

Transparency Register FAQ

If you are an existing corporate client of Baker Newby, your company will have recently received a letter enclosing a questionnaire for completion by all potential “significant individuals” of the company, which is now required due to the government’s recent legislative amendments targeted at reducing money laundering.

In an effort to assist with the required disclosure, we have included below some responses to a sampling of frequently asked questions we have received in the last few months:

1. If a Trust holds 25% or more of the shares in the company what box do I check off to indicate why I’m a “significant individual”?

Any Trustee who is a registered holder of the shares on behalf of the Trust would need to check off the first box under question 3 in the Questionnaire to indicate they are the registered owner of 25% of the shares. In addition, if under the terms of the Trust Agreement any beneficiary or settlor of the Trust has the legal right to direct how the Trustee exercises the Trust’s control over the shares, then that person would also be a significant individual due to having indirect control of the Trust (which would be box #4 under question 3 of the Questionnaire).

2. Who fills out the Questionnaire if there is nobody who seems to be a significant individual at all?

If the company determines that it has no significant individuals, then the Questionnaire does not need to be completed by anyone. However, in that case we would request that a Director of the company confirm in writing with our corporate department (by email if easiest) that the company has determined that there are in fact no significant individuals. We still need to create a Transparency Register for the company which indicates that currently there are no significant individuals after due inquiry by the company.

Some examples of companies which would have no significant individuals are as follows:

- A company with 10 shareholders who each hold 10% of the shares, who haven’t entered into a Shareholders Agreement agreeing to vote their shares together as a “block”, and who aren’t related to each other (i.e., spouses, children and other family members who live in the same household) such that shareholders holding at least 25% of the shares are deemed to “act in concert” under the legislation; and
- A company where the sole shareholder is a non-profit society incorporated under the *Societies Act* (British Columbia) with dozens of members who control the election of the society’s Board of Directors.

3. Do all the Directors of the Company have to fill out the Questionnaire?

No, just because someone is a Director does not mean they are a significant individual and have to fill out the Questionnaire. The Transparency Register is concerned with direct or indirect control over 25% of the company’s shares (defined as a “significant number of shares”) or the right to elect the majority of the Board of Directors of the company, and if a Director does not fall into one of those categories then he or she would not be a significant individual.

4. If I have 40% of the shares in the company (and therefore am presumptively a significant individual) and my spouse has 10% of the shares, do we both have to fill out a Questionnaire?

Yes, you would each have to fill out a separate Questionnaire because spouses are deemed to “act in concert” for the purposes of the transparency legislation, and as a result their interests are deemed

to be added together such that you would each be viewed as having a 50% interest, making you both “significant individuals”.

5. How do I figure out the date that I became a significant individual?

This is often a complicated question, but if you have held 25% or more of the shares in the company since the date of incorporation, or had “control” over a holding company or other intermediary entity that holds 25% or more of the shares in the company since the date of incorporation (or some combination of that), then simply referring to the incorporation date for the company will normally be an accurate way to track the date you became a significant individual. Otherwise, if your interest in the company has changed over time, it will be necessary to review the Central Securities Register to see exactly when you reached the threshold of becoming a significant individual.

6. For Question 5 (the “True / False” question) regarding whether or not I “hold shares in trust, as agent, or as personal or other legal representative for another person”, what does this mean?

Examples of situations where shares would be held “in trust, as agent, or as personal or other legal representative for another person” include the following:

- Holding shares in trust for the benefit of any other person;
- Holding shares on behalf of anyone under 19;
- Being registered as a shareholder in your capacity as an Executor under a Will; and
- Holding and voting shares on someone’s behalf in your capacity as an Attorney acting pursuant to an Enduring Power of Attorney document.

7. For Question 5 (the “True / False” question) regarding whether or not another person “can direct my decision making or influence my decision making” what does this mean?

This question does not relate to whether you consult with a spouse or another trusted advisor before making decisions regarding how to vote your shares, but rather refers to whether another person has the legal right to direct or influence your decision making pursuant to a binding agreement or other form of arrangement, such as a Shareholders Agreement or a “voting trust” arrangement where you are obligated to take directions from another party as to how to vote your shares.