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Just like the Ball in Times Square on New Year's Eve, the Corporate Transparency Act drops on January 1, 2024. Are you ready?

What is the CTA?

The Corporate Transparency Act ("CTA"), signed into law in January 2021 as part of the Anti-Money Laundering Act of 2020, aims to "crack down on anonymous shell companies, which have long been the vehicle of choice of money launderers, terrorists, and criminals."¹ In furtherance of this objective, the CTA requires certain business entities to report beneficial ownership information to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). While this reported information will be stored in a database inaccessible to the public, the CTA allows FinCEN to disclose this information to certain government authorities and financial institutions for limited purposes.² Before the CTA, financial institutions carried the burden of collecting beneficial owner information through customer due diligence reports, but this duty will now shift to those companies required to report.³ Further, the CTA imposes stringent noncompliance penalties, including civil fines and imprisonment.

Who does the CTA Affect?

The CTA broadly impacts various business entities operating within the United States. While there are numerous exceptions placing entities out of reach of the CTA, most small corporations, LLCs, and LPs, **including single-purpose entities**, will fall subject to the CTA's reporting requirements. Construction companies often form single-purpose entities as a risk management strategy for residential construction, to perform projects in which they hold an equity interest, or for other legitimate business purposes. Unfortunately, as noted above, single purpose entities also are formed as anonymous shell companies and used for nefarious purposes.

Entities classified as Reporting Companies are now required to submit beneficial ownership information that includes the identities of individuals who directly or indirectly control twenty-five percent (25%) or more of the entity or any individual who exercises or has the right or ability to exercise, "substantial control over the reporting company," including all senior officers, directors, LLC managers, and general counsel.⁴ Such required beneficial ownership information includes, but is not limited to, full legal name, date of birth, complete current residential or business address, and identification documents, including a photo, such as a passport or driver's license.⁵ As an alternative to filing sensitive information with every report, beneficial owners may obtain a unique FinCEN identification number by applying to FinCEN and providing the required personal information through the application.⁶ Once a beneficial owner has successfully obtained a unique FinCEN identification number, it may provide this number instead of sensitive personal information on subsequent reports.

¹ Office of Representative Carolyn Maloney, Press Release, "Maloney Celebrates Inclusion of Corporate Transparency Act in FY2021 NDAA" (Nov. 19, 2020); 31 U.S.C. § 5336; 31 C.F.R. § 1010.380.

² 31 U.S.C. § 5336(b)(1)(F).

³ 31 U.S.C. § 5336(d)(1).

⁴ 31 U.S.C. § 5336(a)(3)(A).

⁵ 31 U.S.C. § 5336(b)(2)(A).

⁶ 31 U.S.C. § 5336(b)(3).

Who is exempt from the CTA?

Every business entity must evaluate its reporting requirements or exemption status under the CTA. A few of the significant entity exemptions include:

- Large businesses and their subsidiaries formed before January 1, 2024, that employ more than twenty (20) full-time employees, with an operating presence in the United States, **and** that have filed federal income tax returns for the previous year of five million dollars (\$5,000,000) or more in gross receipts or sales generated from the United States.⁷
- Inactive entities formed before January 1, 2020, that are not engaged in any active business, hold no assets, have no foreign ownership, have not changed ownership in the last year, and have not sent or received one thousand dollars (\$1,000) or more in the last year.⁸
- Regulated companies, including publicly traded companies, financial institutions, insurance companies, registered money transmitting companies, regulated public utilities, certain tax-exempt entities such as 501(c)(3) charitable organizations, and certain exempt entities' subsidiaries.⁹

What do I need to do?

Clients should evaluate each of their entities to determine required reporting obligations under the CTA. Guidance for determining reporting obligations or exemptions therefrom may be found in 31 C.F.R. § 1010.380. After determining reporting requirements, BBG recommends developing internal processes to manage the reporting obligations on both an annual and as-necessary basis to ensure timely submittal of updates and full compliance with the CTA.

- **Required reporting entity formed on or after January 1, 2024**

Reporting obligations commence immediately for entities required to report, formed on or after January 1, 2024. For entities meeting this classification, the first report is due within 30 days following the entity's formation.¹⁰

- **Required reporting entity formed before January 1, 2024**

For entities required to report who were formed before January 1, 2024, reports are due by January 1, 2025.¹¹

- **Update reports within 30 days of changed, incorrect, or incomplete information**

All Reporting Companies must update reports within 30 days of becoming aware or having reason to know of changed, incorrect, or incomplete information. Some examples of events that trigger update requirements include change of entity name, change of trade or d/b/a name, transfer of ownership, changes in senior management, changes to the board of directors, or change in ownership due to death or estate distribution.¹²

⁷ 31 C.F.R. § 1010.380(c)(2)(xxi).

⁸ 31 C.F.R. § 1010.380(c)(2)(xxiii).

⁹ 31 C.F.R. § 1010.380(c)(2).

¹⁰ 31 C.F.R. § 1010.380(a)(1)(i).

¹¹ 31 C.F.R. § 1010.380(a)(1)(iii).

¹² 31 C.F.R. § 1010.380(a)(2)-(3).

What are the penalties for noncompliance?

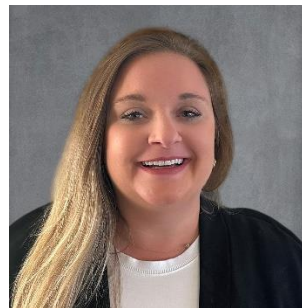
Noncompliance with the CTA may result in both civil and criminal penalties. The CTA prescribes civil penalties up to five hundred dollars (\$500) per day, capped at ten thousand (\$10,000) in aggregate.¹³ Additionally, the CTA allows for two (2) years of imprisonment, which may be in conjunction with the civil penalties noted above.¹⁴ While the CTA outlines harsh penalties for noncompliance, a safe harbor is provided for persons who voluntarily correct inaccurate beneficial ownership information within ninety (90) days after filing.¹⁵ The safe harbor protection only applies if the filer believed the information was true at the time of filing.¹⁶ Similarly, the safe harbor provision does not protect those intentionally submitting inaccurate reports to evade reporting requirements.¹⁷

Conclusion

Reporting requirements under the CTA are ringing in with the New Year. While some entities are lucky enough to fall under one or more of the numerous exemptions that eliminate reporting requirements, entities of all sizes are affected by the CTA. Even if your parent company is exempt, diligence is required to ascertain that all subsidiary or related entities involved with your business or operating under your company (including specifically single-purpose entities) are likewise exempt. BBG recommends each business entity evaluate its reporting requirements under the CTA and develop internal processes to ensure compliance. We are happy to assist in evaluating your company's obligations under the CTA and help you make informed decisions when navigating these new regulations.



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¹³ 31 U.S.C. § 5336(h)(3)(A).

¹⁴ *Id.*

¹⁵ 31 U.S.C. § 5336(h)(C).

¹⁶ 31 U.S.C. § 5336(h)(C)(i).

¹⁷ *Id.*