

CLIENT ALERT

The Corporate Transparency Act: What's New for the Insurance Industry

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Overview of the U.S. Corporate Transparency Act

In the most comprehensive overhaul to the U.S. anti-money laundering and countering the financing of terrorism regime since the USA PATRIOT Act in 2001, the U.S. Congress passed the Anti-Money Laundering Act of 2020 into law on January 1, 2021. The most significant part of the Anti-Money Laundering Act is Title LXIV, the Corporate Transparency Act (“CTA”), which was enacted in 2021, but key implementing regulations did not go into effect until January 1, 2024. The CTA is primarily aimed at preventing money laundering and other illicit activities through the use of shell companies or opaque ownership structures. The CTA introduces broadly similar requirements with respect to beneficial ownership information reporting when compared to existing legislation promoting corporate transparency in other jurisdictions such as the United Kingdom (UK) and Bermuda, and although the drivers are the same, there are some key differences as outlined further below.

The CTA requires certain domestic and foreign entities to report beneficial ownership information to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“**FinCEN**”) and for FinCEN to maintain that information in a non-public, secure database, available only to law enforcement and federal regulators (among others). Although FinCEN already required covered “financial institutions” to identify and verify the identity of certain beneficial owners,¹ the CTA imposed new

¹ These requirements are detailed in FinCEN’s Customer Due Diligence Requirements for Financial Institutions (the “CDD Rule”) (81 Fed. Reg. 29397) (May 11, 2016), which apply only to covered financial institutions, including U.S. banks, mutual funds brokers, dealers in securities, futures commission merchants, and introducing brokers in commodities.

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beneficial ownership reporting requirements on “Reporting Companies” more broadly, which significantly expanded reporting requirements beyond what had been required under the CDD Rule.

The beneficial ownership reporting requirements under the CTA and FinCEN’s implementing regulations² came into effect on January 1, 2024, and require certain entities, known as “Reporting Companies”, to file a one-time report³ to FinCEN with identifying information on the company, its beneficial owners, and certain individuals involved in filing the document that first creates or registers the entity (the “**Company Applicants**”). The reported beneficial ownership information will be available to Federal, State, local, and Tribal government officials as well as certain foreign officials in more limited circumstances, for national security, intelligence, and law enforcement purposes. Financial institutions and their regulators may also obtain access in certain circumstances and with the consent of the Reporting Company.

The requirements for reporting beneficial ownership under the CTA are more closely comparable to those existing in Bermuda than those in the UK, where entities are under an ongoing obligation to maintain beneficial ownership registers. In Bermuda, many of our clients maintain non-exempt companies (i.e. those which are not funds, listed on a recognized stock exchange or overseas companies), that must maintain and file beneficial ownership registers with the Bermuda Monetary Authority (BMA), and which are also available for inspection by the Bermuda Registrar of Companies – but the registers, as in the United States, are not made public. Whilst we are aware that Bermuda has previously indicated that it intends to provide publicly accessible beneficial ownership registers in future, it is not there yet.

In contrast, in the UK, the ‘Persons with Significant Control’ (PSC) regime adopted in 2016 requires UK companies to identify publicly on Companies House those individuals or entities that meet the relevant conditions for registration. More recently, since 1 August 2022 as a requirement of the Economic Crime (Transparency and Enforcement) Act 2022, the UK expanded its disclosure requirements to require overseas entities (constituting a legal entity governed by the law of a territory outside of the UK) to take reasonable steps to identify registrable beneficial owners and maintain their details on Companies House, in a manner similar to UK registered companies – requiring previously anonymous foreign owners of UK freehold and leasehold property (for a term of seven years or more granted on or after 1 January 1999) to reveal their identities. Significantly, any overseas entity seeking to purchase, lease or grant security over UK property must register their details at Companies House before completing the acquisition or financing – going further than other disclosure regimes, particularly in the U.S. and Bermuda discussed in this note.

² See 31 C.F.R. 1010.380.

³ While this is a one-time report, there is an ongoing obligation on Reporting Companies to update or correct information provided to FinCEN within 30 days.

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Reporting company requirements

The CTA and its implementing regulations require every “Reporting Company⁴” to provide specified information for each of its individual beneficial owners, defined as any individual who, directly or indirectly, either (i) exercises substantial control over such Reporting Company; or (ii) owns or controls at least 25 percent of the ownership interests of such Reporting Company. “Ownership interests” are broadly defined and include equity and other types of interests, including capital and profit interests, convertibles, warrants or other rights to acquire (and so would include voting and non-voting interests). Notably, a non-U.S. entity can be within the scope of the new rule and be required to file a beneficial ownership report if it is registered to do business in the United States.

The term “Reporting Companies” refers to corporations and LLCs and any other entity created by the filing of a document with a secretary of state or any similar office under the law of a state or American Indian tribe (commonly including limited partnerships) created under the laws of the United States or foreign entities registered to do business in the United States. The CTA sets forth 23 types of entities that are exempt from the scope of the term “Reporting Company,” primarily because such entities are already subject to reporting requirements of equivalent scope under different regulations.

The applicability of the CTA regime broadly mirrors the principles behind the equivalent regimes in the UK and Bermuda in capturing legal entities incorporated or registered in the relevant home jurisdiction. However, in contrast, as noted above non-U.S. entities can be caught by the scope of the CTA regime. In our experience, overseas entities are not required to file registers under the Bermuda regime, nor are they generally caught by the UK regime except where they own UK property, as discussed above.

Relevant Exemptions

There are several exemptions⁵ from the CTA's filing requirements that may be applicable to those in the U.S. insurance industry, including insurers, reinsurers, and brokers. In particular there is an exemption for (1) insurance companies,⁶ and (2) state-licensed insurance producers, if the entity is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State and the entity has an operating presence at a physical office within the United States.

⁴ Specifically, Reporting Companies are defined as any entity that is a corporation or limited liability company that is: (i) created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe (a domestic reporting company); or (ii) formed under the law of a foreign country and registered to do business in any State or Tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe (a foreign reporting company).

⁵ See FinCEN [FAQ C.2](#) for a full list of exempt entities.

⁶ The entity must be an “insurance company” as defined in [section 2 of the Investment Company Act of 1940 \(15 U.S.C. 80a-2\)](#).

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In addition, the exemption for large operating companies and subsidiaries may also be applicable to entities operating in the insurance industry. An entity qualifies as a large operating company if six factors are met, including requirements that the entity employs more than 20 full-time employees and more than 20 full-time employees of the entity are employed in the United States, that the entity has an operating presence at a physical office within the United States, and that the entity filed a tax return in the United States of \$5,000,000 in gross receipts or sales. Subsidiaries of certain exempt entities are also exempt if the entity's ownership interests are controlled or wholly owned, directly or indirectly, by an exempt entity (with some exceptions⁷).

The available exemptions are generally more extensive when compared to the UK and Bermudian regimes, which apply more broadly to entities registered in those jurisdictions without, for example in the UK, exempting insurance companies. In the UK in particular, broadly speaking only sole traders and UK registered entities with voting shares admitted to UK, EEA or certain other recognized publicly traded markets are not required to keep beneficial ownership registers.

Reporting Requirements under the CTA

For entities that are Reporting Companies and that do not qualify for an exemption, beneficial ownership reports must be filed with FinCEN. Reporting Companies must report information on the following:

- each individual who is a beneficial owner;
- Company Applicants (only for entities created after January 1, 2024):
 - the individual who directly files the document that creates or first registers a reporting company; and
 - the individual who is primarily responsible for directing or controlling such filing (if more than one individual is involved in the filing); and
- the reporting company itself.

See also Willkie's client alert for more information on the reporting process, [Are You Ready to Report? Here's What You Need to Know about the Corporate Transparency Act](#).

⁷ Subsidiaries of entities that are exempt by virtue of being a money transmitter business, pooled investment vehicle, an entity assisting a tax-exempt entity, and an inactive entity, are excluded from the exemption for subsidiaries.

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What should you be doing now?

Whilst the requirements under the CTA will be broadly familiar to clients doing business in other jurisdictions where equivalent transparency rules already apply, they nonetheless introduce potentially significant additional administrative and compliance obligations going forward for any person doing business in the United States.

In particular, you should have reviewed or be reviewing the LLCs, partnerships and corporations in your organization, identifying any that may be exempt from reporting, and identifying and gathering information for any entities that are not exempt and must file a report.

For more information on the CTA, or should you have any other questions, please feel free to contact any of the Willkie attorneys whose details are included in this bulletin.

Crib Sheet: How do the CTA disclosure requirements compare to other regimes you may be familiar with?

As already discussed above, many of our clients are already accustomed to certain beneficial ownership disclosure requirements, particularly in the UK and Bermuda. The information below is intended to be for indicative, high-level comparative purposes and should you have any questions as to your company's individual circumstances or current reporting requirements, you should contact your Willkie attorney or local Bermudian counsel, as appropriate.

Are beneficial ownership details publicly available?

U.S.: No. Beneficial ownership information will only be available as a matter of course to Federal, State, local, and Tribal government officials. Certain foreign officials may also be able to gain access for national security, intelligence, and law enforcement purposes. Regulators may also obtain access in certain circumstances and with the consent of the Reporting Company.

UK: Yes. UK companies are required to identify their beneficial owners and maintain their details on the public register at Companies House, where the beneficial owner is an individual or legal entity that meets the applicable conditions for registration.

Bermuda: No. Non-exempt companies must maintain beneficial ownership registers and file them with the BMA. The registers will also be available for inspection by the Registrar of Companies.

Who is required to report?

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U.S.: Absent a specific exemption (see above), any corporation, LLC, or any other entity created under the laws of the United States or foreign entities registered to do business in the United States.

UK: Any UK-registered Limited Liability Partnership, European public company (*Societas Europaea* or *SE*), unlimited company, private limited company or public limited company whose voting shares are not admitted to trading on a regulated market in the UK, the EEA or certain other specified markets (including the U.S., Japan, Switzerland or Israel).

Bermuda: Any Bermuda incorporated company, limited liability company, partnership and limited partnership (other than a fund, a company listed on a recognized exchange, or an overseas company).

What must be reported on?

U.S.: Anyone who, directly or indirectly, either exercises substantial control over the Reporting Company or owns or controls at least 25 percent of the ownership interests of the Reporting Company. Substantial control refers to control over important decisions of the Reporting Company, including senior officers or anyone who has authority to appoint or remove officers or directors.

UK: Anyone who, in relation to the UK entity, directly or indirectly holds more than (i) 25% of the shares or (ii) 25% of the voting rights, or (iii) holds the right to appoint or remove a majority of the directors, or (iv) the right to exercise or actually exercises significant influence or control over that entity, or (v) has the right to exercise, or actually exercises, significant control or influence over the activities over a trust or a firm that does not have a legal personality but its trustees or members would meet any of the conditions specified in (i) – (iv).

Bermuda: Any individual owning or controlling more than 25% of the shares, voting rights or interests in the Bermuda corporate entity through direct or indirect ownership, or, if there is no such individual, then any individual who controls the entity by other means. Absent any individual meeting these tests, the individual holding the position of senior manager of the corporate entity.

What information must be provided?

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U.S.: For each beneficial owner: full legal name; date of birth; residential address; and identification number from an acceptable identification document (such as a driver's license or passport), along with an image of such document.

UK: For each registrable individual: full name; service address; country of residence; nationality; date of birth; residential address; date of becoming registrable; and nature of control.

For each registrable entity: corporate name; registered office address; legal form and governing law; company registry and registration number; date of becoming registrable; and nature of control.

Bermuda: For each individual, the applicable "minimum requirements" prescribed by legislation, generally: full name; residential address; nationality; date of birth; and nature and extent of interest.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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