

# CLIENT ALERT

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## IMPORTANT NOTICE IMPACTING MILLIONS OF BUSINESS ENTITIES (A SUMMARY OF THE CORPORATE TRANSPARENCY ACT)

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The Corporate Transparency Act ("CTA" or the "Act") is effective as of January 1, 2024. It is the latest effort by the federal government to combat money laundering, tax fraud, and other illegal activity by bad actors. Consistent with the Act's purpose, this information will be available to federal law enforcement agencies (including Treasury and the IRS), and state and local enforcement agencies with prior court approval. Failure to timely comply with the Act may result in both substantial civil penalties and criminal charges.

Unfortunately, a lot of good actors will get caught in the crossfire. Many newly formed corporations, limited liability companies and certain trusts formed after January 1st of 2024 and not falling under any of the Act's exemptions ("Reporting Companies") will need to file reports with the Financial Crimes Enforcement Network ("FinCEN") within ninety (90) days after their formation. (This filing period shortens to 30 days after formation with respect to Reporting Companies formed on or after January 1, 2025.) Foreign companies which register with a State's Secretary of State office can also be Reporting Companies and need to comply with the Act. Reporting Companies formed or registered before 2024 will need to file their FinCEN reports before the end of 2024.

The Act requires that Beneficial Ownership Information ("BOI") of individuals that own 25% or more of Reporting Companies be filed, in addition to those individuals having "Substantial Control" of Reporting Companies. Substantial Control covers individuals serving as a senior officer, having authority over the appointment or removal of a senior officer or a majority of the board (or similar body), directing important decisions, or having any other form of substantial influence or control over a Reporting Company.

### Exemptions

There are a number of exemptions from the Act's reporting requirements. Many of these exemptions cover entities that are already subject to oversight, such as publicly traded companies, banks, investment companies, insurance companies, governmental entities, and public utilities. Many larger accounting firms are exempt too, as are non-profits and other tax-exempt entities, and wholly owned subsidiaries of exempt companies.

There is also a "large operating company" exemption that covers many privately held companies. To qualify, an entity must satisfy all of the following requirements: (1) 20 or more full-time employees located in the U.S.; (2) consolidated annual U.S.-derived revenues exceeding \$5 million (as shown on its latest tax return); and (3) an office or other physical location within the U.S. (Generally speaking, shared office space does not meet that third qualification.) Unfortunately, newly formed companies will not qualify for this exemption, as they will not have a prior year tax filing to show compliance with the minimum revenue standard.

### Information to be Filed

Reporting Companies must timely file a report containing the following BOI for each Beneficial Owner: (1) full legal name; (2) date of birth; (3) current residence address; and (4) the person's unique identifying number from a passport, driver's license, or other government-issued document, plus provide a copy of the document which includes a picture.

In addition, newly formed entities must file the BOI of up to two individuals who meet the definition of "Company Applicant." A "Company Applicant" is the individual who directly files the formation documents (or registration documents for a foreign Reporting Company) when an entity is set up through a Secretary of State office, as well as the individual primarily responsible for directing the filing. Practically speaking, the attorney drafting or directing the drafting of formation documents, as well as an associate or legal assistant who makes the filing, will qualify as Company Applicants.

Reporting Companies falling under an exemption need not file anything, so long as the exemption applies. Moreover, filings do not need to be renewed, but Reporting Companies will need to update their filings within 30 days after any changes. It will be important to designate someone to monitor a company's filed information for changes that will trigger an update (even something as simple as an officer changing her address).

### Conclusion

FinCEN estimates that almost 33 million companies (about 90% of America's business entities) will be required to file under the Act in 2024. The Act imposes substantial civil and criminal penalties on companies that don't make required filings and their senior officers.

Existing companies need to evaluate whether they are Reporting Companies and thus will need to file during 2024, keeping in mind that it may take some time to collect BOI from their Beneficial Owners. Entrepreneurs looking to start a new business in 2024 and beyond should collect the required information from their investors and management during the formation process, and include these filing requirements in their formation checklists and budgets. All companies should consider addressing the CTA in corporate and LLC organizational documents, shareholder agreements, operating agreements, employment agreements, and transactions involving ownership transfers.

Due to Unauthorized Practice of Law concerns, many accountants may be reluctant to get too far into interpreting these definitions and exemptions or may not be well equip to address some of the more nuanced aspects of the CTA. FinCEN allows companies to make their own filing determinations if they wish, and to file their own BOI reports. More information can be found here – <https://www.fincen.gov/boi>.

Dickinson Wright is prepared to answer questions and help in determining if any FinCEN requirements exist and to assist in filing these reports and amendments. For more information, please contact us at [ctacompliancegroup@dickinsonwright.com](mailto:ctacompliancegroup@dickinsonwright.com) or through your main DW relationship person.

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