

# An Introduction to the Corporate Transparency Act

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Vanja Habekovic, Esq.  
Ervin Cohen & Jessup LLP

Chris Manderson, Esq.  
Ervin Cohen & Jessup LLP



# CTA In A Nutshell

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## Intent of Legislation

- Protect: U.S. national security interests | interstate and foreign commerce
- Enable national security | intelligence | law enforcement to counter:
  - Money laundering
  - Terrorism financing
  - Other illicit activity
- Promote financial transparency and compliance

## Target of Legislation

- Anonymous shell companies used to hold assets and conduct financial transactions

## How Implemented

- **Reporting Companies** obligated to disclose **Beneficial Ownership Information** (“BOI”) to Treasury Departments Financial Crimes Enforcement Network (“FinCEN”)

*FinCEN is a bureau of the Treasury Department that collects and analyzes financial transaction information to combat domestic and international money laundering, terrorist financing and other financial crimes*

# What Is A Reporting Company?

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- Corporation;
- Limited Liability Company;
- Any other entity created by filing a document with a Secretary of State or any similar office under the law of a state or Indian tribe; including
  - LP, LLP, LLLP, but not a general partnership or trust (unless registered with a State)
- A foreign entity registered to do business in the United States.

*All such entities are Reporting Companies unless an exemption applies.*

**Action Item:** *contact us to help determine Reporting Company status.*

# What Entities Are Exempt?

23 types of entities are exempt from the reporting requirements:

Exemption No.	Exemption Short Title
1	Securities reporting insurer (Exchange Act Reporting Company)
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities

Exemption No.	Exemption Short Title
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility

Exemption No.	Exemption Short Title
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company 1. More than 20 FTEs in US 2. Has operating presence at physical office in US 3. Exceeded \$5 million in reported gross receipts or sales on its previous year's tax return
22	Subsidiary of certain exempt entities
23	Inactive entity

# Who Is A Beneficial Owner?

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A **Beneficial Owner** is any individual who either *directly or indirectly*:

- A. Exercises *substantial control* over a Reporting Company
- B. Owns or controls at least 25 percent of *the ownership interests* of a Reporting Company

# What Is Substantial Control?

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**Substantial control is any individual that meets any of the four general criteria:**

1. The individual is a senior officer of the entity (such as the President, CEO, CFO, COO and general counsel);
2. An individual who has the authority to appoint or remove senior officers or a majority of the directors of the Reporting Company;
3. Anyone who directs, determines or has substantial influence over important decisions; or
4. Catch-all – any other form of substantial control (designed to capture anyone who can make important decisions on behalf of an entity).

# Indirect Substantial Control

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## Indirect control:

- Board representation
- Voting rights
- Rights associated with financing arrangements
- Control over another entity that controls the reporting company
- Trustee of a trust or similar arrangement

*No limit to number of people who need to be reported.*

# What Are Considered Ownership Interests?

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## Ownership interests include, but are not limited to:

- A. Equity, stock or voting rights
- B. Capital or profit interest
- C. Convertible instruments (including convertible debt)
- D. Derivative Instruments: puts, calls, options, warrants
- E. Any other instrument, contract, arrangement, understanding, relationship, or mechanism that establishes *direct or indirect* ownership



# Ownership Interests - Exceptions

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- A. Minor
- B. Custodian
- C. Employee (but only to the extent they are not a “senior officer”)
- D. An individual with a future inheritance right
- E. A creditor (unless a beneficial owner, or hold certain indirect interests to secure the right to repayment)

# Who Are Company Applicants?

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- Only up to two individuals
- Applies only to entities formed on or after January 1, 2024

## Two categories of Company Applicants:

- Direct filer
- The person primarily responsible for directing or controlling the filing
  - ***This includes lawyers who supervise entity formation***

# Types of Company Applicants

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1. **Direct filer** must be identified by all reporting companies that have a Company Applicant reporting requirement
2. **Directs or controls the filing action** is only required to be reported when more than one individual is involved in the filing of the document that created or first registered the company
  - If more than one individual is involved in the filing, then up to two Company Applicants must be reported
  - All Company Applicants must be individuals
  - Companies or legal entities cannot be Company Applicants
  - Legal counsel can be considered a Company Applicant if they meet the above criteria

# What Are The Reporting Deadlines?

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- Companies created or registered before January 1, 2024, have until January 1, 2025, to file their initial reports.
- Companies created or registered on or after January 1, 2024, but prior to January 1, 2025, must file their reports within 90 days after creation or registration.
- Companies created or registered on or after January 1, 2025, must file their reports within 30 days after creation or registration.
- Companies must report any changes to the reported information within 30 calendar days from when the relevant change occurs. This would include, for example, any change in the BOI previously reported.

*Thus, if a new entity is likely to be needed sometime in 2024, forming that entity before the end of 2023 may be advisable to both buy some extra time to report to FinCEN and avoid the company applicant reporting requirement. Conversely, if an entity that would otherwise be reportable is no longer needed, it may make sense to dissolve that entity prior to year-end.*

# What Information Needs To Be Reported?

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<b>Reporting Company:</b>	<ul style="list-style-type: none"><li>• Legal name and any trade or DBA</li><li>• Street address for principal place of business</li><li>• The jurisdiction of the formation of the entity</li><li>• Tax ID number (TIN and EIN)</li></ul>
<b>Company Applicants and Beneficial Owners:</b>	<ul style="list-style-type: none"><li>• Legal name</li><li>• Date of birth</li><li>• Current residential or business street address</li><li>• ID number (passport, driver's license, or state ID)</li><li>• Image of document with the ID number</li></ul> <p>OR</p> <ul style="list-style-type: none"><li>• Unique ID number issued by FinCEN on subsequent filings in lieu of BOI</li></ul>

# Who Has Access?

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- BOI will not be accessible to the public and will be maintained at the highest security level.
- BOI will be accessible to federal agencies engaged in national security, intelligence, or law enforcement activity and to state, local, or tribal law enforcement agencies with a court order.
- With the consent of the Reporting Company, a financial institution can obtain BOI to facilitate compliance with customer due diligence requirements.



# What Are The Penalties?

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- Civil - \$500 per day
- Criminal – up to \$10,000 and up to two years in jail
- Penalties can apply to both the Reporting Company and any individual

## **There is a willfulness standard:**

- Willfully provides false or fraudulent BOI (such as a fraudulent identifying photo or document); or
- Willfully fails to report complete or updated BOI information.

## **If an entity is required to file, and fails to do so:**

- Senior officers at the time of failure can be held liable; and
- Any person that causes the failure.

# Calls To Action!

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- A. Entities must assess Reporting Company status and collect Beneficial Ownership and (if applicable) Company Applicant information
- B. Utilize the ECJ checklist and Beneficial Ownership questionnaire
- C. Consult outside advisors on compliance and Company Applicant assessments
- D. Consider applying for a FinCEN unique ID number if you will be regularly forming entities for clients
- E. Consider updating standard entity documents such as Operating Agreements, Subscription Agreements to require Beneficial Ownership information disclosure
- F. Consider updating client engagement letters for lawyers and accountants



# Resources

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**FinCEN's BOI Webpage:** <https://www.fincen.gov/boi>

**FinCEN final ruling on 09/30/2022:** <https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements>

**FinCEN final ruling on reporting deadline extension on 11/30/2023:**  
<https://www.federalregister.gov/documents/2023/11/30/2023-26399/beneficial-ownership-information-reporting-deadline-extension-for-reporting-companies-created-or>

**FinCEN FAQ 03/23/2023:** [https://www.fincen.gov/sites/default/files/shared/BOI\\_Reporting\\_Key\\_Questions\\_Published\\_508C.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Reporting_Key_Questions_Published_508C.pdf)

**FinCEN Small Entity Compliance Guide:** <https://www.fincen.gov/boi/small-entity-compliance-guide>

**Subscribe to FinCEN updates:** <https://service.govdelivery.com/accounts/USFINCEN/subscriber/new>



**Vanja Habekovic, Esq.**  
**Partner and Co-Chair of the Business, Corporate  
and Tax Department**  
Ervin Cohen & Jessup LLP  
(310) 281-6377  
vhabekovic@ecjlaw.com



**Chris Manderson, Esq.**  
**Partner and Co-Chair of the Business, Corporate  
and Tax Department**  
Ervin Cohen & Jessup LLP  
(310) 281-6374  
cmanderson@ecjlaw.com

