

C L I F F O R D

C H A N C E

SEEING A WAY THROUGH THE NEW CORPORATE TRANSPARENCY REGIMES IN THE U.S. AND UK

Corporate transparency has, in recent years, become a focus point for governments and regulators across the globe that are keen to prevent abuse of their corporate registration frameworks, whilst at the same time ensuring that their jurisdictions remain an efficient place to do business. In this briefing we'll explore the new transparency regimes that have recently been introduced in both the U.S. and the UK, and what the future may hold for this increasingly important topic.

What's Happening in the US?

The U.S. Corporate Transparency Act (the "**CTA**") and related implementing regulations came into effect on 1 January 2024. The CTA generally requires in-scope legal entities to report specified information about the individuals who ultimately own or control them to the U.S. Treasury Department's Financial Crimes Enforcement Network ("**FinCEN**"), unless one or more exemptions apply.

The following two types of legal entities are "**in-scope entities**" for purposes of the CTA:

- Any U.S. legal entity (including corporations, limited partnerships, and limited liability companies) created by filing a document with a secretary of state (or similar office) under the law of a U.S. state or Indian tribe; or
- any non-U.S. legal entity that has registered to do business in the United States by filing a document with a secretary of state (or similar office) under the law of a U.S. state or Indian tribe.

When no exemption applies, these types of entities are "**Reporting Companies**". Given the broad scope of the CTA, many private fund sponsors (and investors) may have reporting obligations under the CTA.

Considerations for Fund Sponsors

The CTA provides exemptions from its reporting requirements for 23 types of legal entities. Of these, the **RIA and Venture Capital Fund Advisers Exemptions**, **Pooled Investment Vehicle Exemption**, and **Subsidiary Exemption** are most likely to apply to entities within fund structures, while the **Large Operating Company** exemption may be applicable to some portfolio companies.

- **RIA and Venture Capital Fund Advisers Exemptions**

- The CTA regulations expressly exempt SEC-registered investment advisers (“RIAs”) from reporting obligations under the CTA. A venture capital fund adviser exempt from registration with the SEC pursuant to Section 203(l) of the Investment Advisers Act of 1940 (the “Advisers Act”) is also exempt from CTA reporting obligations if it files a Form ADV with the SEC that includes information about its control persons on Item 10.
 - There is no corresponding exemption for exempt reporting advisers relying on the private fund adviser exemption from registration with the SEC.
- Notably, the RIA exemption only applies to the RIA entity itself and does not apply to upstream entities, such as the parent company of the RIA. Therefore, each upstream entity must assess its own status under the CTA.

- **Pooled Investment Vehicle Exemption**

- U.S.-domiciled “pooled investment vehicles” that are exempt from registration as an investment company in reliance on Section 3(c)(1) or 3(c)(7) of the Investment Company Act and that are identified by their legal name on the applicable adviser’s Form ADV (or will be identified in the next annual amendment) are exempt from the CTA’s reporting requirements.
 - The pooled investment vehicle exemption does **not** apply to entities exempt from registration in reliance on Section 3(c)(5). Any 3(c)(5) entity will need to assess whether a different exemption applies based on its specific circumstances.
- A special reporting rule applies to non-U.S. entities that register to do business in any U.S. state or tribal jurisdiction (i.e. “foreign reporting companies”) and would otherwise be exempt under the pooled investment vehicle exemption. These companies are required to report information on their controlling persons (but not on their beneficial owners) to FinCEN.

- **Subsidiary Exemption**

- When all of the ownership interests of an in-scope entity are wholly owned or entirely controlled by one or more entities that are exempt under a specified subset of CTA exemptions (including an RIA or venture capital fund adviser), such entity may be able to rely on the CTA’s “subsidiary exemption.”
 - The subset of CTA exemptions that permit reliance on the subsidiary exemption **does not include** the pooled investment vehicles exemption. Therefore, it is possible that holding entities (i.e. blockers, splitters, and aggregators) may be required to report, unless another exemption applies based on such entities’ particular control and ownership (for example, the subsidiary exemption may apply if all of the ownership interests of the holding entity are entirely controlled by an RIA).
- Recent FinCEN guidance on this exemption clarified that a subsidiary would only qualify if its ownership interests are “*fully, 100 percent owned or controlled* by an exempt entity,” reiterating that this criteria can be met through either ownership of ownership interests or control of ownership interests.

- Thus, if an exempt entity owns or controls less than 100 percent of a subsidiary entity's ownership interests, the entity must assess its own status under the CTA (including whether it is partially controlled or owned by one or more non-exempt entities) and may have to report information concerning the exempt entity to FinCEN.
- **Large Operating Company Exemption**
 - A portfolio company may be exempt from registration under the “large operating company exemption” if the entity: (i) employs more than 20 full time employees, (ii) has an operating presence at a physical office in the United States, **and** (iii) 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 (excluding gross receipts or sales from sources outside the United States).

Reporting Requirements

Each Reporting Company must provide (i) reporting company information, (ii) beneficial ownership information, and (iii) for entities formed on or after 1 January 2024, company applicant information. Reporting Companies are responsible for maintaining the accuracy of the information they provide in their reports. Amendments must be filed within **30 days** of a Reporting Company becoming aware of any change to the reported information.

- **Reporting Company information** includes the entity's legal name, any other names under which it does business (i.e., trade name), the street address of its principal place of business in the U.S. or the primary location in the U.S. where it conducts business, jurisdiction of formation (or, for non-U.S. entities, U.S. jurisdiction in which it first registers), and company EIN (or, for non-U.S. entities without an EIN, a foreign tax ID).
- **Beneficial ownership information** includes an individual's full legal name, date of birth, residential address, and government ID number and image of a government ID. This information (or an individual's FinCEN identifier) must be disclosed for each of an entity's “beneficial owners” (i.e. every individual who directly or indirectly exercises “substantial control” over the entity or owns or controls at least 25% of the ownership interests of the entity).
- **Company applicant information generally** includes the same information as is required to be disclosed on beneficial owners and must be disclosed for (i) the individual filing the document that creates or registers the entity at the U.S. state or tribal level and (ii) if different, the individual responsible for directing and controlling such filing.
- **Upon request, FinCEN will issue FinCEN identifier numbers** to individuals so that such identifier numbers may be disclosed in a Reporting Company's report in place of an individual's information as beneficial owner or company applicant. To apply for a FinCEN identifier, individuals may submit the required identification information and document image directly to FinCEN via an online platform. Individuals receiving FinCEN identifier numbers are required to update any information provided to FinCEN within 30 days of a change in such information, for example a change of address or a change in the identification number of passport when a new passport replaces an expired passport.

Reporting Timeframes

- U.S. entities created and non-U.S. entities registered to do business in the US **before 1 January 2024** must file an initial report by 1 January 2025.
- U.S. entities created and non-U.S. entities registered to do business in the US **between 1 January 2024 and 1 January 2025** must file an initial report within 90 days of receiving notice of their creation or registration.
- U.S. entities created and non-U.S. entities registered to do business in the US **on or after 1 January 2025** must file an initial report within 30 days of receiving notice of their creation or registration.

What's Happening in the UK?

The Economic Crime and Corporate Transparency Act 2023 (the “**ECCTA**”) will make significant changes to UK company and limited partnership law with the aim of improving the integrity of the public register and tackling economic crime. Although the ECCTA received Royal Assent in October 2023, the changes will come into force in phases throughout the course of 2024-2025 via secondary legislation.

Key points for managers with UK limited partnerships, companies, and LLPs in their structures to note at this point in time include:

- Companies House has announced that it is aiming for the first set of measures for UK companies and LLPs to apply from **4 March 2024**, although this is dependent on the secondary legislation having been implemented before then. These measures include, among others:
 - A requirement to have an “appropriate” registered office and to register an “appropriate” email address;
 - A duty to ensure that any individual that is disqualified from acting as a director does not become (or is removed as) an LLP member;
 - Greater powers for the registrar to query or reject information submitted to Companies House, as well as to clean up existing information on the register; and
 - Greater control over company and LLP names.
- The timing for the changes that will impact UK limited partnerships is still unclear.

What does the future hold?

It's clear that corporate transparency is likely to remain a priority concern, not just in the U.S. and the UK, but across the globe. Governments and regulators are keen to ensure that their records and registers remain relevant, clear, and accurate in order to foster their reputations as trusted places to do business, and we may well see the introduction of, or changes to existing, corporate transparency regimes in other jurisdictions in future.

For more information on the changes being introduced by the CTA, ECCTA and how you can prepare, please get in touch with us.

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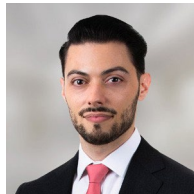


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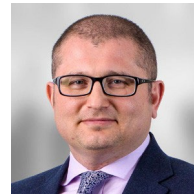
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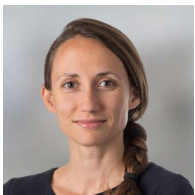
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