

The Corporate Transparency Act: Changes coming in 2024 that may impact your company

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In January 2024, the Corporate Transparency Act (the “Act”), a federal law, will go into effect and require certain entities to report identifying information to the Financial Crimes Enforcement Network of the U.S. Treasury Department (“FinCEN”). The Act became law in January 2021 in an effort to deter illegal activity, such as money laundering, tax evasion, and the financing of terrorism.

While the Act is technical and complex, the following is a high-level summary of the key elements that we hope provide a useful overview of the companies affected by the Act and how to remain compliant. The attorneys at Munck Wilson Mandala are dedicated to helping your company navigate the Act and ensure compliance in 2024.

When does the Act go into effect?

- The Act will go into effect on January 1, 2024

What does the Act impose on the affected companies?

- The Act imposes new reporting requirements for those entities deemed “Reporting Companies”

Who is required to report to FinCEN?

- **“Reporting Companies”** are U.S. entities, such as corporations, limited liability companies, limited partnerships, and any “similar entity.” Foreign entities are considered Reporting Companies if they register to do business in the United States.
- The Act exempts 23 types of entities from reporting requirements, including, *but not limited to*:
 - “Large Operating Companies” that (1) have more than 20 full-time employees in the U.S., (2) regularly conduct business at a physical location in the United States, **and** (3) filed a federal income tax return for the previous year showing more than \$5 million in gross receipts and sales.
 - Public reporting companies, financial institutions, and public accounting firms.
 - Inactive entities, *provided* that six criteria apply, including that the entity (1) was in existence on or before January 1, 2020, (2) is not engaged in active business (and has during the previous 12-month period neither sent nor received more than \$1,000 of funds), and (3) has not had any change in ownership in the preceding 12-month period.
 - Wholly owned subsidiaries of exempt entities.

What do you need to report?

- Reporting Companies are required to report the following information:
 - Company Information;
 - Beneficial Owner Information; and
 - Company Applicant Information (only if the company is formed after December 31, 2023)

What type of Company Information do you need to report?

- Legal name;
- Trade name(s);
- Business address;
- Jurisdiction of formation or registration; and
- Federal tax identification number (EIN/TIN)

Changes in Company Information will require a Reporting Company to file an updated report within 30 days.

Who are Beneficial Owners and what type of information do you need to report?

- Beneficial Owners are individuals who (1) exercise substantial control over the Reporting Company (such as senior officers and potentially certain directors), or (2) own or control not less than 25% of the ownership interests of the Reporting Company.
- A Reporting Company will need to report the following information for each Beneficial Owner:
- A Reporting Company will need to report the following information for each Beneficial Owner:
 - Name;
 - Date of birth;
 - Residential address;
 - Driver's License or Passport number; and
 - Image of either Driver's License or Passport.

Changes in Beneficial Ownership will require a Reporting Company to file an updated report within 30 days.

Who is a Company Applicant and what type of information do you need to report?

- A Company Applicant is an individual who (1) directly files the entity formation document with the Secretary of State and (2) if more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing
- A Reporting Company will need to report the following information for the Company Applicant(s):
 - Name;
 - Date of birth;
 - Residential address;
 - Driver's License or Passport number; and
 - Image of either Driver's License or Passport.

When is the report due?

- Reporting Companies formed on or **after** January 1, 2024, must file the initial report within 90 days after formation.
- Reporting Companies formed **before** January 1, 2024, will have until January 1, 2025, to file the initial report.

What are the penalties for violation of the Act?

- Violations of the reporting obligations (failure to file a report or supplying false information) can be met with civil penalties of up to \$500 per day and criminal penalties in the form of a fine of up to \$10,000 and prison sentences of up to two years, or both.
- Senior officers of a Reporting Company can be held individually liable.
- There is a *safe harbor* from penalties based on inaccurate information in a filing if a Reporting Company or individual:
 - files a report containing corrected information within 90 days after the original submission; and
 - was not acting to evade reporting requirements and did not have actual knowledge that the filed information was inaccurate.

Can we assist you in submitting the required information to FinCEN?

- Yes, FinCEN allows third-party service providers to submit the required information on behalf of Reporting Companies.

Where can you find additional information?

- FinCEN has prepared a Small Entity Compliance Guide that can be found [here](#)
- FinCEN has also been updating its Beneficial Owner Information Reporting FAQs with additional guidance on the scope of the reporting requirements [here](#)

If you have any questions or would like to discuss further, please do not hesitate to contact our Corporate attorneys. We look forward to helping you navigate these new reporting requirements in 2024.

Related People

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