

CLIENT ALERT



Are You Ready to Report? Here's What You Need to Know about the Corporate Transparency Act

December 26, 2023

AUTHORS

Britt Mosman | **Eric S. Halperin** | **Jeffrey S. Hochman** | **Larissa Marcellino**
Mark Proctor | **Lauren Waxman**

UPDATE: This client alert was updated on December 26, 2023 to include a description of new information provided by the Treasury Department's Financial Crimes Enforcement Network ("FinCEN").

- | | |
|--|---|
| How could the CTA impact you? | Under the Corporate Transparency Act (the "CTA"), many entities will be required to report information about their beneficial owners to FinCEN . An estimated 33 million entities are expected to be required to file during the first year alone. |
| When do the reporting requirements take effect? | Entities created on or after January 1, 2024 will initially have 90 days from the date of formation to file a report. Entities created on or after January 1, 2025, however, will have only 30 days from the date of formation to file reports. Entities created before January 1, 2024 must file by January 1, 2025. |
| Who is required to report? | Unless otherwise exempt, all entities (including corporations, LLCs and limited partnerships) created by the filing of an organizational document with state officials must file. Even foreign entities will be required to report if they are registered to do business in the United States. |



Are You Ready to Report? Here's What You Need to Know about the Corporate Transparency Act

What are the available exemptions?

There are 23 exemptions from the CTA's filing requirements, which include certain types of large operating companies, public companies, tax-exempt entities, registered investment companies, registered investment advisers and certain other regulated entities, as well as subsidiaries of many exempt entities, each as further defined in the CTA. For a list of these exemptions, see the Willkie memorandum linked below.

Complex organizational structures that involve pooled investment vehicles, joint ventures and other similar investment vehicles and related arrangements with investment advisers and other managers will likely require a detailed analysis to determine whether an exemption is available and which beneficial owner(s), if any, need to be reported. Please consult your Willkie attorney with any questions.

Who is a beneficial owner?

A beneficial owner is an individual who (i) directly or indirectly exercises substantial control over the reporting entity or (ii) owns or controls at least 25% of the entity's ownership interests. Depending on the circumstances, this may include directors and executive officers of the reporting entity and/or individuals with certain decision-making or veto rights.

What beneficial owner information is required to be reported?

Reporting entities are required to provide the following for each beneficial owner:

- full legal name,
- date of birth,
- residential address and
- identification number from an acceptable identification document (such as a driver's license or passport), along with an image of such document.¹

Reporting entities formed on or after January 1, 2024 will also have to provide information on the person(s) who formed the entity and directed the filing of the document that created or registered the entity (referred to as "company applicants").

Who can access the reports?

FinCEN's database of beneficial ownership information will not be publicly available. In certain circumstances, information may be disclosed to federal and state law enforcement agencies and, with the reporting entity's consent, to financial institutions in connection with know-your-customer (KYC) obligations (among others).

¹ A beneficial owner who does not wish to provide his or her personal information to the reporting entity will be able to provide such information directly to FinCEN, which will, beginning January 1, 2024, issue the owner an identification number to provide to the reporting entity.



Are You Ready to Report? Here's What You Need to Know about the Corporate Transparency Act

What if information changes after a report is filed?

Once the initial report is filed, reporting entities are required to update their report within 30 days any time there is a change to previously reported information about the reporting entity itself or its beneficial owners (such as the reporting entity registering a new business name or any change to a beneficial owner's name or address).

Are there penalties for non-compliance?

The penalties for *willfully* failing to comply or timely file a report include civil fines of up to \$500 per day and criminal penalties of up to \$10,000 and/or two years of imprisonment. Moreover, FinCEN has made clear that an enforcement action can be brought against individual beneficial owners and company applicants who willfully fail to provide required information to a reporting entity.

Do any states have similar laws to the CTA?

The New York LLC Transparency Act will require the disclosure of similar beneficial ownership information for LLCs formed in, or registered to do business in, New York. Unlike under the CTA, beneficial ownership information provided to New York (other than certain personal information) will be available in a publicly searchable database.

What should you be doing now?

1. Review the LLCs, partnerships and corporations in your organization.
2. Identify those entities that may be exempt from reporting and reach out to your Willkie attorney with any questions.
3. Identify and gather information for any entities that are not exempt that will need to file a report. Such reports will need to be filed electronically through a secure filing system that FinCEN intends to make available on its website beginning January 1, 2024.



Are You Ready to Report? Here's What You Need to Know about the Corporate Transparency Act

For More Information

For additional details regarding the CTA, please see our client memorandum [here](#). If you have any questions regarding the CTA or this client alert, please contact the attorneys listed below or the Willkie attorney with whom you regularly work.

Britt Mosman

202 303 1057

bmosman@willkie.com

Eric S. Halperin

212 728 8952

ehalperin@willkie.com

Jeffrey S. Hochman

212 728 8592

jhochman@willkie.com

Larissa Marcellino

212 728 8039

lmarcellino@willkie.com

Mark Proctor

212 728 8234

mproctor@willkie.com

Lauren Waxman

212 728 3375

lwaxman@willkie.com

Copyright © 2023 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in Brussels, Chicago, Frankfurt, Houston, London, Los Angeles, Milan, New York, Palo Alto, Paris, Rome, San Francisco and Washington. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000, and our fax number is (212) 728-8111. Our website is located at www.willkie.com.