

Mercator Focus

Insights from across the Entity Portfolio Management Industry

Q4 2023



Foreword

1 | Foreword

2 | The Corporate Transparency Act is coming: What you should know

4 | Get your calendars in sync – ensuring compliance in 2024

5 | Corporate Transactions: 5 key considerations before taking the plunge

6 | Entity Management in 2023 – A year in review



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2023 has been another exceptional year for the Mercator® by Citco (Mercator) team and I'm delighted to introduce the final edition of the Mercator Focus newsletter.

In this quarter, we have celebrated significant milestones and continued our growth journey with new functionalities launched on Entica® – including Ownership Charts and Workflow Automations – further streamlining processes and providing users greater corporate secretarial oversight. As the pioneers of Entity Portfolio Management (EPM), we are proud to be at the forefront of this evolution in further developing Entica® as a cutting-edge workflow, data- and reporting tool to assist our clients.

In November, we announced the expansion of our global operations with an in-house team and office in the State of Delaware, United States (US). The establishment of a physical foothold in the US is another step in the continual development of our service delivery model, enabling us to increase workflow efficiencies and bolstering our service offering to better meet the needs of our clients. Staying in the US, this quarter we partnered with global law firm DLA Piper, hosting a webinar to discuss the new compliance challenges and key considerations for business ahead of the US Corporate Transparency Act (CTA) on 1 January. For those who missed out, a recording can be found on Mercator.net and the DLA Piper team have kindly contributed a piece for this newsletter summarizing the steps to ensure compliance.

Another key highlight of Q4 was the release of our Mercator Entity Management 2023 report, which is gaining acceptance as a true data-driven resource for the industry. This

year's data reveals how the digitalization drive is becoming a deciding factor for EPM efficiency around the world. You can read more about this year's key findings later in this newsletter.

Notwithstanding the importance of technology, the stakeholders within our clients' organizations are people. People with whom our client service teams have built a rapport and a close relationship over the years. In that respect, I'd also like to share my thanks for the feedback in our Annual client satisfaction survey – you gave us our highest overall score yet, and we will use this invaluable feedback to further optimize our offering and prioritize items for development that you have highlighted.

As the new year beckons, we are pleased to now offer clients the opportunity to incorporate Tax and Accounting obligations into their 2024 Global Annual Compliance Calendars. We are increasingly seeing Entica® becoming a tool for all teams - whether it be corporate secretarial, tax, compliance or accounting - to access as a 'single source of truth' and we feature an article on the importance of synchronization and communication between departments.

Finally, we wrap this issue with an article offering guidance on how to approach complex cross-border mergers or acquisitions, based on the various large-scale projects we have completed on behalf of clients. Given the prevalence of M&A activity and our continued involvement in these projects, we have now developed a distinct solution to help clients stay on top of administration, streamline processes and keep control of timelines and costs.

Now, as we look ahead to an exciting year, I would like to thank our clients for their partnership and look forward to growing our relationships and service offering even further in 2024.

I'd also like to share my thanks for the feedback in our Annual client satisfaction survey – you gave us our highest overall score yet, and we will use this invaluable feedback to further optimize our offering and prioritize items for development that you have highlighted.

The Corporate Transparency Act is coming: What you should know

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After nearly two years of buildup, certain reporting companies will be required to comply with the Corporate Transparency Act (CTA) starting January 1, 2024. Initially passed in 2021, the CTA seeks to combat anonymous shell companies and/or opaque ownership structures used to facilitate money laundering, terrorist financing, sanctions evasion, the sheltering of illicit funds in the US, and other crimes.

Under the CTA, certain domestic and foreign companies will be required to disclose certain information about their beneficial owners (BOs) and individuals who file corporate paperwork on the companies' behalf (company applicants) to the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN).

Companies subject to the CTA will be required to file disclosures regarding BOs and company applicants on a cloud-based Beneficial Ownership Secured System (BOSS). The beneficial ownership information (BOI) will be made available to the following groups:

- a. federal, state, local, and tribal, and officials and foreign officials who request access for activities related to national security, intelligence, and law enforcement;
- b. financial institutions in certain circumstances with the consent of the reporting company; and
- c. regulators, when they supervise those financial institutions.

While there are still additional regulations surrounding access to BOI and customer due diligence under the CTA pending, how should both US and non-US companies prepare?

WHAT COMPANIES QUALIFY AS A "REPORTING COMPANY"?

A domestic reporting company (RC) is a corporation, LLC, LP, or similar entity created by filing a document with any US state, territory, or Indian tribe. A foreign RC is a corporation, LLC, LP, or similar entity formed under the laws of a foreign country and registered to do business in any US state, territory, or tribal jurisdiction.

ARE THERE EXEMPTIONS?

Yes. The CTA provides 23 exemptions from the RC definition, which generally apply to already highly regulated businesses. There are also exemptions for large operating companies, pooled investment vehicles, subsidiaries of certain exempt entities, and inactive entities. Although FinCEN provides a helpful small business guide, consulting counsel prior to submitting BOI is important.

WHEN DO I NEED TO REPORT?

It depends. If your company was created or registered before January 1, 2024, you will have until January 1, 2025 to file. RCs created or registered in 2024 will have 90 days to file their initial BOI. RCs created or registered on or after January 1, 2025 will have only 30 days to file their initial BOI after receiving actual or public notice of their creation or registration becoming effective.

WHAT BOI DO I NEED TO PROVIDE?

The RC must provide:

1. its legal name;
2. any trade names;
3. current street address of principal place of business;
4. jurisdiction of formation or registration; and
5. taxpayer identification number (or equivalent issued by a non-US jurisdiction).

For its BOs, the RC must provide:

1. the individual's name;
2. date of birth;
3. residential address; and
4. a photo of acceptable identification such as a passport or US driver's license.

For RCs created after January 1, 2024, the RC must provide this information about its company applicant or applicants.

WHO ARE BENEFICIAL OWNERS AND COMPANY APPLICANTS?

BOs include anyone who, directly or indirectly, either exercises substantial control over the RC or owns or controls at least 25 percent of the ownership interests of the RC. Substantial control refers to control over important decisions of the Reporting Company. This includes senior officers or anyone who has authority to appoint or remove officers or directors, among others.

Company applicants are those who directly file the document to create or register the reporting company and the individual who is primarily responsible for directing and controlling the filing.

There can only be two such individuals.



DO I NEED TO REPORT CHANGES TO BOI?

Yes. You must file updated and/or corrected reports within 30 days of any change. This includes companies that become exempt after filing BOI. If you are currently exempt, you do not need to file BOI claiming an exemption. However, you should consider preserving records relevant to your exemption determination.

Additionally, if you become aware that a report is inaccurate or have reason to know about the inaccuracy, you must correct the report within 30 days.

ARE THE BOI REPORTS PUBLIC?

No. BOI will be available to law enforcement, state, and local government agencies with a court order, federal financial regulators, and financial institutions with consent of the RC.

ARE THERE PENALTIES FOR NONCOMPLIANCE?

Yes. Both RCs and senior officers who willfully fail to file or update a report are subject to a fine of \$500/day for continuing violations, up to \$10,000 and/or imprisonment for two years. There is a safe harbor for RCs that voluntarily correct an inaccurate report "promptly," ie, within 90 days of filing the report.

Additionally, anyone who knowingly discloses BOI without authorization is subject to a fine of \$500/day, up to \$250,000 and/or imprisonment up to five years. There are increased fines (up to \$500,000) and imprisonment (up to ten years) if the unauthorized disclosure of BOI involved a pattern of other unlawful activity involving more than \$100,000 in a 12-month period or while violating another US law.)

WHAT SHOULD I DO NOW?

If you believe you may qualify as an RC, practice good corporate housekeeping by:

- Identifying all business entities that are wholly or partially owned or controlled by the RC
- Determining which entities may qualify for an exemption
- If no exemption applies, determining BOs for each entity and determining if any entities will need separate tax identification numbers
- Identifying the company applicant(s)
- Dissolving any unneeded, non-exempt entities by the end of 2023
- Forming new entities prior to January 1, 2024 to benefit from the one-year deadline to report
- Establishing record keeping and CTA compliance processes

Get your calendars in sync – ensuring compliance in 2024



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With over 75 years of experience in entity governance as part of the Citco group of companies (Citco), Mercator® by Citco (Mercator) has gained a clear understanding of how large multinationals and funds operate their entity portfolios. In recent years, we have noticed two common practical challenges afflicting many multinational organisations: the first is managing information flow across internal and external teams; and the second is aligning priorities and deadlines.

Often the main cause of these two issues is having unsynchronised calendars and project status reports, or having none at all. Although this sounds trivial, the consequences can be far reaching – from inconsistent communication and the mismanagement of teams' deadlines and objectives, through to delays in filings and incorrect information being submitted to third parties. Collectively these missteps can lead to deep dissatisfaction from stakeholders and increase business continuity risks.

The synchronization of calendars and project status reports is particularly important for organisations with many subsidiaries worldwide. Each jurisdiction is required to manage numerous reporting obligations with a multitude of different deadlines, spanning accounting, tax, compliance and more.

The situation becomes even more complex when you consider how each area of the business is managed by a dedicated team that either completes the necessary tasks in-house, or is supported by an external (global, regional or local) service provider.

Typically each team is responsible for tracking the recurring obligations and deadlines falling within their area – whether it be compliance, corporate

secretarial, accounting or tax – and can do this by using either using technology platforms to digitise the process, or various internal spreadsheets which requires manual input. Information is then exchanged between teams through various channels such as emails, calls and in-person meetings.

THE SOLUTION

A digitised calendaring solution can be a simple but effective way to generate greater efficiencies and enable clearer and consistent communication across multiple different business and supporting functions. Moreover, having all monthly, quarterly, annual and other recurring obligations and deadlines in one place – whether it be tax, accounting, corporate secretarial or compliance - gives the business more control over its global portfolio management and legal operations framework, whilst creating greater transparency.

A high-functioning digitised central calendaring system tracking compliance obligations should have certain features:

- **Automatic reminders:** Timely notifications, reminders and updates should be sent out ahead of and after key events happen (for example, changed due dates, and the completion of a filing). This function can help minimize the risk of missed deadlines and resulting consequences, such as slowdown of business operations, fines and other sanctions.
- **Documents library:** An extensive online depository of the related documents for a company should be maintained on the platform to enable authorised users the ease of accessing necessary files related to their tasks.

- **Role-based accessibility:** A user authorisation module which allows for individuals in a company to be allocated different levels of role-based access to the platform increased client usability. This function should come with certain restrictions to sensitive information and documents.
- **Reporting options:** The option to filter obligations and convert reports into different formats will allow for increased flexibility for users.

With the end of the calendar year fast approaching and new compliance deadlines emerging for 2024, it is an ideal time to review existing workflows between teams and consider new solutions to streamline processes and ensure complete synchronisation between teams.

HOW MERCATOR CAN HELP

Mercator's Global Compliance Calendar functionality supports multinationals with the management of their compliance deadlines worldwide and is a key tool in our proprietary technology platform Entica®.

It provides a customized and comprehensive overview of all compliance deadlines, whether it is a corporate income tax return filing, business name / permit / license renewal or ESG reporting or filing of economic substance.

Users can expand the solution to suit their individual needs and scale the calendar to cover all compliance obligations relevant to their organisation.

[Learn more here](#)

Corporate Transactions: 5 key considerations before taking the plunge



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Large-scale corporate transactions have become a powerful tool for strategic business model transformations.

If carried out correctly, cross-border mergers or acquisitions can provide opportunities for companies to grow into new markets, give shareholders options for their stakes, or address financial challenges head on.

They can also be very complex. Questions abound around how to handle and split the work across the business, what corporate structure to use, and whether to outsource some or all of the process.

As ever, any business embarking on this journey should consider how to make the process as smooth as possible, and - most importantly - achieved by the pre-agreed target date. Here are five key considerations businesses should take into account before proceeding.

1. Pre-work is crucial

Good planning is critical throughout the corporate restructuring process. If a deadline is tight, proper pre-work pays-off in the later stages, helping to avoid unexpected events and complications.

Preparing a consolidated list of scheduled changes, evaluating the sequence of legal actions, checking whether necessary corporate documents are available for drafting purposes, determining applicable laws to verify the compliance, and identifying project stakeholders can be major timesavers in the pre-work phase.

All of the above is particularly important when it comes to cross-border projects involving multiple subsidiaries across different jurisdictions or regions.



2. Centralized workflow

Corporate transactions can often involve multiple teams and stakeholders. It can be a challenge to take everyone on the same journey if actions are carried out independently of each other.

However, if all the efforts are centralized, and tasks are distributed as part of a coordinated plan of action, it can make the whole process more efficient.

This is of course easier said than done, but there are many practical ways to achieve this centralization. For example, a communication matrix showing who needs to communicate or be accountable to whom can have a big impact, as can single-channel communication between stakeholders, especially if one individual is given responsibility for part, or all, of the process. This helps to avoid a lack of coordination that can lead to situations where deadlines are missed or tasks are not completed.

Within this centralized workflow, it also makes sense to combine document gathering and drafting across different entities, ensuring the necessary data and documents are all being handled together to avoid any delays.

3. Make deadlines – and stick to them

To ensure the overall project is on track, companies can break up the process into smaller steps and set up interim deadlines.

Regular follow-up calls with clear agendas can increase accountability for all parties and help to meet the final deadline, and ensure everyone is pushing towards the same targets at the different stages of the project.

4. Be flexible

During a corporate transaction things can change, issues can arise, and the unexpected can happen. Being prepared for such scenarios is key, allowing businesses to solve problems and adapt to challenges if they arise. No business should be wedded to one single course of action. Instead, they should build in some leeway to plans so they can be flexible.

5. Don't forget Post-transaction actions

Deadlines and immediate priorities can sometimes lead to decisions that may require remedial or supplemental actions after a deal closes.

Addressing these should be something that is on everyone's radar to help ensure any corporate transaction is successful and sustainable over the long-term.

When companies get these five things right, it marks the difference between a successful process outcome and one that, although it may ultimately achieve its goal, will do so at the expense of severe headaches and many sleepless nights.

Entity Management in 2023 – A year in review



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2023 witnessed another year of rapid evolution in Entity Portfolio Management (EPM), with new challenges and developments affecting in-house teams globally.

The **Mercator Entity Management 2023 report** analyzes how average EPM cost, time and activity levels have changed in the past year, based on proprietary data covering 180 jurisdictions and 20 different types of corporate secretarial tasks. The findings are a benchmark for multinationals' expenditure and efficiency, paired with analysis and guiding principles from our dedicated team of jurisdictional experts on how to ensure EPM excellence.

Here are our key takeaways from this year's report.

THE DIGITALIZATION DRIVE

Flexible company regulations introduced to fit working-from-home arrangements during the COVID pandemic have continued to drive efficiencies in many jurisdictions around the world. We continue to see the digitalization drive revolutionizing how multinationals manage and maintain their global portfolio of entities, and this year has seen more jurisdictions embrace digital tools to streamline processes and shorten processing times. For example, there has been increased take up of authorities using e-Delivery systems. The e-Delivery system replaces traditional paper correspondence between public institutions and other commercial entities, while preserving the correspondence's legal value.

However, in 2023, the digitalization drive has played out at different speeds worldwide with the gap widening between Global Financial Centres with streamlined, tech-driven solutions – such as Singapore, (US) – and other jurisdictions still relying on

traditional legalization methods, physical filings and in person meetings. This is most pronounced in Asia-Pacific (APAC), which has some of the most efficient processes for multinationals and some of the most complex. In those jurisdictions, the added complexity not only creates administrative burdens for in-house teams, but also increases time and costs for multinationals.

RISE IN ULTIMATE BENEFICIAL OWNERSHIP REPORTING

Increased demand for transparency and growing regulatory scrutiny has seen many jurisdictions across the world introduce Ultimate Beneficial Owner (UBO) reporting requirements. There are now 120 countries around the world with some kind of UBO regulation – with India, Italy, Oman, South Africa, India and Uganda introducing requirements in 2023.

With the formal implementation of the US Corporate Transparency Act (CTA) on 1 January 2024, The Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") issued additional guidelines in 2023 relating to the new UBO requirements for the United States and Puerto Rico.

As with any other legislation, UBO reporting requirements remain "movable" even after being set. Jurisdictions with changes to existing UBO reporting in 2023 included Australia, Spain, Poland, Mozambique and the Czech Republic amongst others. From a company's perspective, it is extremely important to keep an eye on these developments and comply in time.

COST AND TIME RANKINGS

For the second year running, Europe ranked as the lowest cost region for multinationals to operate in, driven by the ongoing implementation of the EU Digitalization Directive and a highly competitive legal

service market. In comparison, the Middle East and Africa (MEA) and Latin America (LATAM) are most expensive, with many jurisdictions in those regions still requiring wet-ink signatures and multiple steps for notarization, translation and legalization of foreign documents.

North America (NA) was revealed as the fastest region, benefiting from widespread adoption of e-signatures and electronic filings, with average time to complete tasks decreasing by 14% in 2023.

Overall, when weighting both cost and time to complete activities, Malaysia emerges as the most favorable location in which to base entities in 2023, followed by Australia and Singapore. Malaysia takes pole position with both competitive cost levels and relatively fast corporate processes by local authorities.

Conversely, Taiwan ranks lowest followed by Vietnam and Norway. Norway stands out from other European countries, again due to the complex processes involved for even the most common corporate actions including additional steps for completing director changes and the process of obtaining a D-number (a temporary identification number for non-permanent resident of Norway).

Whilst these jurisdictions offer a wealth of opportunity for international businesses, multinationals should be aware of the complexity and deep local knowledge required in order to set up and maintain entities in these areas.

Ultimately, no matter the location, it is increasingly important for multinationals to ensure each entity is properly managed and compliant to minimize heightened business risks in today's constantly evolving regulatory landscape.



Find Out More

For further information on how we can assist you,
please contact Mercator@citco.com

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