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# The US Corporate Transparency Act

## Frequently Asked Questions

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On 1 January 2021, the US Congress passed the Corporate Transparency Act (the "CTA") imposing new reporting obligations on US business entities and potential disclosure of personal information to the Financial Crimes Enforcement Network ("FinCEN") about their beneficial owners if the US business entities are determined to be subject to the CTA. The CTA is an important step for the US to prevent money laundering and terrorist financing. This helps to bring the US into compliance with international anti-money laundering standards.

On 30 September 2022, FinCEN issued a final rule implementing the beneficial ownership information reporting requirements with an effective date of 1 January 2024 (the "Final Rule").

Answers have been set out below to some frequently asked questions that your institution may have based on the CTA Final Rule. Institutions would be well advised to work with their US counsel to gain a good understanding of this far-reaching legislation. Please note that this document is provided for information purposes only as a summary of the CTA and is not intended to be legal advice on the CTA or your obligations thereunder; the Maples Group does not provide US legal advice.



**Will the CTA have a large impact on the entity formation and management process in the US?**

Yes. In the regulatory analysis detailed in the Final Rule, FinCEN estimates that there will be at least 32.6 million "Reporting Companies" in existence when it becomes effective. The CTA will have a major impact on how entities are formed and registered in the US and organisations should begin putting procedures in place immediately in order to meet the filing requirements. However, it is important to note that there are exemptions.



**When will the CTA go into effect?**

The CTA becomes effective on 1 January 2024.



## Who must file?

A corporation, limited liability company "or other similar entity" created in the US or registered to do business in the US by filing a document with the secretary of state or similar office under the laws of a US state or Indian Tribe is required to file with FinCEN (a "Reporting Company"). This includes, but is not limited to, companies, limited liability companies, limited liability partnerships, limited partnerships and business trusts.



## Can a non-US entity be considered a Reporting Company?

Yes. It is important to note that non-US entities will fall under the definition of a Reporting Company if they are registered to do business with a US secretary of state (or a similar office) or an Indian Tribe.



## What information must be reported to FinCEN?

Each Reporting Company will submit to FinCEN a beneficial owner information report ("BOI Report") containing the following information:

- the Reporting Company itself:
  - Its full legal name and any trade or alternative 'doing business as' names through which the Reporting Company is engaging in business;
  - The street address of the "principal place of business" or primary street address of the location in the US where it conducts business (PO boxes or the address of a company formation agent or other third party are not acceptable);
  - Its jurisdiction of formation or registration; and
  - IRS issued tax identification number ("US TIN").
- In addition to the above, a Foreign Reporting Company will also be required to provide:
  - Its jurisdiction of first registration in the US; and
  - Its country / jurisdiction of formation.
- In addition:
  - Foreign Reporting Companies without a US TIN will be required to provide a foreign tax identification number and the name of the relevant jurisdiction.
  - Reporting Companies will not be allowed to report a DUNS or LEI in lieu of a TIN.
  - In the event a foreign Reporting Company is not able to obtain a foreign TIN, FinCEN will consider appropriate guidance or relief depending on the circumstances.
- The Company Applicant(s):
  - The individual who directly files the document to create or register the Reporting Company with a US state or Indian Tribe; and
  - The individual who is primarily responsible for directing or controlling such filing if more than one individual is involved.

- An Existing Reporting Company formed prior to 1 January 2024 will not be required to report its Company Applicants on its initial BOI Report.
- Changes to the Company Applicant(s) are not reportable.
- Its Beneficial Owner(s):
  - Anyone who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise:
  - Exercises "substantial control" over the Reporting Company; or
  - Owns or controls not less than 25% of the "ownership interests" of the Reporting Company.



## What information must be reported on individuals?

The CTA requires each Reporting Company to submit to FinCEN a BOI Report identifying each of its Company Applicants and Beneficial Owners:

- Full legal name;
- Date of birth;
- Current residential address (in the case of a Company Applicant who files a document to create or register a Reporting Company in the course of such individual's business, a business street address is acceptable); and
- A unique identifying number from a non-expired identification document with the underlying document scanned to FinCEN as part of the BOI Report.

Acceptable identification documents include:

- A non-expired (i) US passport, (ii) US state or local issued ID, or (iii) state issued driver's license or, if an individual lacks these items, a non-expired foreign passport;
- An image of such document; and
- The jurisdiction that issued the identification document.

In lieu of the above information, a Reporting Company may provide a Company Applicant or Beneficial Owner's FinCen Identifier (see below for a detailed explanation).



## Who is considered to exercise "substantial control" over the Reporting Company?

- Anyone serving as a senior officer of a Reporting Company;
- Anyone exercising authority over the appointment or removal of any senior officer or a majority of the board of directors or managers (or similar body) of a Reporting Company;
- Anyone directing, determining, or substantially influencing important decisions made by the Reporting Company; and
- Catch-all provision: any other individual who is exercising any form of substantial control over the Reporting Company.



## Who is considered to have ownership interest?

- Any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise owns or controls not less than 25% of the ownership interests of the entity;
- In the case of a Reporting Company whose ownership interests are held in trust, other individuals with authority to dispose of trust assets, such as trustees, may be considered as controlling the ownership interests held in trust, as will grantors or settlors that have retained the right to revoke the trust, or to otherwise withdraw the assets of the trust; and
- Catch-all provision: any individual who has entered into any other instrument, contract, arrangement, understanding, relationship, or other mechanism used to establish ownership.



## Can a Company Applicant or Beneficial Owner provide information in lieu of their personal information when the Reporting Company files its BOI Report with FinCEN?

Yes. Individuals can provide their BOI Report to FinCEN to obtain a "FinCEN Identifier". The FinCEN Identifier can be provided in lieu of their personal information when the Reporting Company files its BOI Report with FinCEN. It is important to note that the Final Rule does not contemplate a de-registration process, so the individuals with the FinCEN Identifier are responsible for making updates or corrections to their beneficial owner information on an indefinite basis by submitting an updated application to FinCEN, and are subject to the same timelines and terms as updates or corrections to a BOI Report by a Reporting Company. FinCEN is continuing to consider these issues and intends to provide further guidance before the effective date.



## When to file?

Reporting Companies will be required to abide by the following timeframes:

- One year for Reporting Companies created or registered to do business in the US prior to 1 January 2024, which will have until 1 January 2025 to file their initial BOI Report with FinCEN;
- 90 calendar days for domestic Reporting Companies created, or foreign Reporting Companies registered to do business in the US for the first time, on or after 1 January and before 1 January 2025 to file their initial BOI Report with FinCEN<sup>1</sup>. The trigger to begin the reporting period is the earlier of the date on which:
  - A Reporting Company receives actual notice that its creation (or registration) has become effective; or
  - A Secretary of State, or similar office, first provides public notice, such as through a publicly accessible registry, that the domestic Reporting Company has been created or the foreign Reporting Company has been registered;
- 30 calendar days for domestic Reporting Companies created, or foreign Reporting Companies registered to do business in the US for the first time, on or after 1 January 2025;
- 30 calendar days for updates if there is a change in the information previously reported to FinCEN; and

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<sup>1</sup> On 30 November 2023, FinCEN amended the Final Rule extending the filing deadline from 30 days to 90 days for entities created or registered on or after 1 January 2024 and before 1 January 2025.

- 30 calendar days to file a corrected report from the date the Reporting Company becomes aware or has reason to know that the information previously provided to FinCEN was inaccurate and remains inaccurate.



### Are there exemptions?

Yes. [FinCEN's Final Rule](#) specifically excludes 23 types of entities from the definition of Reporting Company, (please see the next page of this document for this list of exemptions). In general, the exceptions apply to entities that already disclose beneficial ownership information through other federal laws / regulations or those entities which are impracticable for money-laundering activities. Exempted entities may include publicly-traded companies, tax-exempt entities and companies operating in highly-regulated industries, such as banks, federal or state credit unions, money transmitting businesses, insurance companies, certain pooled investment vehicles, public utilities companies, etc. If an entity is exempt then no filings at all are required. Penalties will be due if an exemption is incorrect or changes, and notifications and filings are not made. Please consult your legal advisors to determine what exemptions may apply.



### Are there penalties for non-compliance?

Yes. Failure to provide beneficial ownership information to FinCEN under the CTA may result in both civil and criminal penalties. An individual or entity that fails to provide the required information will be liable for a civil penalty of up to US\$500 for each day a violation continues and may be fined up to US\$10,000 and imprisoned up to two years for a criminal violation.



### Can FinCEN share this information?

Yes, in limited circumstances. Given the sensitivity of the reportable information, the CTA imposes strict confidentiality, security, and access restrictions on the data. FinCEN is authorised to disclose reportable beneficial owner information to a statutorily defined group of governmental authorities and financial institutions, in limited circumstances.



### Will the Maples Group be able to assist our clients with these new filing requirements?

Our Delaware office will be able to assist clients with the preparation and submission of the beneficial ownership information report filings required by the US Corporate Transparency Act. The Maples Group's Delaware office is long established and our expert team, specialising in US entity management, has vast experience with the US corporate environment, as well as all state and federal filing requirements. We have intimate knowledge of similar beneficial ownership regimes around the world, using well established and market tested procedures to manage the vast numbers of filings potentially required by the CTA.



### Who can we contact with any additional questions on the CTA?

For further information on the CTA, please see our article: [CTA: Practical Issues for Entity Management](#) or contact the individuals below in our Delaware office:

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# Exemptions from the Definition of Reporting Company

## The US Corporate Transparency Act

FinCEN's [Final Rule](#) specifically excludes 23 types of entities from the definition of Reporting Company.

The following exemptions are listed in order in FinCEN's Beneficial Ownership Information Reporting Regulations at 31 CFR § 1010.380(c)(2) and take effect on January 1, 2024. Please note that this table is provided for information purposes only and is not intended to be legal advice on the CTA or your obligations thereunder; the Maples Group does not provide US legal advice. Please see [FinCEN's Beneficial Ownership Information Reporting Regulations at 31 CFR 1010.380](#) for the official text.

	Exemption	Definition
i	SEC reporting issuer	Any issuer of securities that is: (A) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or (B) Required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).
ii	Government authority	Any entity that: (A) Is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and (B) Exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.
iii	Bank	Any bank, as defined in: (A) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); (B) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or (C) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).
iv	Credit union	Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

v	Depository institution holding company	Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).
vi	Money transmitting business	Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.
vii	Broker or dealer in securities	Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).
viii	Securities exchange or clearing agency	Any exchange or clearing agency, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q-1).
ix	Other Exchange Act registered entity	Any other entity not described in paragraph (c)(2)(i), (vii), or (viii) of 31 CFR § 1010.380 that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).
x	Investment company or investment adviser	Any entity that is: (A) An investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or is an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and (B) Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.).
xi	Venture capital fund adviser	Any investment adviser that: (A) Is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)); and (B) Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.
xii	Insurance company	Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2).
xiii	State-licensed insurance producer	Any entity that: (A) 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 (B) Has an operating presence at a physical office within the United States.
xiv	Commodity Exchange Act registered entity	Any entity that: (A) Is a registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or (B) Is: (1) A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section

		2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B); and (2) Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.
xv	Accounting firm	Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).
xvi	Public Utility	Any entity that is a regulated public utility as defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.
xvii	Financial Market utility	Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).
xviii	Pooled investment vehicle	(i) Any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)); or (ii) any company that would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is identified by its legal name by the applicable investment adviser in the Form ADV (or successor form) filed with the U.S. Securities and Exchange Commission.
xix	Tax-exempt entity	Any entity that is: (A) An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status; (B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or (C) A trust described in paragraph (1) or (2) of section 4947(a) of the Code.
xx	Entity assisting a tax-exempt entity	Any entity that: (A) Operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in paragraph (c)(2)(xix) of 31 CFR § 1010.380; (B) Is a United States person; (C) Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and (D) Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.
xxi	Large operating company	Any entity that:



		<p>(A) Employs more than 20 full time employees in the United States, with "full time employee in the United States" having the meaning provided in 26 CFR 54.4980H-1(a) and 54.4980H-3, except that the term "United States" as used in 26 CFR 54.4980H-1(a) and 54.4980H-3 has the meaning provided in § 1010.100(hhh);</p> <p>(B) Has an operating presence at a physical office within the United States; and</p> <p>(C) Filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.</p>
xxii	Subsidiary of certain exempt entities	Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in paragraphs (c)(2)(i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), or (xxi) of 31 CFR § 1010.380.
xxiii	Inactive entity	<p>Any entity that:</p> <p>(A) Was in existence on or before 1 January 2020;</p> <p>(B) Is not engaged in active business;</p> <p>(C) Is not owned by a foreign person, whether directly or indirectly, wholly or partially;</p> <p>(D) Has not experienced any change in ownership in the preceding 12-month period;</p> <p>(E) Has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period; and</p> <p>(F) Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including but not limited to any ownership interest in any corporation, limited liability company, or other similar entity.</p>

For further information on the CTA, please contact the individuals below in our Delaware office:

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