



KROKIDAS & BLUESTEIN LLP

Nationwide Injunction Halts Enforcement of the CTA in Advance of the January 1, 2025 Deadline

On December 3, 2024, in the case of Texas Top Cop Shop, Inc. et al. vs. Garland (U.S. Attorney General), the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction which halts the enforcement of portions of the Corporate Transparency Act (the “CTA”) and related regulations in advance of the January 1, 2025 deadline. However, the injunction is temporary and an appeal has been filed. As a result, “reporting companies” should speak with counsel regarding how to proceed. The most conservative course of action would be to make any required filings in advance of the January 1, 2025 deadline. A summary of the CTA without regard to the injunction is below for reference.

Summary of the CTA

The Corporate Transparency Act (CTA), which took effect in January 2024, requires certain companies to disclose their beneficial owners and key decision-makers to the Financial Crimes Enforcement Network (FinCEN).^[1] The CTA aims to prevent financial crimes such as money laundering, tax evasion, and terrorism financing, which are often facilitated by corporate anonymity.^[2] For certain companies formed before January 1, 2024, the reporting deadline is January 1, 2025.

Who is Impacted? Are there Exemptions?

The rule applies to “reporting companies”.^[3] The definition of “reporting companies” is broad, including domestic and foreign corporations, limited liability companies (LLCs), business trusts and other entities that are created by filing documents with a secretary of state.

However, the CTA provides a number of exemptions from its disclosure requirements.^[4] Key exemptions include those for:

- Churches, charities and nonprofit entities that are exempt from tax under Section 501(a) of the Internal Revenue Code, and charitable trusts, and their *wholly owned or controlled* subsidiaries,
 - Please note that these exemptions would not cover an entity with both exempt and non-exempt ownership or control
- Certain regulated entities (such as entities regulated by the Securities and Exchange Commission, Federal Deposit Insurance Corporation, or Comptroller of the Currency),
- Large operating companies with more than 20 full-time employees, \$5 million in gross receipts or sales, and a physical U.S. office, and
- Certain inactive companies

When are the Reporting Deadlines? ^[5]

- Reporting companies created or registered before January 1, 2024 have until **January 1, 2025** to file initial reports
- Reporting companies formed in 2024 have **90 days** after receiving actual or public notice, whichever is earlier, of their company's creation or registration
- Reporting companies formed on or after January 1, 2025 will have **30 days** after receiving actual or public notice, whichever is earlier, of their company's creation or registration

Beneficial ownership information reporting is not an annual requirement. A report only needs to be submitted once, unless it needs to be updated or corrected. ^[6]

Beneficial Owners

A beneficial owner includes any individual who:

1. Exercises *substantial control* over a reporting company, or
2. Owns or controls at least 25% of the company's *ownership interests*. ^[7]

“Substantial control” generally refers to any individual making key decisions for the company, and includes anyone who is a senior officer, has authority to appoint or remove any senior officer or a majority of directors, is a key decision-maker, or has other forms of significant influence over the company. ^[8]

Ownership interests can include equity, stock, voting rights, profit or capital interests, convertible instruments, options or other mechanisms. ^[9] A company may have multiple types of ownership interests.

What Must Be Reported?

Generally, reporting companies must have beneficial owners register and provide a FinCen ID to the reporting company or the reporting company must provide each beneficial owner's:

1. Name;
2. Date of birth;
3. Address; and
4. The identifying number and issuer from either a non-expired U.S. driver's license, a non-expired U.S. passport, or a non-expired identification document issues by a State, local government, or Indian tribe. (If none of these documents exist, a non-expired foreign passport can be used). ^[10]

The reporting company must also submit information about itself, such as its name(s) and address. Reporting companies created on or after January 1, 2024, are also required to submit information about company applicants. ^[11] Company applicants are: (1) the individual who directly files the document that creates or registers the company with the state, and (2) if one or more person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing. If the reporting company was formed with the assistance of a third party (such as a law firm, CPA or registered agent), then certain employees of that third party may be company applicants. You will need to obtain each company applicant's FinCen ID or the same information as for a beneficial owner and include such information in your filing.

The Financial Crimes Enforcement Network has issued a Small Entity Compliance Guide:

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

For additional information or guidance, please contact Attorneys Sheryl A. Howard (SHoward@kb-law.com), Emily Kretchmer (EKretchmer@kb-law.com) or Anthony L. Leccese (ALeccese@kb-law.com). While Krokidas & Bluestein will not make required filings under the CTA, we can assist clients with understanding their obligations under the CTA.

[1] 31 U.S.C.A. § 5336.

[2] 31 C.F.R. §1010.380 (2022).

[3] 31 U.S.C.A. § 5336 (a)(11)(A).

[4] 31 U.S.C.A. § 5336 (a)(11)(B).

[5] 31 C.F.R. §1010.380.

[6] *U.S. Beneficial Ownership Information Registry Now Accepting Reports*, Fin. Crimes Enforcement Network (Jan. 1, 2024), <https://www.fincen.gov/news/news-releases/us-beneficial-ownership-information-registry-now-accepting-reports>.

[7] *Id.*

[8] 31 C.F.R. §1010.380 (2022).

[9] Fin. Crimes Enforcement Network, *Beneficial Ownership Information Reporting Requirements Small Entity Compliance Guide*, 18 (2023),

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf.

[10] *Id.*

[11] *Id.* at 34.