

December 26, 2023

## Services

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## The Corporate Transparency Act

The Corporate Transparency Act (“CTA”) will become effective on January 1, 2024, and will require many existing and newly created companies to report extensive information about their “beneficial owners” and “company applicants” to the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). Compliance with the CTA is the responsibility of reporting companies that are subject to the CTA. Reporting companies that fail to comply with the CTA are subject to substantial civil and criminal penalties. All reporting companies should be taking steps to comply with the reporting requirements by the applicable deadline.

### Reporting Companies

Reporting companies include any corporation, limited liability company or other entity that is formed by filing a document (such as a certificate of incorporation, etc.) with a secretary of state if that company is not exempt. The CTA contains 23 specific exemptions from the reporting obligations. Notable exemptions include:

- “Large operating companies,” which are companies that meet all three of the following criteria: (1) employ more than 20 employees on a full-time basis (at least 30 hours per week or 130 hours per month) in the U.S.; (2) have filed U.S. federal income tax returns in the previous year demonstrating more than \$5,000,000 in aggregate gross receipts or sales; and (3) have an operating presence at a physical office in the U.S.
- Certain regulated entities that already disclose significant information about themselves, including SEC reporting issuers, broker-dealers, banks, credit unions, insurance companies, etc.
- Certain subsidiaries of exempt companies.

### Reporting Obligations

The initial FinCEN report filed by a reporting company will include basic information about the company, such as complete legal name and any d/b/a names, current street address of U.S. principal place of business, jurisdiction of formation and taxpayer identification number or employer identification number. The report will also include private personal information about each individual who is a “beneficial owner” or “company applicant.”

Generally, “beneficial owners” include individuals who, directly or indirectly, own or control at least 25% of the ownership interests in the reporting company. Individuals who do not hold or control any ownership interests in the reporting company are also deemed to be “beneficial owners” if they exercise

“substantial control” over a reporting company. Examples of parties who have “substantial control” over a reporting company include those who serve as senior officers of the reporting company, those who have authority over the appointment and removal of senior officers or a majority of the board, and those who exercise substantial influence over important decisions made by the reporting company.

A “company applicant” is a person who either files or directs the filing of the document creating or registering the reporting company (such as the certificate of incorporation, etc.). Reporting companies formed before January 1, 2024 are not required to report information about their company applicants, but are required to report information about their beneficial owners.

The private personal information (“PPI”) required to be disclosed regarding each beneficial owner and company applicant includes the individual’s legal name, date of birth, current residential street address, the unique identifying number from an acceptable identification document (such as a passport or driver’s license), and an image of the identification document. If there is any change in the information about the reporting company or its beneficial owners, the reporting company must file an updated report with FinCEN within 30 days after the change occurs.

### **FinCEN Identifiers**

FinCEN is creating a process for individuals and reporting companies to obtain a “FinCEN Identifier.” Beginning January 1, 2024, individuals may provide their PPI directly to FinCEN on a one-time basis to receive a FinCEN Identifier. A beneficial owner or company applicant may then provide the FinCEN Identifier to a reporting company in lieu of providing their PPI. This process potentially provides greater privacy protection to beneficial owners and company applicants and lessens the burden on reporting companies to report changes in beneficial owner information, such as when an individual moves or renews a passport or driver’s license (which information must be updated by the holder of the FinCEN Identifier).

### **Compliance Dates**

Generally, the date by which a reporting company must file its initial report with FinCEN depends upon its date of formation. If the reporting company was:

- in existence prior to January 1, 2024, the initial report must be filed by January 1, 2025;
- formed during calendar year 2024, the initial report must be filed within 90 days after the date of formation; and
- formed on or after January 1, 2025, the initial report must be filed within 30 days after the date of formation.

Any company that becomes a reporting company because it no longer qualifies for an exemption must file an initial report within 30 days after the date that it ceases to meet the exemption criteria.

An updated report is required to be filed within 30 days of a change in beneficial owner information, but is not required in the case of changes in company applicant information. If a reporting company becomes aware of inaccuracies in an earlier report, a corrected report is required to be filed within 30 days.

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## Penalties for Noncompliance

The CTA provides substantial civil and criminal penalties for violations, including a fine of up to \$10,000, imprisonment for up to two years, or both, in the case of any person who willfully provides or attempts to provide false or fraudulent beneficial owner information or willfully fails to report complete or updated beneficial owner information to FinCEN. In addition, reporting companies and individuals who cause a reporting company not to report, or who are senior officers of a reporting company at the time of its failure to report, may be subject to penalties under the CTA.

## Action Items for Companies

If you are a company, you should be working on the following action items:

- Determine if you will be a reporting company or if one or more exemptions may be available to you;
- Identify your beneficial owners (and company applicants if you were formed after January 1, 2024);
- Designate a company officer to be responsible for compliance with the CTA;
- Amend your company's organizational documents (bylaws, limited liability company agreement, etc.), employment agreements, stockholder agreements and stock purchase agreements to include covenants that beneficial owners will provide the necessary PPI or FinCEN Identifier to you for purposes of satisfying your CTA reporting obligations;
- Collect the required PPI or FinCEN Identifier from your beneficial owners and company applicants; and
- Develop and maintain systems and procedures to protect any PPI that you receive from beneficial owners and company applicants.

Please contact the members of Kutak Rock's Corporate Finance Group listed on the left or your Kutak Rock attorney for additional information or assistance in preparing for the CTA. You may also visit us at [www.kutakrock.com](http://www.kutakrock.com).

