



Meltzer, Lippe, Goldstein & Breitstone, LLP

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CORPORATE/ BUSINESS PRACTICE GROUP

Meltzer Lippe is home to a large, experienced Corporate/Business Practice Group.

Our corporate clients include public and private companies, ranging from start-ups to Fortune 500 corporations; partnerships, limited liability companies and joint ventures; institutional lenders and borrowers; angel financiers and venture capital firms; corporate boards of directors; foreign companies; family owned businesses; hedge funds; private equity funds and health care companies. We represent clients across many industries and offer the kind of support that allows your company to keep pace with corporate disclosure requirements and to be responsive to your needs for the business documents necessary to grow your business.

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COMPLYING WITH THE CORPORATE TRANSPARENCY ACT AND NEW YORK LIMITED LIABILITY COMPANY TRANSPARENCY ACT

Effective January 1, 2024, the newly enacted Corporate Transparency Act (the “**CTA**”) will require most legal entities incorporated, organized, or registered to do business in a U.S. state to file beneficial ownership information reports (“**BOI Reports**”) disclosing certain information relating to its owners, officers, and controlling persons with the Financial Crimes Enforcement Network (FinCEN), who will maintain a private secured list of all such disclosed information.

The CTA establishes civil penalties (\$500 per day up to a total of \$10,000) and criminal penalties (up to two years of imprisonment) for individuals who knowingly provide false or fraudulent information in connection with a BOI Report and entities that fail to comply with the CTA reporting requirements.

In addition to the CTA, New York’s legislature passed a similar act, the New York Limited Liability Company Transparency Act (the “**NYLTA**”), requiring the disclosure of certain personal information of individuals who own or exert substantial control over any limited liability company (a “**LLC**”) pursuant to the filing of a beneficial owners disclosure (“**NY BOI Disclosures**”). Note that only LLCs are required to make a NY BOI Disclosure under the NYLTA. Corporations, partnerships and other entities, are not required to make a NY BOI Disclosure under the NYLTA. If signed by Governor Kathy Hochul, the NYLTA will create a public database matching the names of corresponding reporting individuals to their LLC’s name and business address.

Penalties for failure to comply with the NYLTA will result in the LLC being shown as delinquent in the New York Department of State online database. To remove such delinquency from the Department of State records, the LLC must comply with the statute by disclosing the required information and pay a penalty of \$250.

Meltzer Lippe recommends that business owners be proactive and identify all of their existing entities to determine whether those entities must make filings pursuant to the CTA and NYLTA.

Key Takeaways:

1. All entities formed or registered to do business in the United States will either need:
 - A. To determine if they qualify for an exemption from the CTA’s reporting requirements; or
 - B. Submit a timely BOI Report to FinCEN.
2. If the NYLTA goes into effect, all LLCs formed in or registered to do business New York will either need:
 - A. To determine if they qualify for an exemption from the NYLTA’s reporting requirements; or
 - B. Submit a timely NY BOI Disclosure to the appropriate agency.

Corporate Transparency Act

When Must Entities File BOI Reports?

Entities formed prior to January 1, 2024 will have until January 1, 2025 to file an initial report. Under the CTA, in its current iteration, entities formed on or after January 1, 2024 must file their initial report within 30 days after their formation. However, on September 28, 2023, FinCEN proposed extending the deadline from 30 days to 90 days for entities formed during the first year of the CTA (i.e. 2024).

The CTA only requires entities to file an initial report, unless their information changes or they later qualify for an exemption, then such entity must file an updated report within 30 days of such change. If an entity qualifies as exempt on January 1, 2025, but later disqualifies, such entity will have to file an initial BOI Report.

Which Entities Must Report Under the CTA?

The CTA applies to all domestic and foreign privately held entities (including, but not limited to, corporations, partnerships, LLCs, and statutory trusts) that are formed or registered to do business in the United States by filing with a secretary of state or similar office, unless an exemption applies.

What Entities are Exempt?

There are 23 types of entities that are exempt from filing a BOI Report under the CTA, including, but not limited to, tax-exempt entities, public companies, insurance companies, registered investment companies and banks. If an entity is exempt from the CTA, it does not need to register with FinCEN under the CTA or file a BOI Report. One significant exemption from the CTA is the exemption for “large operating companies.”

To qualify as a “large operating company,” an entity must:

1. Have at least 20 full-time U.S. employees;
2. Have filed in the year prior to filing the BOI Report a federal U.S. income tax return showing more than \$5,000,000 a year in gross receipts or sales (not including receipts and sales from sources outside of the U.S.); and
3. Operate from a physical office in the U.S.

Additionally, any subsidiary that is either directly or indirectly wholly owned by an exempt entity is also exempt from reporting under the CTA, unless such entity is a subsidiary of the following types of exempt entities: securities reporter issuers, money service businesses, pooled investment vehicles, entities assisting tax entities, and inactive entities. If you are unsure whether your entity is exempt under the CTA, please contact your Meltzer Lippe advisor.

Who Must Disclose Personal Information Under the CTA?

The CTA requires reporting companies to provide personal information of the “Beneficial Owners” and “Company Applicants” of the reporting company. Beneficial Owners are individuals who (1) own or control at least 25% of the ownership interests of the company or (2) indirectly or directly exercise substantial control over the reporting company. Beneficial Owners include any senior officers of the company as well as individuals who own their interests either directly or indirectly through a trust or another legal entity.

Company Applicants are any individuals who either directly file or have control over individuals who file to form, incorporate or register an entity. Companies formed prior to January 1, 2024 do not need to disclose the Company Applicant’s personal information.

Meltzer Lippe recommends that legal entities already in existence should:

1. Identify individuals who exercise substantial control over the company;
2. Identify types of ownership in the company and the individuals who hold those ownership interests; and
3. Calculate the percentage of ownership interests held directly or indirectly by individuals.

Meltzer Lippe further recommends that our clients who plan to form new entities in the near future should consider expediting the formation of their entities prior to January 1, 2024, to (1) give itself until January 1, 2025 to file a BOI Report, and (2) so as to avoid disclosing the Company Applicant’s personal information.

Which Individuals are Exempt from Disclosing?

Certain individuals are not considered Beneficial Owners of a reporting company and therefore are not required to report their personal information to FinCEN. Specifically:

1. Minor children (instead, the reporting company must disclose information regarding the minor child’s parent or legal guardian);
2. An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual (in which case that individual must report to FinCEN);
3. An employee of the reporting company, acting solely as an employee, whose substantial control over or economic benefits from the entity are derived solely from the employment status (provided that the person is not a senior officer of the entity);
4. An individual whose only interest in a reporting company is a future interest through a right of inheritance; and
5. A creditor of the reporting company (unless they exercise substantial control or have a 25-percent ownership interest in the reporting company).

What Personal Information Must Individuals Disclose Under the CTA?

Beneficial Owners and Company Applicants must report:

1. Full legal name and date of birth;
2. Complete current address (if a Company Applicant is acting in the course of their employment, they may report the business address of the entity); and
3. A copy of an applicable identification document, such as a passport or driver's license, and its unique identifying number.

Along with the personal disclosures, the CTA requires the entity must disclose the:

1. Full legal name and any trade names of the entity;
2. Complete current address of the principal place of business;
3. The state in which the entity was formed or the foreign jurisdiction in which it was registered and the current state in which it is registered to do business; and
4. The entity's IRS Taxpayer Identification Number including an Employer Identification Number, or the Tax Identification Number issued by a foreign jurisdiction and the name of such jurisdiction.

How to Disclose under the CTA

To file under the CTA, a legal entity must do so electronically through a secure filing system. FinCEN is still developing the website and the application will not be available until January 1, 2024, but guidance will become available at www.fincen.gov/boi in the near future.

New York Limited Liability Company Transparency Act

Compliance with the NYLTA is nearly identical to the CTA. While the Department of State has yet to determine where entities should file their reports, the NYLTA will require the same personal information disclosures from the CTA, but will only apply to LLCs and their Beneficial Owners.

The NYLTA retains the same 23 exemptions for reporting LLCs and the same five exemptions for Beneficial Owners. Further, a reporting LLC may file a copy of their CTA disclosure to comply with the NYLTA.

Where these statutes differ is that the NYLTA creates a searchable public database. The searchable public database will contain the full legal name of the Beneficial Owners of reporting LLCs, the business address of reporting LLCs, and the name and trade name of the reporting LLCs. The database will not include the Beneficial Owner's address, personal identification document number, and copy of such personal identification document, such as a driver's license or passport. The Secretary of State will create regulations providing for certain individuals to be exempt from having their information posted on the public database, but the New York legislature has indicated that such exemptions will be very limited.

Meltzer Lippe will continue to monitor developments with respect to the CTA and the NYLTA and will provide updates when appropriate. If you have questions relative to the foregoing, please to reach out to your Meltzer Lippe advisor or contact Christopher M. Armstrong or David I. Schaffer at Meltzer, Lippe, Goldstein & Breitstone, LLP.

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