an ISC.<sup>[17]</sup>
- CTA: While specific required steps are not set out in the legislation, the corporation should maintain an auditable trail for each BOI request it makes, including the reason for the request, the date of the request, any information received in response, etc.<sup>[18]</sup>

## What if the corporation is unable to identify any/all ISCs/BOI?

- CBCA: Where a corporation cannot identify any ISCs, its ISC Register must contain a statement that the corporation has determined that:
  - it has been unable to identify any ISCs or that there are no ISCs; and
  - a description of the steps taken by the subject corporation to identify ISCs.<sup>[19]</sup>
- CTA: Where a corporation cannot obtain the required information, it can submit comments and complaints to the Inspector General of the Department of the Treasury and/or the Secretary of the Treasury regarding the BOI notification and information collection process or regarding the accuracy, completeness, or timeliness of such information.<sup>[20]</sup>

## What is a subject entity currently required to do with the report?

- CBCA: Maintain at its registered office or any other place as designated by the company's directors.<sup>[21]</sup>
- CTA: N/A – FinCEN cannot accept reports before January 1, 2024.

## When is filing of the first report due?

- CBCA: Starting January 22, 2024, companies subject to the ISC Register requirements will be required to file their ISC registers with Corporations Canada annually, along with their annual returns.<sup>[22]</sup> Beyond January 22, 2024, new companies will be required to file the ISC Register during the company's incorporation (filing the ISC Register will be required as part of the incorporation application), or within 30 days of an amalgamation or continuance under the CBCA.<sup>[23]</sup>
- CTA: Subject companies registered or created before January 1, 2024 have until January 1, 2025, to file the first report with FinCEN.<sup>[24]</sup> Companies registered or created on or after January 1, 2024 must file the first report with FinCEN within 30 days of the entity's creation.<sup>[25]</sup>

## How often does the report need to be updated?

- CBCA: At least once during each financial year (a company should ensure its ISC Register is up-to-date in advance of filing),<sup>[26]</sup> and within 15 days of learning of any updates or changes to the information in the report.<sup>[27]</sup>
- CTA: Within 30 days after any change occurring.<sup>[28]</sup>

## What is the maximum penalty for an offence committed under the legislation?

- CBCA: Summary conviction, \$200,000 fine and imprisonment for up to six months.<sup>[29]</sup>
- CTA: Civil penalties and/or criminal sanctions including a maximum \$500,000 fine and imprisonment for up to 10 years.<sup>[30]</sup>

At the provincial level, the Alberta Business Corporations Act (ABCA) does not have a requirement for ABCA-incorporated companies to create and maintain a register of individuals with significant control — yet. With the update to the federal Regulations and the introduction of the new U.S. rules, however, time will tell whether the Alberta legislature decides to follow with its own rules.

If you would like more information on the new U.S. reporting requirements, we encourage you to visit FinCEN's website and to review its Compliance Guide which provides detailed direction to U.S. companies regarding how to comply with the new reporting requirements. If we can assist you in creating or maintaining your ISC Register, contact any member of our Business Law Group.

[1] Canada Business Corporations Act, RSC, 1985, c C-44.

[2] Canada Business Corporations Regulations, 2001, SOR/2001-512.

[3] William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub.L. No. 116-283 (H.R. 6395), 134 Stat. 338, 116th Cong. 2d Sess.

[4] CBCA, s 21.1(1).

[5] CTA, § 5336.

[6] CBCA, s 2(1).

[7] CTA, § 5336 (a)(11)(A).

[8] CBCA, s 21.1(7).

[9] CBCA Regulations, s 34.

[10] CTA, § 5336 (a)(11)(B).

[11] CBCA s 2.1.

[12] CTA, § 5336(a)(3).

[13] CBCA, s 21.1(1).

[14] See CTA Regulations / Vol. 87, No. 189 (CTA Regulations) § 1010.380(b)(1)(i) for the full list of corporate information required.

[15] CTA Regulations § 1010.380(b)(1)(ii)(E). Note: There is an application process available to obtain a unique FinCEN identifier in order to ease the identification process for future disclosure of beneficial ownership status.

[16] CTA, § 5336 (b)(2)(A).

[17] CBCA Regulations, s 33(1). Note: Section 33(2) specifies what information the company should request.

[18] CTA, § 5336 (c)(3)(H).

[19] CBCA Regulations, s 34(1).

[20] CTA, § 5336 (h)(4).

[21] CBCA, s 21.1(1).

[22] See <https://ised-isde.canada.ca/site/corporations-canada/en/individuals-significant-control-file-your-information> for more information regarding the filing process and which information could be made publicly available.

[23] See <https://ised-isde.canada.ca/site/corporations-canada/en/individuals-significant-control-file-your-information> for Corporations Canada's notice issued last month clarifying new filing requirements coming in early 2024.

[24] CTA Regulations § 1010.380(a)(1)(iii).

[25] CTA Regulations § 1010.380(a)(1)(i)-(ii).

[26] CBCA, s 21.1(2).

[27] CBCA, s 21.1(3).

[28] CTA Regulations § 1010.380(a)(2).

[29] CBCA, ss 21.4(5).

[30] CTA, § 5336 (h)(3).

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