

BILL 24 AND THE 2022 CHANGES TO THE NEWFOUNDLAND AND LABRADOR CORPORATIONS ACT: HOW DO YOU COMPLY?

October 11th, 2022

On April 1st, 2022, Bill 24, which set out amendments to the province's Corporations Act (the "Act") came into force. This Bill and the resulting amendments went largely unnoticed by the business community. But make no mistake, the amendments contained in Bill 24 are significant and should be understood by all business owners in the province. The purpose of this article is to bring these changes to the attention of our colleagues and clients and outline steps you can take to ensure compliance.

The amendments in Bill 24, in short, provided for the following two major changes:

1. Newfoundland and Labrador incorporated companies must now keep a register of persons who have "significant control" over the company, and to provide this information to certain third parties if requested; and
2. The requirement that 25% of company directors in Newfoundland and Labrador be Canadian residents has been eliminated.

"Significant Control" Registry – What does it mean and how do you comply?

The obligation to report on who "controls" your company is by far the most far-reaching change to the Act in many years. This change requires you to record, track, and disclose persons having "significant control" in your company – and looks behind any corporate structure you may have in place that would otherwise keep your ownership affairs private. That said, Bill 24 is not a novel concept; this change served to bring the Newfoundland Act into conformity with other Canadian provinces and the Canada Business Corporations Act. As such, similar to other provinces, the confidentiality over who "controls" a company that existed in Newfoundland and Labrador prior to these amendments has now been lost.

Under the amendments – now effective since 1 April 2022, all companies incorporated or registered under the Act must maintain a list of persons with "significant control" over the company. The definition of "significant control" can be summarized as anyone who controls or influences more than 25% or more of the voting rights or outstanding shares of the company, either directly or indirectly.

The registry of these persons must be kept current, and the company will be obligated “at least once during each fiscal year” to take reasonable steps to ensure that it has identified any changes in the individuals with “significant control” over the company.

In addition to maintaining your “significant control” registry (also referred to as an “ISC Registry”), you must also be prepared to disclose this registry, or information from it, to certain third parties upon request. These parties include the Registrar of Companies, certain investigative bodies (CRA being the main one), shareholders, and creditors of the company. Once the company receives a request for disclosure it is required to provide the information without exception. Failure to comply with these new requirements to maintain and disclose an ISC Registry of persons with “significant control” could result in an offence under the Act, with liability on conviction of a fine of up to \$5,000. However, it does not end there. A director, officer or shareholder who “knowingly authorizes, permits or acquiesces in the contravention” of the Act is personally liable on conviction for a fine of up to \$200,000 and/or 6 months in prison.

What should you do next?

We are recommending that all Newfoundland and Labrador companies take steps to ensure they are in compliance with these new requirements of the Act. We suggest the following:

- For most companies the ISC Registry will look very similar to the companies share registry, though it will contain some more detailed information not typically found in a share registry. Our team has prepared an updated suite of corporate record book documents to update and maintain our clients corporate records to meet with the new requirements under the Act.
- For our clients who have corporate shareholders, shares held by trusts or other more sophisticated arrangements, it may take more work to flesh out and maintain the ISC Registry on a go forward basis. Our team can assist you in helping you determine your obligations.
- Finally, it is important to remember that each company circumstance is unique and often times your disclosure obligations will not be clear. It is recommended that you speak with a lawyer to determine your obligations as a officer, director and shareholder of a Newfoundland and Labrador company operating under the Act.

Our team at O’Keefe & Company are pleased to assist new and existing clients with updating their corporate record books to ensure compliance with these new regulations. Please contact us for a free consultation on your needs.



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