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Corporate Transparency Act

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The Corporate Transparency Act: What You Need to Know

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A new federal anti-corruption law took effect January 1, 2024. How will it affect you?



What's the impact?

- Creates new reporting obligations for a wide range of entities formed in the United States.
- Requires Reporting Companies to disclose information to the US Treasury about their owners and persons who exercise control.
- Establishes tight reporting deadlines for entities formed after January 1, 2024.

March 4, 2024 Update: On March 1, a federal court in Alabama ruled that the Corporate Transparency Act is unconstitutional. The court's judgment blocks the federal government from enforcing the Act against the plaintiffs in the case, the members of the National Small Business Association. The government is expected to appeal. The firm is monitoring the legal developments and will provide additional information and guidance as the case proceeds.

The Corporate Transparency Act took effect January 1, 2024. The CTA is designed to combat money laundering and other financial crime by requiring a broad range of entities to disclose information about their owners and persons who exercise control to the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the US Treasury.

The CTA is simple in concept, but technical in its application. The keys to navigating these new reporting requirements are the following:

- / Whether an entity is a Reporting Company that must report to FinCEN (or whether that entity falls into one of many enumerated exceptions to the reporting requirement)
- / Who Beneficial Owners and Company Applicants are whose information must be reported
- / When reports are due to FinCEN

Key CTA Terms

- / **Reporting Company** includes virtually any entity formed in the United States. However, the act also creates numerous exemptions, which exclude certain categories of entities including:
 - o Public companies
 - o Larger companies (with a physical US location, > 20 employees and > \$5M in gross receipts/sales)
 - o Companies in regulated industries (e.g., financial services, including certain investment companies, fund advisors and pooled investment vehicles; insurance)
 - o Tax-exempt entities
 - o Subsidiaries (e.g., portfolio companies) controlled or wholly owned by an exempt entity may be exempt as well (depending on the specific exemption utilized)
- / Entities that fall within one of these exemptions are not required to file CTA reports.
- / **Beneficial Owner** is defined as any individual who (i) owns 25 percent or more of a Reporting Company or (ii) exercises “substantial control” over a Reporting Company. Many senior executives will be deemed Beneficial Owners under the act due to their control over a Reporting Company.
- / **Company Applicant** is an individual who directly files an entity’s formation documents with a relevant state or tribal authority or is primarily responsible for directing or controlling the filing.

Who will this affect?

The CTA will impact entities across the US and the individuals who own or control those entities.

- / Every corporation, LLC, and other legal entity formed in the US needs to determine whether it

is a Reporting Company under the act or whether it falls within an exemption.

- / Every entity that is a Reporting Company needs to identify its Beneficial Owners and Company Applicant(s).
- / Trustees will be deemed Beneficial Owners of a Reporting Company if the trust owns 25% or more of the Reporting Company.
- / Attorneys and other service providers involved in forming new entities after January 1, 2024, may be deemed Company Applicants.

Who must comply with the CTA?

It is the obligation of the Reporting Company to file reports with FinCEN.

However, individual Beneficial Owners, senior officers, and Company Applicants may face civil and/or criminal liability for willful failure to provide required information or for providing false information.

What are the deadlines for CTA compliance?

- / **Reporting Companies formed between January 1, 2024, and December 31, 2024**, must file their initial Beneficial Ownership Information (BOI) report with FinCEN within **90 days** after receiving actual or public notice, whichever is earlier, of their company's creation or registration.
 - o Reporting Companies created **on or after January 1, 2025**, will have **30 days** within which to make the required BOI report filing.
 - o Reporting Companies created **before January 1, 2024**, must file their initial BOI report by **January 1, 2025**.
 - o Reporting Companies created **before January 1, 2024**, are *not* required to identify their Company Applicants.
- / **Updates:** A Reporting Company must file an updated BOI report whenever there is a change in (i) its basic information, (ii) Beneficial Owners, or (iii) status as a Reporting Company (i.e., if the company becomes eligible for an exemption). The updated report must be filed *no later than 30 days after the change*.

What are the potential consequences for non-compliance?

- / A **willful failure** to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in **civil or criminal penalties**, including civil penalties of up to \$500 for

each day that the violation continues, or criminal penalties, including imprisonment of up to two years and/or a fine of up to \$10,000.

- / A person may be subject to civil and/or criminal penalties for **willfully causing** a Reporting Company not to file a required a BOI report or to report incomplete or false beneficial ownership information.

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