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Section 16(a) Reporting for Foreign Private Issuers

By David S. Bakst, Kate Ball-Dodd, Thomas Kollar, Christopher Nickas, Ali Perry, Liz Walsh, Gilat Abraham Zaefen & Jennifer Zepralka on January 29, 2026

Effective March 18, 2026, foreign private issuers, or FPIs, will be subject to the reporting requirements under Section 16(a) of the Securities Exchange Act of 1934. Below, we outline what this means for FPIs, their officer and directors, and how you can get ready to comply.

What are Foreign Private Issuers?

FPIs are non-U.S. companies with shares that are listed on a U.S. exchange with most of their share ownership, management, and/or assets outside the United States.[1]

Will all FPIs be Subject to Section 16(a) Reporting?

The reporting requirement goes into effect on March 18, 2026, without any requirement that the Securities and Exchange Commission, or SEC, amend its rules. While the SEC has the ability to create exemptions from the reporting requirements, FPIs should not assume that it will provide any such exemptions prior to the effective date, if at all, and therefore should begin preparing to comply as soon as possible.

Who are an FPI's Section 16 Reporting Persons?

All of an FPI's directors will be Section 16 reporting persons. In addition, all of an FPI's executive officers, plus certain other officers (depending on their role in the company) will also be Section 16 reporting persons.

Officers	Directors
President	All members of the board of directors, whether or not they are employees
Principal financial officer	
Principal accounting officer or controller	
Any vice president in charge of a principal business unit, division, or function (i.e., sales, administration, or finance)	
Any other officer (including an officer of a subsidiary) or other person who performs similar policy-making functions	

Practice Tip: Boards of directors are tasked with determining the identity of an issuer's Section 16 reporting persons. In doing so, an individual's function and role are more determinative than title.

Practice Tip: While the determination is based on particular facts and circumstances, certain positions like general counsel / chief legal officer are often not considered Section 16 officers.

What are the Section 16(a) Reporting Requirements?

All Section 16 reporting persons must report their direct and indirect beneficial ownership of the FPI's securities to the U.S. Securities and Exchange Commission, or SEC.

What securities must be reported?

Equity securities registered in the United States, rights to equity securities (e.g., options, warrants, or restricted shares), or instruments that derive their value from equity securities (e.g., phantom shares or restricted share units). Debt securities do not need to be reported unless they are *convertible* into equity securities.

How is beneficial ownership determined?

Beneficial ownership for purposes of Section 16(a) reporting is broad and can be created through a variety of contracts, arrangements, understandings, or relationships. The key question is whether the reporting person has the opportunity to profit directly or indirectly from a transaction in the securities (this is called “pecuniary interest”)?

- **Direct beneficial ownership:** Shares held in the reporting person’s name.
- **Indirect beneficial ownership:** Examples include shares held by immediate family members living in the same household, a general partner’s proportionate interest in the portfolio securities held by a partnership; a person’s interest in securities held by a trust under certain circumstances, or a person’s right to acquire equity securities through the exercise or conversion of any derivative security, whether or not presently exercisable.

Practice Tip: Ownership of and transactions in shares that are indirectly beneficially held by the reporting person are reported on the reporting person’s forms, consistent with how they would be reported if the shares are held in the reporting person’s name.

Practice Tip: For FPIs with American Depositary Shares, or ADSs, listed on a U.S. exchange, transactions in both the underlying shares and the ADSs must be reported.

What are reportable transactions?

Again, reportable transactions are broad. They include not only open market purchases and sales but private transactions, gifts of securities, exercises of convertible securities, transactions involving many derivative securities or employee benefit plan transactions, transactions pursuant to a Rule 10b5-1 plan, and other transactions. Reporting persons and issuers should consult their counsel prior to executing any transaction to confirm whether it is reportable.

How Do Reporting Persons Complete their Section 16 Reporting?

Reporting persons are required to file the following reports with the SEC by the filing deadlines set forth below:

Form	Ownership Reported on Form	Filing Deadline
Form 3	Initial report listing all equity securities held by the reporting person	Filed within 10 calendar days of appointment (in practice, as soon as practicable after becoming a reporting person)
Form 4	Ongoing reports filed each time there is a change in the reporting person's beneficial ownership	Filed before the end of the 2 nd business day after the reportable transaction
Form 5	Filed when there was at least one transaction in the FPI's securities by a reporting person that was not reported on Form 4, either due to an exemption or a failure to report	If applicable, filed within 45 days after the FPI's fiscal year-end

Failure to timely comply could result in any or all of: (i) a cease-and-desist order from the SEC, (ii) fines based on each violation and (iii) criminal prosecution for intentional misstatements or omissions.

Practice Tip: The time to file a Form 4 is short! For example, if a transaction is completed on Tuesday, Form 4 must be on file with the SEC by 10 PM EST on Thursday.

What To Do Now?

- **Begin Enrolling Reporting Persons in EDGAR Next:** All reporting persons who do not currently file reports with the SEC must complete a notarized Form ID in order to file on EDGAR Next. Given anticipated processing delays at the SEC due to volume, FPIs should begin the EDGAR Next enrollment process as soon as possible. In order to complete a Form ID, the following information is needed from each Section 16 reporting person:
 - Applicant's name, business address (typically the issuer's address) and telephone number;

- Confirm whether the applicant has ever been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (e.g., officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation;
- Name, address, email address and telephone number of one or more account administrators;
- Confirm whether the individual(s) being authorized as prospective account administrators have been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (e.g., officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation;
- Billing contact's name, address, email address and telephone number (Section 16 filings do not have filing fees, but this information is still required; most domestic issuers name someone in-house); and
- Signatory's name, email address and phone number (if not the applicant).

Practice Tip: There are two ways to complete a Form ID in EDGAR Next: either (1) the Form ID itself is executed by the Section 16 reporting person and notarized, or (2) the reporting person executes a power of attorney, or POA, which must be notarized, giving another individual the ability to complete the Form ID on their behalf.

- **Complete EDGAR Next Delegations:** Ensure that EDGAR Next filing authority for each reporting person is delegated to an administrator at the FPI and/or a financial printer.
- **Determine Who Will File:** Many domestic U.S. issuers file on behalf of their reporting persons, but this is not required.

Practice Tip: If someone other than the reporting person will be executing Section 16 reports on his or her behalf, a POA is required, and must be filed with the reporting person's initial Form 3.

- **Put Procedures in Place to Ensure Timely Reporting:** Consider adopting a policy (e.g. a mandatory pre-clearance policy) to assist reporting persons in complying with their reporting

requirements and to ensure timely information sharing, especially where the FPI will file on the reporting person's behalf.

- ***Begin Collecting Ownership Information to Ensure a Timely Initial Filing:*** FPIs should work with their reporting persons to prepare accurate ownership disclosures for the initial Form 3 filing.

For more information about Section 16 reporting and other issues under the U.S. federal securities laws, please reach out to any of the contacts listed or a member of your Mayer Brown team.

[1] To determine if an issuer is an FPI, follow the steps below:

- **Step 1:** If the issuer is organized under a non-U.S. law, proceed to Step 2. If it is a U.S.-organized issuer, it cannot be an FPI.
- **Step 2:** Based on a “reasonable inquiry,” determine whether U.S. residents hold more than 50% of the issuer's outstanding voting securities. If U.S. residents hold 50% or less, the issuer is an FPI. If more than 50%, go to Step 3.
- **Step 3:** If U.S. residents hold more than 50% of voting securities, the issuer is an FPI unless any one of the following is true:
 - **Board/management test:** A majority of executive officers or directors are U.S. citizens or residents.
 - **Asset location test:** More than 50% of the issuer's assets are located in the U.S.
 - **Administrative test:** The business is administered principally in the U.S. (i.e., primary managerial/administrative center is in the U.S.).

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