

Treasury Adopts New Beneficial Ownership Reporting Regulations for US and Foreign Persons

On January 1, 2021, The Corporate Transparency Act (“CTA”) was enacted. The CTA authorized the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) to set up a secure beneficial ownership registry for information on entities created in or qualified to do business in the United States and to collect information from entities related to the beneficial ownership of such entities that may be accessed by federal agencies and law enforcement departments (federal, state and local).

On September 29, 2022, FinCEN adopted regulations to provide greater detail for the implementation and operation of the CTA by requiring the disclosure of beneficial ownership of such entity as further discussed below (the “Disclosure Regulations”). The Disclosure Regulations set forth the definition of (i) beneficial ownership, (ii) reporting company, and (iii) the type of information that will need to be disclosed.

Determination of Beneficial Owner¹. The term Beneficial Owner includes any individual who, directly or indirectly, either ***exercises substantial control*** over such reporting company or ***owns and controls at least 25 percent of the ownership interests*** of such reporting company. The determination of substantial control over a reporting company includes:

- Service as a senior officer,
- Authority over appointment/removal of senior officer(s) or a majority or dominant minority of the members of the board of directors (or similar),
- Direction, determination, or decision of, or substantial influence over, certain important matters affecting the reporting company,
- “Any other form of substantial control over the reporting company,”
- Those with the ability to direct, determine, decide, or exercise substantial influence over traditional “major decisions” (e.g., business purpose, financings, sales, major corporate actions, budgets, compensation, material contracts, governing documents, etc.)

¹ For companies that are formed on or after the effective date, in addition to reporting a beneficial owner, the CTA requires information for a “company applicant.” A company applicant is defined as the individual who files the document that creates the entity. In the case of a foreign reporting company, a company applicant would be the individual who files the document that first registers the entity to do business in the United States. This requirement will include the lawyer who prepares and files the incorporation documents as well as the lawyer’s employee (paralegal).

However, property managers and others exercising ordinary day-to-day decisions may not be considered beneficial owners.

Ownership includes an economic or voting interest in the entity or convertible debt, equity kickers, warrants, or options.

Reporting Companies. Reporting Company(ies) include domestic or foreign companies that are:

- corporations,
- limited liability companies, and
- any other entity that is created by filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe

Type of Information to be Disclosed. The Disclosure Regulations require disclosure of beneficial owners (both US and foreign persons) of domestic entities or foreign entities that have filed in a state in the US for authority to do business in the US. The rule seeks the following information required to be reported for the beneficial owner by a Reporting Company:

- Full name
- Any trade name or d/b/a name
- Business street address
- State or Tribal jurisdiction of formation
- TIN (if no TIN issued, Dunn and Bradstreet Data Universal Numbering System Number or Legal Entity Identifier)

List of Exempt Entities Under the CTA. The CTA provided a list of exempt entities. These exempt entities are considered to be “larger more heavily regulated entities from its reporting requirements” (i.e., entities that are subject to federal and state securities regulations such as public companies, financial firms, RIAs, and insurance companies²).

² 31 CFR Part 1010, [federalregister.gov/d/2022-21020](https://www.federalregister.gov/d/2022-21020), page 30.

The following entities are exempt from the Disclosure Regulations:

SEC reporting issuer	Governmental authority
Banks	Credit unions
Depository institution holding company	Money transmitting business
Broker/dealer in securities	Securities exchange or clearing agency
Other Exchange Act registered entity	Investment company or investment adviser
Venture capital fund adviser	Insurance company
State-licensed insurance producer	Commodity Exchange Act registered entity
Public accounting firm	Public utility
Financial market utility	Pooled investment vehicle
Tax-exempt entity	Entity assisting tax-exempt entity
Certain publicly listed entities	Subsidiary of certain exempt entities
Inactive entity	

Effective Date. The Disclosure Regulation is effective January 1, 2024. Reporting companies created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after creation or registration to file their initial reports.

For additional information, please contact any of the following: Jess Bahs at jess.bahs@fisherbroyles.com, Stuart Anolik at stuart.anolik@fisherbroyles.com with any questions or more specific situations.

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