

CLIENT ALERT

Are You Ready to Report? Here's What Non-U.S. Investment Advisers Need to Know about the Corporate Transparency Act

February 21, 2024

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What is the Corporate Transparency Act?

Under the Corporate Transparency Act (the "CTA"), unless otherwise exempt, all entities created in the United States or registered to do business in the United States by the filing of an organizational document with U.S. state officials will be required to report information about their beneficial owners to the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN").

Who is a non-U.S. investment adviser?

A non-U.S. investment adviser is an entity that provides investment advisory services to clients and is organized in a jurisdiction outside of the United States.

How could the CTA impact non-U.S. investment advisers?

A non-U.S. investment adviser will only be required to report information about the adviser's beneficial owners if it is registered to do business in one or more states in the United States.

A non-U.S. entity typically needs to register to do business in a U.S. state if it engages in certain activities within that state, such as having a physical presence (e.g., office) in that

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state, having employees in that state or conducting significant business transactions in that state. Each state has its own rules for what constitutes “doing business.”

Non-U.S. investment advisers should also evaluate the other entities in their organization and the entities that they manage (including funds, holding companies, portfolio companies and their subsidiaries) to determine whether those entities need to comply with the CTA's beneficial owner information (“BOI”) reporting requirements.

When do the reporting requirements take effect?

The date of an entity's formation or registration in the United States will determine the amount of time such entity will have to file an initial report:

<u>Date of Formation / Registration in U.S.</u>	<u>BOI Filing Deadline</u>
Before January 1, 2024	January 1, 2025
January 1, 2024 – December 31, 2024	90 days from date of formation/registration
On or after January 1, 2025	30 days from date of formation/registration

Are exemptions available for non-U.S. entities that are otherwise required to report?

There are 23 exemptions from the CTA's reporting requirements, which are noted on the FinCEN website linked [here](#). However, certain exemptions will be more useful than others to non-U.S. investment advisers, including:

- **Exemption #10 (Investment company or investment adviser):** A non-U.S. investment adviser registered to do business in the United States may qualify for an exemption if it is registered as an investment adviser with the U.S. Securities and Exchange Commission (“SEC”).
- **Exemption #18 (Pooled investment vehicle):** A pooled investment vehicle (“PIV”) managed by a non-U.S. investment adviser may also qualify for an exemption if (i) the non-U.S. investment adviser is registered with the SEC as an investment adviser and has filed a Form ADV, (ii) the PIV is a private fund (exempt from registration with the SEC as an investment company under Section 3(c)(1) or 3(c)(7) of the U.S. Investment Company Act of 1940) and (iii) the PIV is identified as a private fund on the non-U.S. investment adviser's Form ADV. Once these criteria are met, the PIV's jurisdiction of organization and U.S. registration status will determine the amount of information that such PIV is required to report, as set forth below:

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<u>U.S. Organization</u>	<u>U.S. Registration</u>	<u>BOI Report</u>
Yes	n/a	No
No	No	No
No	Yes	Special Report*

* A PIV that otherwise meets the criteria of Exemption #18 but is formed under the laws of a non-U.S. country and registered to do business in the United States (referred to as a “foreign pooled investment vehicle”) is only required to file a BOI Report for one individual who exercises substantial control over the entity. If more than one individual exercises substantial control over the entity, the entity must report information about the individual who has the greatest authority over the strategic management of the entity.

- **Exemption #22 (Subsidiary of certain exempt entities):** Complex organizational structures that involve PIVs, joint ventures and other similar investment vehicles and related arrangements with SEC-registered investment advisers will require a more detailed analysis to determine whether an exemption is available and which beneficial owner(s), if any, need to be reported. Please consult your Willkie attorney with questions about how to analyze subsidiaries.

Who is a beneficial owner? A beneficial owner is an individual who (i) directly or indirectly exercises substantial control over the reporting entity or (ii) owns or controls at least 25% of the entity's ownership interests. Depending on the circumstances, this may include directors and executive officers of the reporting entity and/or individuals with certain decision-making or veto rights.

What beneficial owner information is required to be reported? Reporting entities are required to provide the following 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.¹

¹ A beneficial owner who does not wish to provide his or her personal information to the reporting entity will be able to provide such information directly to FinCEN, which will issue the owner an identification number to provide to the reporting entity.

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Reporting entities formed on or after January 1, 2024 will also have to provide information on the person(s) who formed the entity and directed the filing of the document that created or registered the entity (referred to as “company applicants”).

Who can access the reports?

FinCEN's database of beneficial ownership information will not be publicly available. In certain circumstances, information may be disclosed to U.S. federal and state law enforcement agencies and, with the reporting entity's consent, to financial institutions in connection with know-your-customer (KYC) obligations (among others).

What if information changes after a report is filed?

Once the initial report is filed, reporting entities are required to update their report within 30 days any time there is a change to previously reported information about the reporting entity itself or its beneficial owners (such as the reporting entity registering a new business name or any change to a beneficial owner's name or address).

Are there penalties for non-compliance?

The penalties for *willfully* failing to comply or timely file a report include civil fines of up to \$500 per day and criminal penalties of up to \$10,000 and/or two years of imprisonment. Moreover, FinCEN has made clear that an enforcement action can be brought against individual beneficial owners and company applicants who willfully fail to provide required information to a reporting entity.

What should non-U.S. investment advisers be doing now?

1. Review the limited liability companies, partnerships, corporations and other entities in your organization.
2. Identify those entities which were formed in the United States or have registered to do business in the United States.
3. With respect to those entities identified in #2 above, identify those entities that may be exempt from reporting and reach out to your Willkie attorney with any questions.
4. Identify and gather information for any entities that are not exempt that will need to file a report. Such reports will need to be filed electronically through FinCEN's secure filing system.
5. Update your compliance policies and procedures to ensure ongoing compliance with the CTA with respect to all entities that are in scope of the reporting requirements.

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For More Information

For additional details regarding the CTA, please see our client memorandum [here](#). If you have any questions regarding the CTA or this client alert, please contact the attorneys listed below or the Willkie attorney with whom you regularly work.

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