



Upcoming Filing Requirements Under the Corporate Transparency Act That May Be Applicable to Public Companies

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In case you missed our [earlier Alert](#) on the upcoming filing requirements by certain corporate entities, including LLCs, under the Corporate Transparency Act (CTA), please see our [Reference Guide](#). As described therein, certain corporate entities must electronically file a “beneficial ownership information report” (BOI Report) with the Financial Crimes Enforcement Network (FinCEN) by **January 1, 2025** if formed prior to January 1, 2024, or **within 90 days of its formation** if formed during 2024, or **within 30 days of its formation** if formed on or after January 1, 2025.

Is this Filing Requirement Applicable to Public Companies or Their Subsidiaries?

Public companies are exempt from the filing requirements under the CTA. However, a public company’s subsidiaries may be required to file under the CTA under certain circumstances. Wholly owned subsidiaries of public companies are exempt from this filing requirement.

Unfortunately, on January 12, 2024, FinCen issued FAQ L.6 providing, in part, that “[i]f an exempt entity controls some but not all of the ownership interests of the subsidiary and any of remaining interests are controlled by a non-exempt entity or individual, the subsidiary does not qualify for the subsidiary exemption. To qualify, a subsidiary’s ownership interests must be fully, 100 percent owned or controlled by one or more entities from the list of exempt entities....” On October 3, 2024, FinCen updated this FAQ to clarify that “[i]n this context, control of ownership interests means that the exempt entity or entities entirely control all of the ownership interests in the reporting company, in the same way that an exempt entity or entities must wholly own all of a subsidiary’s ownership interests for the exemption to apply.”

This FAQ causes problems for entities with management carried interests, options or other forms of equity incentives, such as interests convertible into equity, issued to individuals in addition to joint ventures with non-exempt minority investors. This is true even if the public company owns or controls a majority economic ownership interest in the subsidiary in question. Accordingly, subsidiaries of public companies listed on exhibits to the public company’s Form 10-K that have other non-exempt owners are not exempt from the filing requirements under the CTA.

BOI Report

If a public company owns a subsidiary subject to this filing requirement, much of the information in the BOI Report is fairly basic and readily available, but it must provide detailed information about the entity’s Beneficial Owners (defined below), including (but not limited to) their date of birth, residential street address, taxpayer identification number and either their passport number or driver’s license

number or other acceptable unique identifier (along with an image of that identification document). If any of this information changes, the entity must file an updated or amended report within **30 days of the change**. Examples of changes that would trigger a duty to update a report include a new business name for the reporting company, a change in Beneficial Owners, such as a change in senior managers, directors, managers, large equity owners or any change to a Beneficial Owner's name, address or a license or passport number, as applicable. Willful noncompliance of these reporting requirements could result in **a civil fine of \$500/day or criminal penalties including a fine of up to \$10,000, imprisonment or both**.

Beneficial Owner

A Beneficial Owner is an **individual** who, directly or indirectly, exercises "Substantial Control" over the company. Generally, an individual exercises Substantial Control if they (i) are a senior officer, director or manager or (ii) direct, determine or have substantial influence over important business decisions. Whether a particular senior officer, director or manager directly or indirectly exercises substantial control over a reporting company must be considered on a case-by-case basis. Any individual who exercises Substantial Control over the reporting company through an unaffiliated company must be reported as a Beneficial Owner of the reporting company. In addition, to Substantial Control, an individual is a Beneficial Owner if they own or control **25% or more of a company's ownership interests**. It is possible for certain trust arrangements to constitute Beneficial Ownership.

Under a special reporting rule applicable to public companies, a reporting company may report a parent company's name in lieu of information about its beneficial owners if its beneficial owners only hold their ownership interest in the reporting company through the parent company and the parent company is an exempt entity.

Company Applicant

Companies formed on or after January 1, 2024 must also report information about Company Applicants (typically the attorney and/or paralegal who directed the formation of the company and filed the documentation with the applicable Secretary of State).

What Should Public Companies Be Doing Now?

Public companies should analyze whether any of its subsidiaries are subject to the filing requirements under the CTA and, if so, consider taking some or all of these actions:

- Amend the subsidiary's organizational documents or shareholder agreements to require Beneficial Owners to promptly update the company's records upon a change of any of this information. If this action is taken, it makes sense to do so before filing the applicable BOI Reports, if possible.
- Consider adding indemnification provisions in its favor in the appropriate document or policy to protect it from a Beneficial Owner who does not provide accurate, complete, and timely information initially or upon a change. Before doing so, determine whether such a provision would conflict with other existing indemnification obligations and exculpation by the reporting company of senior officers, directors or managers who are Beneficial Owners or with individuals or equity owners who are also Beneficial Owners.
- If you need assistance in making such a filing, there are service providers, such as Capital Services, who will work with you to make such filings for a fee (\$120 in the case of Capital Services).

If you have questions regarding the filing requirements, here are some other resources for your reference:

- [FinCen's Frequently Asked Questions regarding Beneficial Ownership Information](#)
- [FinCen's Small Entity Compliance Guide regarding BOI reporting requirements](#)

As indicated above, the CTA and its implementing regulations have created a number of new risks and responsibilities – we understand the difficulty in sorting through these new requirements, let alone complying with them. If you have any questions about them, or how GableGotwals may be able to help you, please let us know.



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