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## New Transparency Register Requirements for Private Ontario Corporations

By Chaim Sapirman and Dania Mastrorillo

Effective January 1, 2023, the *Business Corporations Act* (Ontario) (the “**OBCA**”) was amended to require each private Ontario corporation (a “**Corporation**”) to prepare and maintain a “transparency register” (the “**Transparency Register**”). A Transparency Register is a register that includes certain personal information about individuals with significant control or influence over a Corporation. The OBCA amendments are intended to assist in the detection of corporate crime (including the use of corporations for money laundering, tax evasion and other illegal financial activities). The Transparency Register provisions are similar to those enacted for federally-incorporated corporations and provincial corporations in British Columbia, Saskatchewan, Manitoba, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.

A Corporation’s Transparency Register must include certain personal information regarding its “individuals with significant control”, including full names, addresses, jurisdictions of residence, and when and how the individuals became “individuals with significant control”. The Transparency Register must also list the steps the Corporation took to ensure the Transparency Register is accurate and up-to-date.

An “individual with significant control” means an individual who fits any of the following criteria:

1. the individual holds a 25 percent or greater interest, either by votes or fair market value, directly or indirectly in a Corporation (including registered shareholdings, beneficial ownership of shares and direct/indirect control or direction over the shares); or
2. the individual has direct or indirect influence that, if exercised, would give him or her “control in fact” over a Corporation. In making a “control in fact” determination, “all factors that are relevant in the circumstances” must be considered.

The OBCA permits only certain governmental bodies and inspecting officials, such as members of the police force, designated regulatory bodies (including the Ontario Securities Commission) and tax officials to request and obtain disclosure of a Corporation’s Transparency Register. The Transparency Register will not be available to the public, nor will the OBCA provisions require disclosure to shareholders or creditors.

The OBCA provides penalties for failure to comply with the new Transparency Register provisions, including fines of up to \$200,000 against a Corporation or its directors, shareholders and officers, and/or up to six months imprisonment for directors, shareholders and officers.

A Corporation must maintain the Transparency Register at its registered office (or at such other location in Ontario as the directors of the Corporation may designate). The Transparency Register must be reviewed and, if necessary, updated at least once in every fiscal year to ensure it is accurate. If new information is noted during an annual review, it must be recorded in the Transparency Register within 15 days of the date on which a Corporation becomes aware of such information. Additionally, the Transparency Register must be updated whenever relevant information is available within 15 days of the date that a Corporation becomes aware of such information.

If you have any questions with respect to the Transparency Register process or the foregoing information, we encourage you to reach out to a member of our Business Law Group, who would be pleased to assist you.

## Authors



**Chaim Sapirman**  
Partner

**Tel:** 416 777 5196  
csapirman@torkinmanes.com



**Dania Mastrorillo**  
Associate

**Tel:** 416 775 8825  
dmastrorillo@torkinmanes.com

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