

Insights

CTA AND CORPORATE GOVERNANCE: A QUICK GUIDE FOR SITUATIONS WHERE CTA COMES INTO PLAY

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The Corporate Transparency Act (“CTA”) was enacted by The U.S. Congress in January 2021 as a way to protect the United States financial system from being used for money laundering and other illicit activities. The CTA requires certain entities, referred to as “reporting companies”, to file a beneficial ownership information (“BOI”) report with the Department of Treasury’s Financial Crimes Enforcement Network, better known as FinCEN. The BOI report includes information about the company, company applicants (if formed in 2024 or later), and beneficial owners who substantially control or own the company.

Once the initial BOI report is submitted, it is crucial for companies to remain mindful of their obligation to update the BOI report when any information on that report changes or the entity gains or loses exempt status. This includes reporting changes to company information (e.g., the addition of a trade name or a change of the main address), information about new beneficial owners (e.g., an ultimate beneficial owner with less than 25% of equity obtaining 25%, or a person who obtains decision-making rights regarding a specific business line), and changes to existing beneficial ownership information (e.g., a change of a beneficial owner’s residential address).

Given the wide-ranging scope and stringent filing deadlines of the CTA, it is essential to carefully assess its applicability and the timing of any required filings in most corporate transactions. The CTA introduces a new regulatory framework that demands close scrutiny of corporate restructuring and will have significant implications for many, if not most, corporate transactions. Due to numerous ambiguities in the CTA’s application to different scenarios, a detailed, entity-by-entity analysis is often required.

BCLP continues to closely monitor developments in the CTA implementation process, and our lawyers are available to discuss these and any related issues as they arise.

Below is a quick downloadable guide for reporting companies to identify instances where an updated BOI report may be required, as well as other considerations for complying with the CTA.

U.S. Corporate Transparency Act: Corporate Governance Quick Guide



After filing the initial report for existing entities, below are some additional considerations for complying with the Corporate Transparency Act ("CTA") for reporting companies.



Have you considered whether you have a duty to file a beneficial ownership information ("BOI") report or update a BOI report when any of the following occurs?

- Formation of entities
- Acquisition of entities
- Reorganizations
- Dissolutions
- Mergers
- Becoming exempt and/or losing exempt status
- Appointment or removal of officers/managers/directors
- Changes to ownership, voting rights or economic rights
- Fundraisings or issuance of equity, options, warrants, or convertible debt
- Equity sales/M&A transactions
- Debt financings
- Name change of reporting company
- New DBA or trade name
- Office relocation
- Change to information for any beneficial owner



Have you incorporated compliance mechanisms?

- Have your senior officers obtained FinCEN IDs?
- Do you have a mechanism to track when company or beneficial ownership information changes?
- Consider adopting a CTA Compliance Policy.
- Consider appointing a CTA Compliance Officer.
- Consider any additional privacy protections to safeguard, secure and transmit BOI report information.



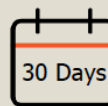
Have you considered any changes in the M&A context?

- Have you added representations in your purchase agreement about CTA compliance of the entities being sold?
- Have you made diligence requests and/or added representations in your purchase agreement about company applicant information (if the initial report was not filed) or about the Company's FinCEN ID?
- Have you included covenants in your purchase agreement related to Buyer making the updated filing after Closing?
- If it is a merger, has the merger subsidiary requested an EIN and filed its initial BOI report before closing?



Have you updated your Operating Agreements, Stockholder Agreements, Investment documents, Employment Agreements, Equity Incentive Agreement, and/or Bylaws?

- Consider including provisions requiring shareholders/members/owners to provide information when their beneficial ownership information changes.
- Consider including indemnification obligations for beneficial owners who do not provide timely updates to their information.



Timing for an Updated Report?

Updated BOI Report must be filed with FinCEN within 30 calendar days after the triggering event occurs.

This is a non-exhaustive summary of when the CTA may apply to reporting companies after the initial filing. This is not legal advice. Please speak with an attorney for advice regarding whether and how the CTA applies to your entities.

For advice regarding your obligations under the CTA, please contact your BCLP relationship lawyer or a member of BCLP's CTA team. Please note that BCLP does not provide advice as to the application of the CTA to an entity unless we have been expressly engaged to provide such advice.

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