



Corporate Law

January 2024

## U.S. Corporate Transparency Legislation

Dear Clients,

In an effort to enhance enforcement of laws with respect to money laundering and other conduct that benefits from fiscal anonymity, the United States enacted legislation that is currently coming into effect requiring the registration of information regarding the beneficial owners of a range of private entities. We summarize the highlights of this legislation below.

### Background

In 2021, Congress passed the Corporate Transparency Act (“CTA”), which came into effect on January 1, 2024.

The CTA requires many domestic U.S. companies (which can include corporations and limited liability companies, other than single-member LLCs) formed by the filing of a document with a secretary of state or similar office and foreign companies conducting business in the United States to report information about their beneficial owners to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”). Twenty-three types of entities are exempt from the reporting requirements. These exempt entities include, *inter alia*, publicly traded companies that file reports with the SEC, many nonprofits, and “large operating companies,” which the CTA defines as entities that meet all of the following criteria: (1) it employs more than 20 full-time employees (an average of 30 hours per week); (2) it either owns or leases a physical office within the United States from which it operates; (3) it filed a Federal income tax or information return in the United States for the previous year, showing more than US\$5,000,000 in gross receipts or sales, and reported such amount on the applicable IRS forms.

According to the CTA, a beneficial owner is an individual who, directly or indirectly, either has (i) substantial control over the reporting company’s decisions or operations, or (ii) owns at least 25% of the company’s shares or other equity interests or instruments convertible into or creating a right to purchase or sell such interests. The CTA provides

that an individual exercises substantial control if he or she: (i) serves as a senior officer in a reporting company; (ii) has authority in the removal or appointment of any senior officer, or a majority of the board of directors of a reporting company; (iii) has authority to direct, or have substantial influence over important decisions; or (iv) has any other substantial control over the reporting company.

Certain types of individuals are not considered to be beneficial owners, including the following: (i) individuals acting as nominees or custodians; (ii) employees who are not senior officers; and (iii) individuals who have a future interest in the reporting company, for example by right of inheritance.

### **Disclosed Information**

The information that reporting companies are required to disclose with respect to their beneficial owners differs based on the date their establishment date. Businesses registered or established after January 1, 2024, must - within the earlier of 90 days after formation or public announcement - provide information regarding the business, its beneficial owners, and its “company applicants” (the individual who directly files the document that creates the domestic reporting company or who first registers the foreign company to do business in the US, and the person who is primarily responsible for directing or controlling a filing made by another person) - including owners’ and applicants’ names, addresses, birthdays, and ID numbers, and the jurisdiction of the identifying documents. All reporting companies must provide their legal name and trademarks, as well as their current U.S. address, a taxpayer identification number, and the jurisdiction where they were formed or registered. Companies established before January 1, 2024 must report the required information to FinCEN until January 1, 2025, and can omit information regarding company applicants. Reporting companies that will be established after January 1, 2025, would be required to complete the reporting within 30 days of the acceptance of their formation or registration. All reporting companies would have 30 days to update FinCEN regarding any changes in the information they previously reported, or if any of the information in the previous reports is found to be inaccurate, including changes to a beneficial owner’s name or address, passport, or driver’s license number. Moreover, operational changes and delegation of authority may also have to be reported to FinCEN if, for instance, a new person is performing substantial duties in the business.

FinCEN will permit Federal, State, local, and Tribal officials, as well as certain foreign officials who submit a request through a U.S. Federal government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. Financial institutions will have access to beneficial ownership information in certain circumstances, with the consent of the reporting company. Those financial institutions’ regulators will also have access to beneficial

ownership information when they supervise the financial institutions.

The information will be stored by FinCEN in a secure and confidential database.

The form required to file the necessary information can be found by going to FinCEN's BOI E-Filing website (<https://boiefiling.fincen.gov>) and selecting "File BOIR."

### **Penalties for Non-compliance**

A company that willfully provides false information or fails to provide complete and updated information to FinCEN can be subject to both civil and criminal penalties. The civil fine can be up to USD 10,000, and the criminal penalty can be up to two (2) years imprisonment. In addition, the CTA can hold individuals in the reporting company liable, if such individual's actions caused the failures, or the individual was a senior officer at the time such failures occurred.

**Sincerely,**

**FISCHER (FBC & Co.)**

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