

IMPORTANT INFORMATION ON THE CORPORATE TRANSPARENCY ACT

K&L GATES

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This memorandum provides important information on the Corporate Transparency Act, 31 U.S.C § 5336, and the rules and regulations promulgated thereunder (the “CTA”). The CTA is part of the Anti-Money Laundering Act of 2020, with the purpose to combat money laundering and the engagement of other illicit activities through anonymously owned entities in the United States. The CTA applies both to newly formed and already existing U.S. entities and to foreign entities doing business in the United States, and has significant implications for most domestic and foreign businesses as it imposes new reporting obligations on such entities, requiring a fact specific analysis for each entity’s unique circumstances.

The CTA became effective **January 1, 2024** and it requires all **Reporting Companies** to begin providing to the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury (“**FinCEN**”), information about their **Beneficial Owners** and, for Reporting Companies formed on or after January 1, 2024, information about their **Company Applicants**.

This communication is only a high-level summary of the CTA. It is not intended to serve as legal advice. If you would like help understanding how the CTA may apply to your entity or organization, you are invited to communicate with your contacts at K&L Gates LLP or any member of the firm identified at the end of this communication.

I. What Is a Reporting Company

A **Reporting Company** is generally any corporation, LLC, or similar entity that is created by filing a document with the Secretary of State or similar office of a state or Indian tribe that is not an **Exempt Entity**. The requirements also apply to a foreign entity registering to do business in the United States.

The CTA includes a specified list of 23 **Exempt Entities**. In general, entities that already report ownership information to a governmental entity (i.e., regulated entities) are exempt, including: public companies, financial institutions, registered money transmitting businesses, 1934 Act broker-dealers, registered investment advisors and investment companies, insurance companies, PCAOB accounting firms, public utilities, 501(c)s, and certain political organizations. There is also an exemption for large operating companies that must meet the each of following requirements: (i) employs more than **20** full time employees **in the United States**; (ii) **operating** presence at a **physical office** in the United States; **and** (iii) previous year’s federal tax return demonstrates more than \$5 million in “gross receipts or sales in the aggregate” from sources within the United States.

II. When Do Reporting Companies Need to Comply With the CTA

Reporting Companies that:

- are formed **on or after January 1, 2024 until December 31, 2024** must comply with the provisions of the CTA within **90 days** after notice of the effectiveness of such entity’s formation (or registration)¹; and
- already exist prior to January 1, 2024 must comply with the CTA **by January 1, 2025**.

¹Entities formed on or after **January 1, 2025** must comply with the provisions of the CTA within **30 days** after notice of the effectiveness of such entity’s initial formation (or registration) filing.

III. What Information Needs to Be Provided Under the CTA

Reporting Companies formed (or registered in the United States) on or after January 1, 2024 must provide both **Beneficial Owner** and **Company Applicant** information to FinCEN. Reporting Companies in existence prior to January 1, 2024 must only provide **Beneficial Owner** information and they are **not** required to provide information on their Company Applicants.

To the extent any of the information reported to FinCEN changes or was inaccurate when made, the Reporting Company must file an update within 30 calendar days after the change or upon learning of the error. This creates an ongoing reporting obligation for which Reporting Companies must monitor.

With respect to each **Beneficial Owner**, the Initial Report submitted to FinCEN must contain either the following information or a **FinCEN Identifier**:

- Full legal name
- Date of birth
- Residential address (the address does not have to be a U.S. address)
- Unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents:
 - o U.S. passport
 - o State driver’s license
 - o Identification document issued by a state, local government, or Native American tribe
 - o If individual does not have any of the foregoing, a foreign passport

Reporting Companies, Beneficial Owners, and Company Applicants can obtain a **FinCEN Identifier** by applying directly to FinCEN with the required information. The FinCEN Identifier will allow Reporting Companies, Beneficial Owners and Company Applicants to report the FinCEN Identifiers in lieu of collecting and reporting the required information for each entity or individual. It will also facilitate updating the information in the future to the extent that any of the reported information changes.

It is essential to note that the obligation and related liabilities to update information reported to FinCEN fall to the **Reporting Company**, except the obligation (and related liabilities) to update the underlying information for FinCEN Identifiers, which falls to the holder of the FinCEN Identifier.

IV. Who Is a Beneficial Owner?

A Beneficial Owner is any individual who, directly or indirectly:

- i. Exercises **substantial control** over a Reporting Company; OR
- ii. Owns or controls at least **25 percent of the ownership interests** of a Reporting Company.

An individual might be a Beneficial Owner through substantial control, ownership interest, or both. However, Reporting Companies are not obligated to report the reason that an individual is a beneficial owner. Further, a Reporting Company may, and often will, have more than one Beneficial Owner, and there are no maximum number of Beneficial Owners.

The CTA contains five exceptions to the definition of Beneficial Owner: (i) minor children, (ii) Nominee, Intermediary, Custodian, or Agent, (iii) Employees (who do not exercise substantial control), (iv) inheritors, and (v) creditors. Each of these exceptions is subject to qualifications and meeting the parameters specified in the CTA.

V. What Is Substantial Control?

Reporting Companies are required to identify all individuals who exercise substantial control over the company. An individual exercises substantial control over a Reporting Company if the individual meets any of four general criteria:

- 1) The individual is a senior officer;
- 2) The individual has authority to appoint or remove certain officers or a majority of directors/managers of the Reporting Company;
- 3) The individual is an important decision-maker; OR
- 4) The individual has any other form of substantial control over the reporting company.

VI. What Is an Ownership Interest?

Reporting Companies are required to identify all individuals who own or control **at least 25 percent** of the ownership interests of the company. "Ownership interests" is defined broadly to include:

- 1) Any equity, stock, or similar instrument, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, interest in a joint venture, or certificate of interest in a business trust, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;
- 2) Any capital or profit interest in any entity;
- 3) Any instrument convertible, with or without consideration, into any share or instrument described in items (1)-(2), any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in items (1)-(2), regardless of whether characterized as debt;
- 4) Any put, call, straddle, or other option or privilege of buying or selling any of the items described (1)-(3) without being bound to do so, except to the extent that such options or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or

- 5) Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

VII. Who Is a Company Applicant

For a U.S. entity that is a Reporting Company, a Company Applicant is each individual who (i) directly files the formation document and (ii) is primarily responsible for directing or controlling the filing. For a foreign Reporting Company, a Company Applicant is each individual who (i) directly files the document that first registers the foreign reporting company, and (ii) is primarily responsible for directing or controlling the filing. Up to two Company Applicants need to be reported for Reporting Companies formed/registered on or after January 1, 2024. Company Applicants do not need to be reported for Reporting Companies formed/registered prior to January 1, 2024.

VIII. Conclusion

This communication is not intended to serve as legal advice or guidance. If you would like help understanding how the CTA may apply to your entity or organization, you are invited to communicate with your contacts at K&L Gates LLP or any member of the firm identified below.

Additional information and resources relating to the CTA can be found at our website:

[The Corporate Transparency Act: Through a Real Estate Lens \(December 13, 2023\)](#)

[The US Corporate Transparency Act: Practical Considerations for Private Fund Sponsors as the Effective Date Approaches \(December 12, 2023\)](#)

[Europe: Significant Expansion to Corporate Criminal Liability in the United Kingdom \(November 12, 2023\)](#)

[Why Corporates are Now More Likely to Face Criminal Prosecution for the Actions of Their Employees \(November 20, 2023\)](#)

[The Corporate Transparency Act: Through a Family Office Lens \(October 3, 2023\)](#)

[Complying With FinCEN's Beneficial Ownership Reporting Rules Under the Corporate Transparency Act \(August 15, 2023\)](#)

[Real Estate Beneficial Ownership Regulatory Alert: Complying with Foreign Ownership Reporting Requirements in US Real Estate \(July 24, 2023\)](#)

[What Emerging Growth Companies and Investors Need to Know About the Corporate Transparency Act \(August 8, 2022\)](#)

[Navigating the Corporate Transparency Act and FinCEN's Implementing Regulations \(September 15, 2021\)](#)

[Beneficial Ownership Reporting Requirements Under the New Corporate Transparency Act—Main Street Meets the Feds \(February 18, 2021\)](#)

[More Tools for AML Enforcement and More to Come: Key Considerations From the 2020 Anti-Money Laundering Act and the Corporate Transparency Act \(January 15, 2021\)](#)

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