

Corporate Property Interests: New Ontario Record-Keeping Requirements Scheduled To Take Effect Imminently

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Author: Dan Giantsopoulos

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Ontario corporate legislation is being amended to provide for new record-keeping obligations.

Corporate clients should take note of the amendments to the legislation and are encouraged to consider -- sooner rather than later -- what they will need to do to ensure compliance.

The amendments to the corporate legislation arise from the introduction by the Ontario government of the *Forfeited Corporate Property Act, 2015* and the *Escheats Act, 2015*. Both new statutes are scheduled to come into force on December 10, 2016. (Escheat means the property of an owner who dies without heirs reverts to the state.)

These new statutes will impose obligations on virtually all corporations created or continued under Ontario law.

The new *Forfeited Corporate Property Act, 2015* imposes record-keeping obligations on Ontario corporations by way of amendments to the *Ontario Business Corporations Act* (the "OBCA").

Under the OBCA, these new record-keeping obligations:

- will apply as of December 10, 2016 (i.e. 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 Ontario corporation is required to create and maintain at its registered office "a register of the corporation's ownership interests in land in Ontario," including

“a building or structure that is owned separately from the land on which the building or structure is located or an interest in such a building or structure.”

The purpose of this appears to be so that if a corporation is dissolved involuntarily (for example, for failure to pay corporate taxes), the government can easily determine whether any real property has escheated or forfeited to the Crown.” Blaney McMurtry LLP has considerable expertise and can help clients prepare and maintain the necessary registers.

Special attention should be paid to the term “ownership interest,” which potentially extends to both legal and beneficial ownership interests in real property.

Once the amendments to the corporate legislation become effective, the relevant statutes will require each corporation to maintain (and 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 ownership (legal or beneficial) of every property in Ontario and, if applicable, the date of disposition of such property.

Ontario corporations will be required to maintain with the property register (for each property listed in the register) “a copy of any deeds, transfers or similar documents” that contain any of the following information:

- the land titles or registry division and the property identifier number;
- the Ontario municipal address, if any;
- the legal description, and
- the assessment roll number, if any.

The wording of the amendments to the corporate legislation suggests that the 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*; and
- DOES NOT extend to non-resident corporations (incorporated outside Ontario), even if such entities hold ownership interests in real property situated in Ontario.

In addition to the record-keeping obligations detailed above, the new statutes introduce legislation that affect the:

- dissolution and/or revival of Ontario corporations, and
- forfeiture to the provincial Crown of both real and personal property owned by such corporations.

Ontario corporations should take note that, by December 10, 2018 (two years hence), the amendments to the corporate legislation will require ALL corporations to prepare and maintain a register of all “ownership interests” in Ontario land held by the corporation.

As noted above, every Ontario corporation that is incorporated (or continued into Ontario from another jurisdiction) on or after December 10, 2016 will need to comply with amendments to the corporate legislation immediately following its incorporation or continuance.

Different time frames for compliance will apply to corporations governed by the Not-for-Profit Corporations Act, 2010, which is not yet in force.

Given the lack of publicity that these corporate amendments have received to date, Blaney McMurtry LLP anticipates that further guidance will continue to surface following the effective date of the new legislation.

We encourage you to contact the corporate lawyers of Blaney McMurtry LLP with any questions or comments you may have about the amendments.

Dan Giantsopoulos is a partner in Blaney McMurtry's corporate/commercial and international trade and business practice groups. His practice focuses on advising a wide variety of businesses of various sizes (whether corporations, partnerships or joint ventures) and their owners/operators in the areas of corporate and commercial law, estate planning and administration, and domestic tax. He is frequently called upon to draft or review Share/Asset Purchase and Sales Agreements, Shareholders' Agreements, Consulting and Employment Agreements; to structure tax driven corporate reorganizations, and to advise on shareholder disputes. He advises and represents various American public and private companies with respect to establishing and growing their Canadian business operations.

Dan can be reached at (416) 593-2984 and dgiantsopoulos@blaney.com.

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