

The Corporate Transparency Act – Are You Ready to Register?

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Jonathan Dixon, Senior Advisor – *FinCEN, Dept. of the Treasury*

Joe Fernandez, Partner - *Seiler*

Elizabeth McMorrow – *Elizabeth A. McMorrow Law LLC*



Beneficial Ownership
Information

The Corporate Transparency Act and Beneficial Ownership Information Reporting Requirements for Companies



U.S. Department of the Treasury
Financial Crimes Enforcement Network
www.fincen.gov/boi

What is the Corporate Transparency Act, or CTA?

- The CTA was enacted by Congress in 2021.
- This law creates a beneficial ownership information reporting requirement designed to make it harder for bad actors to use shell companies to hide their ill-gotten gains and to help law enforcement identify who is behind these bad companies.
- Companies will report their beneficial ownership information to the Financial Crimes Enforcement Network, or FinCEN, a bureau within the U.S. Department of the Treasury.

Beneficial Ownership Reporting Resources

- Beginning on **January 1, 2024**, many companies in the United States will have to begin reporting information about their beneficial owners, i.e., the individuals who ultimately own or control the company, and their company applicants.
- FinCEN developed a Beneficial Ownership webpage to assist and educate small businesses on these new reporting requirements – www.fincen.gov/boi
 - The webpage contains guidance documents, answers to frequently asked questions, introductory videos, quick reference guides, and other resources for small businesses to help them understand the requirement to report beneficial ownership information to FinCEN.
- FinCEN recently issued a **Small Entity Compliance Guide** that walks small businesses through these requirements in plain language.

Small Entity Compliance Guide

Available at www.fincen.gov/boi



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Does my company have to report its beneficial owners?



04

What specific information does my company need to report?



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Who is a beneficial owner of my company?



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When and how should my company file its initial report?



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Does my company have to report its company applicants?



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What if there are changes to or inaccuracies in reported information?

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01

Does my company have to report its beneficial owners?

Domestic Reporting Company

- A corporation, limited liability company, or any other entity created by the filing of a document with a secretary of state or similar office.

Foreign Reporting Company

- A corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in the U.S. by the filing of a document with a secretary of state or similar office.

Non-Reporting Companies

- Entities that are not created by filing with a secretary of state.
 - E.g., sole proprietorships, certain trusts.

Exempt Companies

- Exempt companies include banks, credit unions, tax-exempt entities, public utilities, and certain large companies.
- Various check-box examples in the Small Entity Compliance Guide will assist your company in determining whether you are exempt from reporting.

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02

Who is a beneficial owner of my company?

- If your company is a reporting company, your next step is to identify its beneficial owners. A beneficial owner is **any** individual who, directly or indirectly:
 - Owns or controls at least 25 percent of the **ownership interests** of a reporting company; **OR**
 - Exercises **substantial control** over a reporting company.
- An individual might be a beneficial owner by virtue of their substantial control, ownership interests, or both.



02

Who is a beneficial owner of my company?

- **Ownership Interest** - Reporting companies are required to identify **all** individuals who own or control at least 25 percent of the **ownership interests** of the company.
- Ownership interest includes equity, stock, or voting rights; a capital or profit interest; convertible instruments; options or privileges; and any other instrument, contract, or other mechanism used to establish ownership.
- There are several exceptions to the definition of beneficial owner, including a minor child, a nominee, intermediary, custodian, or agent, an employee, an inheritor and a creditor.

The Small Entity Compliance Guide has detailed graphics, checklists, and examples to assist reporting companies in identifying their beneficial owners.



02

Who is a beneficial owner of my company?

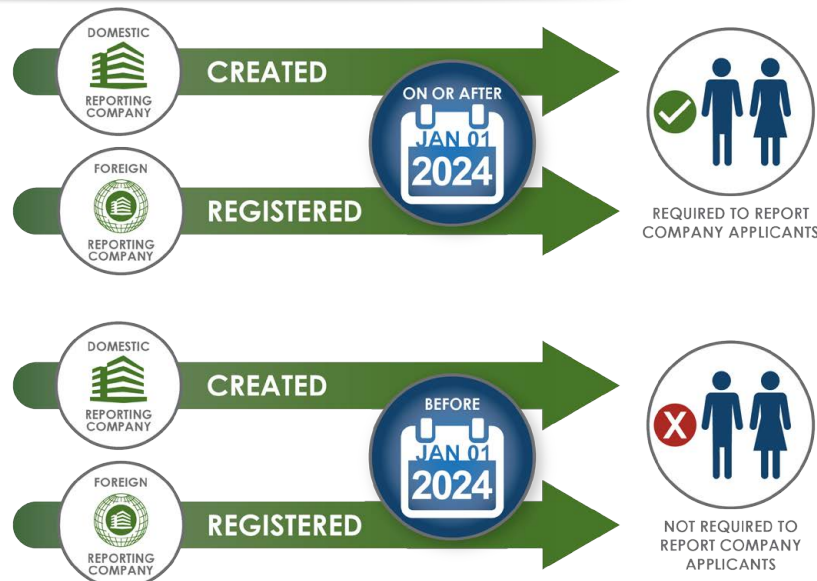
- **Substantial Control** - Reporting companies are required to identify **all** individuals who exercise **substantial control** over the company.
- An individual exercises **substantial control** over a reporting company if the individual meets **any** of four general criteria:
 1. the individual is a senior officer;
 2. the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company;
 3. the individual is an important decision-maker; or
 4. the individual has any other form of substantial control over the reporting company.

The Small Entity Compliance Guide provides more information about these criteria.



03

Does my company have to report its company applicants?





03

Does my company have to report its company applicants?

- **Company Applicants** are:
 - The individual who directly filed the document that created or first registered a domestic or foreign reporting company.
 - The individual who was primarily responsible for directing or controlling the filing of the creation or first registration document.



04

What specific information does my company need to report?

- Your reporting company must provide information about **itself**:
 - Legal name.
 - Any trade name or any “doing business as” (d/b/a).
 - Complete U.S. address.
 - For a domestic reporting company: State, Tribal, or foreign jurisdiction of formation.
 - For a foreign reporting company: State or Tribal jurisdiction of first registration.
 - Taxpayer Identification Number (TIN) or foreign tax ID.



04

What specific information does my company need to report?

- A reporting company must provide information about **its beneficial owners** and **company applicants**:
 - Name.
 - Date of birth.
 - Address.
 - Identifying number and issuing jurisdiction from a non-expired driver's license, U.S. passport, or an identification document issued by a State, local government, or Indian tribe, or a foreign passport (if none of the other document exist).
 - An image of the document must also be provided.



04

What specific information does my company need to report?

- A "FinCEN identifier" is a unique identifying number that FinCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain required information to FinCEN.
- An individual or reporting company may only receive one FinCEN identifier.
- FinCEN identifiers may be reported instead of certain required information about beneficial owners or company applicants.
- FinCEN identifiers will not be available until January 1, 2024.



05

When and how should my company file its initial report?



The reporting requirement is effective on January 1, 2024. FinCEN will begin accepting beneficial ownership information reports on that date.



INITIAL REPORTS

Required by all companies that meet the definition of **reporting company** and are not **exempt** from that definition.



Existing reporting companies

Created or registered to do business in the United States before January 1, 2024.

Reports due by **January 1, 2025**.



New reporting companies

Created or registered to do business in the United States on or after January 1, 2024.

Reports due within **30 calendar days** of receiving actual or public notice that the creation or registration of the reporting company is effective.



05

When and how should my company file its initial report?

- If your company is required to file a beneficial ownership information report, you must do so electronically through a secure filing system. FinCEN's filing system is currently under development and will not be available until January 1, 2024. **FinCEN will not accept any beneficial ownership information reports before January 1, 2024.**
- FinCEN will publish instructions and other technical guidance on how to complete the report.
- Sign up for FinCEN updates or periodically check our website at www.fincen.gov/boi.



06

What if there are changes to or inaccuracies in reported information?



UPDATED REPORTS

Required when there is a change to previously reported information about the reporting company itself or its beneficial owners.



Updated reports due within **30 calendar days** after a change occurs.



06

What if there are changes to or inaccuracies in reported information?



CORRECTED REPORTS

Required when previously reported information was inaccurate when filed and remains inaccurate.



Corrected reports due within **30 calendar days** after the reporting company becomes aware or has reason to know of an inaccuracy.

What happens if my company does not report BOI in the required timeframe?

- FinCEN is working hard to ensure that reporting companies are aware of their obligations to report, update, and correct beneficial ownership information. FinCEN understands this is a new requirement. If you correct a mistake or omission within 90 days of the deadline for the original report, you may avoid being penalized. However, you could face civil and criminal penalties if you disregard your beneficial ownership information reporting obligations.

Additional Resources

- Visit FinCEN's website at www.fincen.gov/boi for more information
 - Small Entity Compliance Guide
 - Frequently Asked Questions
 - Small Business Resources
 - Introductory Videos
 - Quick Reference materials
- Contact FinCEN at www.fincen.gov/contact. Email us at FRC@fincen.gov or call 1-800-767-2825.
- Visit FinCEN.gov to sign up for FinCEN's email subscription service to be immediately notified of beneficial ownership updates.

CTA
39TH ANNUAL TEI/SJSU HIGH TECH TAX
INSTITUTE

November 6, 2023



Agenda

- CTA Best Practices
- Other BO Initiatives
- CTA Structure Examples



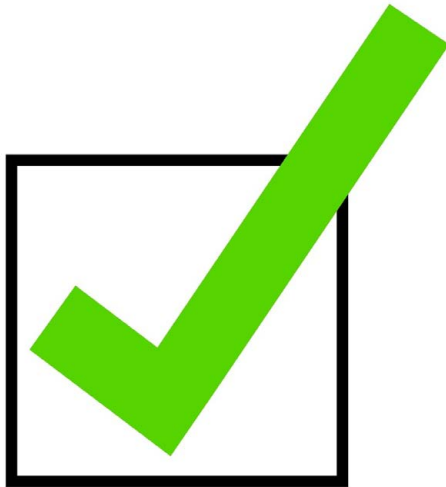
BEST PRACTICES

CTA Internal Prep (1)

- Draft Policies & Processes.
- Document classification of entities: subject to CTA or exempt.
- Determine if any personnel are Company Applicants.
 - Educate them on FinCEN identifier.
- Train relevant employees.



CTA Internal Prep (2)



- Update deal / M&A schedules to ensure FinCEN registration deadlines are met.
- Establish communication lines between CTA team and HR to ensure changes in Reportable Company officers/directors are updated in FinCEN portal.
- Assign someone to track FinCEN updates.

CTA External Prep

- Advise clients CTA starts January 1, 2024.
- Inventory current client data collection to determine gaps.
- Prepare data collection portal / send questionnaire.
- Review established structures used for non-U.S. clients.
- Establish communication lines between CTA team and client to ensure changes in Reportable Company investors/officers/directors are updated in FinCEN portal.
- Provide clients with FinCEN updates.

Data Pool



- Potentially new info now known by your firm.
- Review data based on specific industry requirements.
 - E.g., OFAC, BSA/AML, EAR
- Review data based on internal P&Ps.
 - E.g., Conflict of interest, reputational risk
- Maintain records pursuant to CTA and other applicable regs/laws.
 - E.g., GDPR, CCPA/CPRA, NY PPPL

OTHER BO INITIATIVES

U.S. / Federal

- **Congress**
- H.R. 4035 and S. 2623 (both entitled: Protecting Small Business Information Act of 2023) would delay CTA to a future date to provide small businesses time to learn about their CTA obligations.
 - S. 2623: Last action July 27, 2023.
 - H.R. 4035: Last action June 12, 2023.



- **SEC**
- Oct. 10, 2023: adopted amendments to rules governing BO reporting under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 to shorten filing deadlines and expand disclosure.



- **Lawsuit**
- National Small Business United v. Yellen: Lawsuit claiming CTA is unconstitutional. Amicus brief supporting CTA includes Transparency International.

U.S. / State

- **New York**
- June 2023 NY passed AO3484 (LLC Transparency Act) to require LLCs to disclose BOs at time of formation / qualification to do business in NY. Once Governor signs, effective date will be 1 year after signing.



- **California**
- SB 594 requires corporations, LLCs, and REITs to report BOs to CA Secretary of State with BO info publicly accessible.
 - Placed on suspense file May 8, 2023.



European Union

- GDPR v Public BO Registries.
- The European Union Court of Justice decided in November 2022 (C-37/20 and C-601/20 cases) unrestricted public access to BO registries in EU Member States was not acceptable because of the associated 'disproportionate' interference with privacy and data protection rights.



Cayman Islands



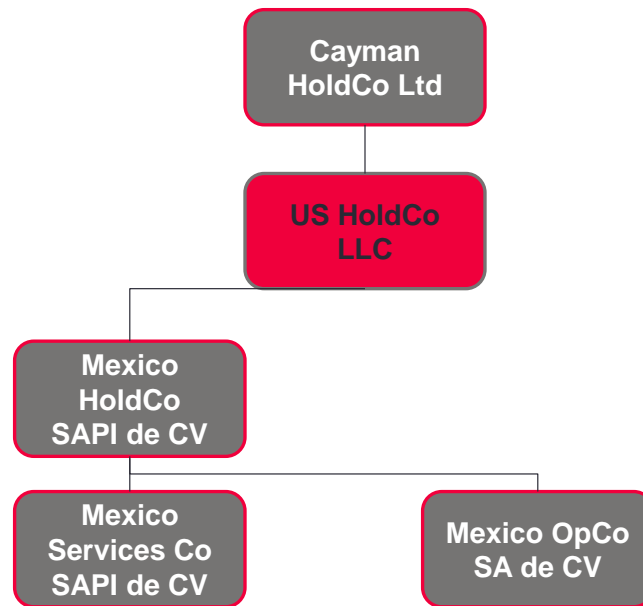
- BO Registry came into effect July 1, 2017.
- Beneficial Ownership Transparency Bill 2023 (published Aug. 30, 2023) includes language authorizing the Cayman Islands cabinet to make regulations to open up information held in the jurisdiction's BO register to public view.
- Prior to implementation, discussions will be held with UK and CDOTs re: necessary privacy safeguards esp. to comply with EU Court of Justice decision.

STRUCTURE EXAMPLES

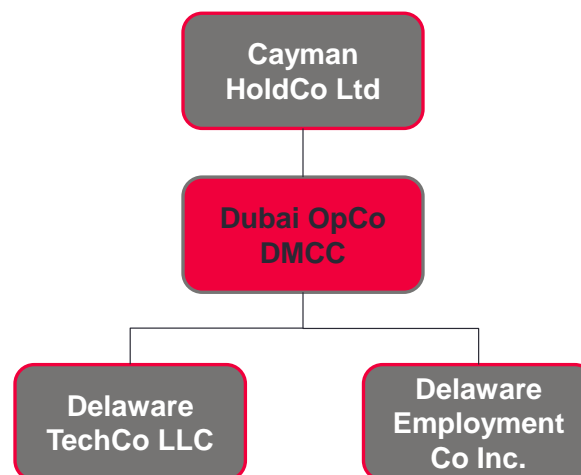
Structure templates but no cookie cutter result for CTA classification or reporting.



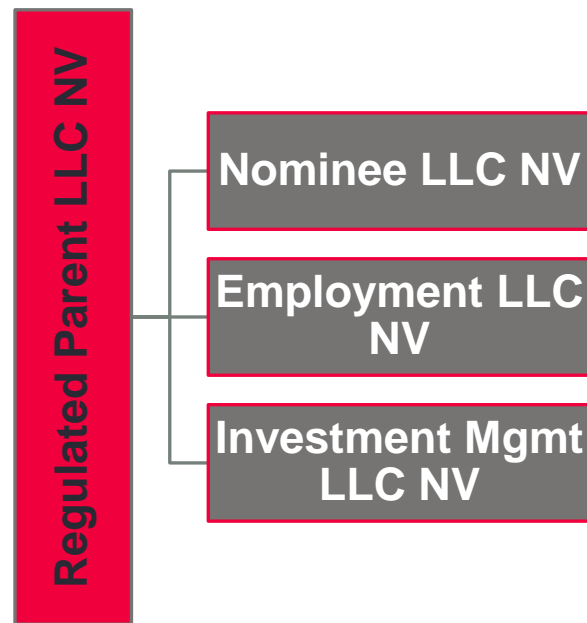
LATAM Example



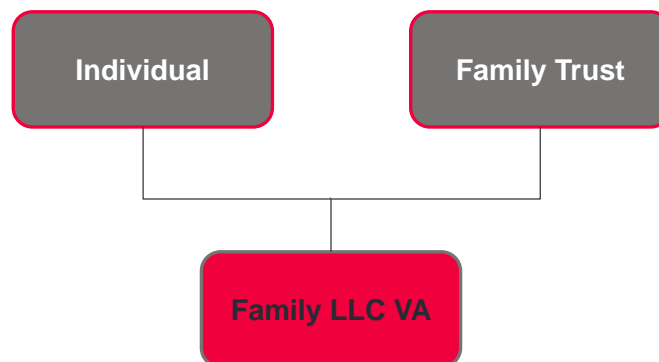
Middle East Example



US Regulated Parent



Closely Held Family Company



Contact Details



Elizabeth A. McMorrow Law LLC

Elizabeth A. McMorrow
elizabethmcmorrowlaw.com
elizabeth@elizabethmcmorrowlaw.com
+1.508.733.1807

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