



understanding the corporate transparency act

MSK Client Alert

December 2, 2024

As of January 1, 2024, significant new reporting requirements have come into effect with the Corporate Transparency Act (the "CTA"). In general, the CTA is a new federal law that requires most US-based entities, and certain foreign entities (collectively, "Reporting Companies"), to report detailed information about their "Beneficial Owners" and "Company Applicants" to the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the US Department of the Treasury. It is crucial to understand these new mandatory requirements and ensure compliance to avoid penalties. **[1]**

Summary of key points under the CTA:

- **Reporting Company Definition:** A Reporting Company is: (1) any domestic entity created by filing a document with a US state (including the District of Columbia), territory, Indian Tribe, or similar office (g., corporations, limited liability companies, limited partnerships and certain trusts), or (2) a foreign entity registered to do business in any US state (including the District of Columbia), territory, or Tribal jurisdiction.
- **Exceptions:** The CTA generally excludes public companies, "large" operating companies, companies in certain regulated industries (g., financial services, insurance, etc.), and tax exempt entities, among others.
- **Beneficial Ownership Criteria:** A Reporting Company must identify and report detailed information about each of its Beneficial Owners. A Beneficial Owner is any individual who either (1) exercises substantial control over the Reporting Company, or (2) owns or controls at least 25 percent of the ownership interests in the Reporting Company.
- **Substantial Control Test:** Substantial control refers to whether an individual has the power to make significant decisions for the Reporting Company. This includes senior officers and anyone with the authority to appoint or remove officers or directors.

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- **Ownership Test:** An individual is a beneficial owner if they own or control at least 25% of the entity (directly or indirectly), including joint ownership of undivided interests.
- For trusts deemed to exercise substantial control over, or those that own at least 25 percent interest in, a Reporting Company, Beneficial Owners may include grantors or settlors, trustees, advisors, protectors, designated representatives, or beneficiaries with significant control or withdrawal rights.
- **Company Applicants:** Company Applicants include (1) the individual who directly files the document to create/register the Reporting Company, and (2) the individual who is primarily responsible for directing/controlling the filing of such document. There may only be two Company Applicants.
- **Required Information:** The CTA requires Reporting Companies to provide information about itself and each of its Beneficial Owners (and Company Applicants for entities formed/registered on or after January 1, 2024).
- **Beneficial Owners / Company Applicants:** The Reporting Company must report the full legal names, dates of birth, residential addresses, and photos of acceptable identification (e.g., a passport or US driver's license) for each of its Beneficial Owners (and Company Applicants, if applicable).
- **Reporting Company:** Must report its legal name, any trade names or DBAs, current principal place of business, jurisdiction where formed or registered, and a taxpayer identification number (or the foreign equivalent).
- **Filing Deadlines:** The reporting deadlines vary based on when the entity was formed or registered. Entities formed or registered before January 1, 2024 have through December 31, 2024. Entities formed or registered during 2024 have 90 days to file after their date of formation. Entities formed or registered on or after January 1, 2025 have 30 days to file after their date of formation.
- **FinCEN ID Number:** Individuals and entities can register with FinCEN to receive a FinCEN ID number, which will streamline the information gathering and the reporting process. The FinCEN ID number may generally be provided in lieu of the information outlined above with respect to Reporting Companies, Beneficial Owners, and Company Applicants. Individuals can apply for the FinCEN ID number here: <https://fincenid.fincen.gov/landing>, and entities can apply for a FinCEN ID number as part of its initial Beneficial Ownership Information Report submission. We strongly encourage any entity or individual required to report under the CTA to apply for a FinCEN ID number.
- **Penalties for Noncompliance:** Penalties can be severe, including civil fines and possible imprisonment for willful violations. Generally, the Reporting Company and its senior officers are liable for noncompliance, not the Beneficial Owners or Company Applicants, if applicable. However, any individual who willfully provides false information to a reporting company may be liable.

Compliance options:

1. **Self-Compliance:** You can complete the registration process on your own here: <https://boiefiling.fincen.gov>.



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2. Legal Service Providers: Engage a third-party legal service company. We can provide a list of recommended providers upon request.

We understand that these regulations are complex, and our goal is to ensure a smooth transition for your company. Please do not hesitate to reach out with any questions or for further clarification.

[1] A Federal District Court recently ruled that the CTA is unconstitutional. The relief from this ruling currently applies only to the named plaintiffs, which include the members of the National Small Business Association. Accordingly, companies other than the named plaintiffs in the District Court case must still comply with the CTA.