

O'Melveny

**The Corporate
Transparency Act:**
A Quick Reference Guide

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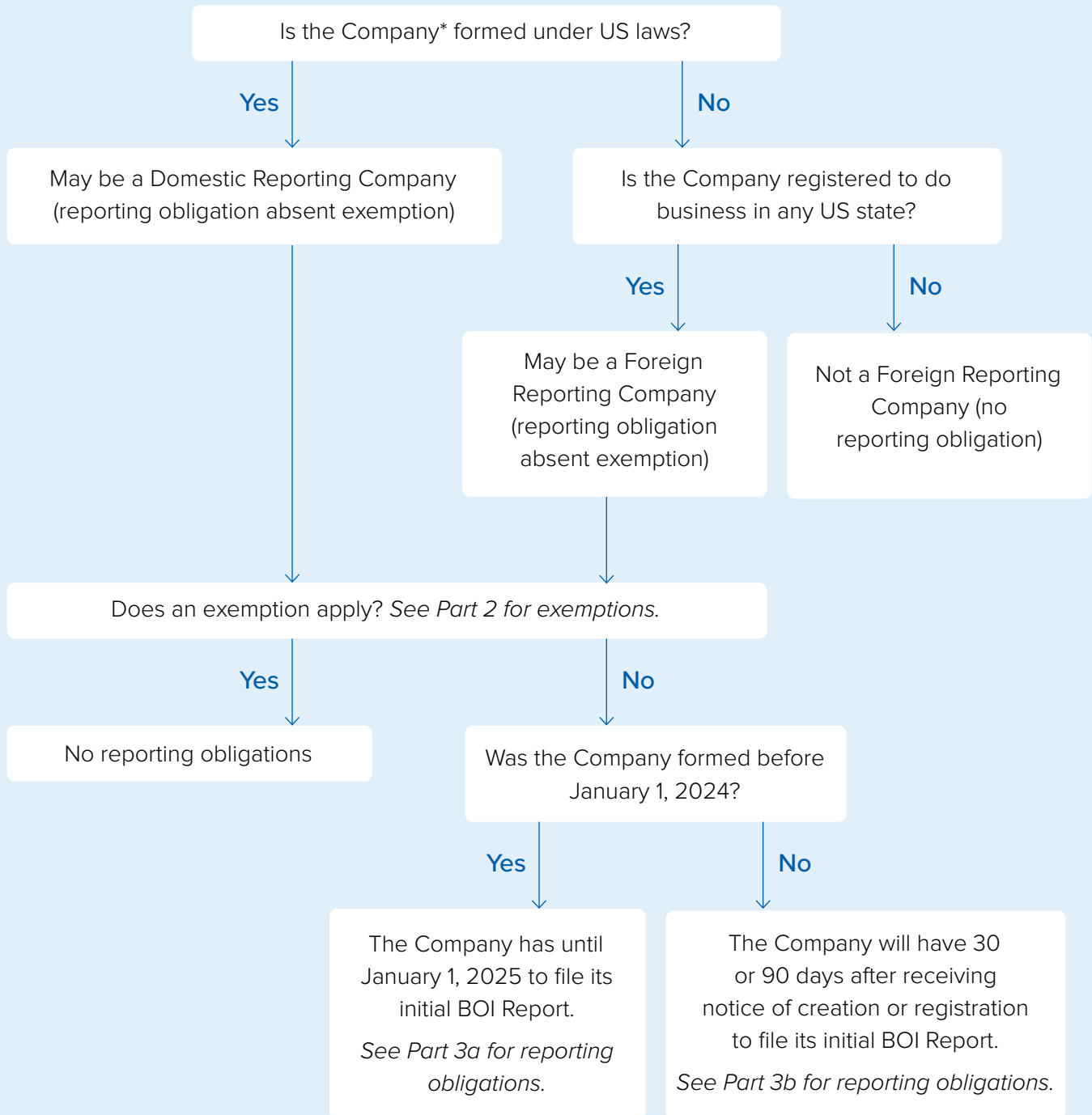
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The Corporate Transparency Act

The Corporate Transparency Act (CTA), which was enacted in early 2021, became effective on January 1, 2024. Under the CTA, entities, whether domestic or foreign, may be reporting companies and, absent an applicable exemption, will be required to file and update an initial beneficial ownership report (“BOI Report”). The BOI Report will be available on a non-public database to be maintained by the Financial Crimes Enforcement Network (FinCEN), a bureau of the US Department of the Treasury. Access to BOI is limited to certain authorized recipients for specific purposes.

1

Does a BOI Report Need to be Filed?



*A domestic "Reporting Company" is any corporation, LLC or other entity that is created by the filing of a document with a secretary of state or any similar office under the law of any state or Indian tribe in the US. A foreign "Reporting Company" is any corporation, LLC, or other entity formed under the law of a foreign company that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe.

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Is There an Available Exemption to Filing the BOI Report?

The CTA includes 23 exemptions to the requirement for Reporting Companies to file a BOI Report:

- | | |
|---|--|
| (i) Securities reporting issuers | (xiii) State-licensed insurance producers |
| (ii) Governmental authorities | (xiv) Commodity Exchange Act registered entities |
| (iii) Banks | (xv) Accounting Firms |
| (iv) Credit unions | (xvi) Public utilities |
| (v) Depository institution holding companies | (xvii) Financial market utilities |
| (vi) Money services businesses | (xviii) Pooled investment vehicles |
| (vii) Brokers or dealers in securities | (xix) Tax-exempt entities |
| (viii) Securities exchange or clearing agencies | (xx) Entity assisting a tax-exempt entity |
| (ix) Other Exchange Act registered entities | (xxi) Large Operating Companies |
| (x) Investment companies or investment advisers | (xxii) Subsidiaries of certain exempt entities |
| (xi) Venture capital fund advisers | (xxiii) Inactive entities |
| (xii) Insurance companies | |

For the typical private operating company, however, there are limited exemptions available.



Large Operating Company Exemption.

Companies meeting the following requirements will be exempt:

- more than 20 full-time employees in the US;
- operating presence at a physical office in the US; and
- more than \$5 million in gross receipts/sales (net of returns and allowances) from sources in the US (demonstrated in the Company's US Federal income tax return filed for the previous year)



Subsidiary of Certain Exempt Entities.

Subsidiaries whose ownership interests are fully, 100% owned or controlled, directly or indirectly, by certain exempt entities¹ under the CTA will also be exempt.

¹ Subsidiaries of the exempt entities listed in clauses (i), (ii), (iii), (iv), (v), (vii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xxi) and (xxii) above.

3a

What are the Reporting Obligations for a Reporting Company?

For Reporting Companies formed or registered **prior** to January 1, 2024

When and where to file the BOI Report?

The Reporting Company must file its initial BOI Report by January 1, 2025. The filing can be made by pdf or online and can be accessed [here](#).²

Whose information is included in the BOI Report?

- Reporting Company; and
- Each Beneficial Owner³ of the Reporting Company.

What is included in the BOI Report?

For the Reporting Company:

- Name of Reporting Company
- DBA (if applicable);
- Principal business address⁴;
- Jurisdiction of formation⁵; and
- TIN.⁶

For each Beneficial Owner:

- Full legal name;
- DOB;
- Residential address; and
- Photo ID.⁸

or

FinCEN Identifier⁷

² A copy of the BOI Report should be kept for future reference in case any updates need to be made.

³ See Part 4 for description of Beneficial Owners.

⁴ If the principal business is not located in the US, provide primary location in the US where the Reporting Company conducts business.

⁵ If a Foreign Reporting Company, state or tribal jurisdiction where Foreign Reporting Company first registered in the US.

⁶ If a Foreign Reporting Company has not been issued a TIN, tax identification number in the foreign jurisdiction.

⁷ A Beneficial Owner that has obtained a FinCEN identifier may provide it to the Reporting Company to be included in the BOI Report in lieu of providing the required information. A FinCEN identifier is a unique identifying number that FinCEN will issue to an individual upon request after the individual provides certain information to FinCEN (name, DOB, address and photo ID). The form to apply for a FinCEN identifier can be accessed [here](#).

⁸ A non-expired US passport, state driver's license or an identification document issued by a state, local government or Indian tribe are acceptable forms of photo ID. If an individual does not have any of the foregoing documents, a foreign passport would be sufficient photo ID.

3b

What are the Reporting Obligations for a Reporting Company?

For Reporting Companies formed or registered **after** January 1, 2024

When and where to file the BOI Report?

Companies formed during the 2024 calendar year will have 90 days after receiving notice of creation or registration to file their initial BOI Report. Companies formed after the 2024 calendar year will have 30 days after receiving notice of creation or registration to file their initial BOI Report. The filing can be made by pdf or online and can be accessed [here](#).⁹

Whose information is included in the BOI Report?

- Reporting Company;
- One or two Company Applicants¹⁰ of the Reporting Company; and
- Each Beneficial Owner¹¹ of the Reporting Company.

What is included in the BOI Report?

For the Reporting Company:

- Name of Reporting Company
- DBA (if applicable);
- Principal business address¹²;
- Jurisdiction of formation¹³; and
- TIN.¹⁴

For each Beneficial Owner and up to two Company Applicants:

- Full legal name;
 - DOB;
 - Address¹⁵; and
 - Photo ID.¹⁷
- or FinCEN Identifier¹⁶

⁹ A copy of the BOI Report should be kept for future reference in case any updates need to be made.

¹⁰ A "Company Applicant" is (i) the individual who directly files the documents to create the Domestic Reporting Company or register the Foreign Reporting Company to do business in any US state (individual who actually physically or electronically files the document); and (ii) the individual who was primarily responsible for directing or controlling the filing of the creation or registration document.

¹¹ See Part 4 for description of Beneficial Owners.

¹² If the principal business is not located in the US, provide primary location in the US where the Reporting Company conducts business.

¹³ If a Foreign Reporting Company, state or tribal jurisdiction where Foreign Reporting Company first registered in the US.

¹⁴ If a Foreign Reporting Company has not been issued a TIN, tax identification number in the foreign jurisdiction.

¹⁵ For Beneficial Owners, residential address to be provided; and for Company Applicants, business address if the Company Applicant forms or registers companies in the course of their business (e.g., paralegal or corporate formation service) and residential address for all other Company Applicants.

¹⁶ A Beneficial Owner or a Company Applicant that has obtained a FinCEN identifier may provide it to the Reporting Company to be included in the BOI Report in lieu of providing the required information. A FinCEN identifier is a unique identifying number that FinCEN will issue to an individual upon request after the individual provides certain information to FinCEN (name, DOB, address and photo ID). The form to apply for a FinCEN identifier can be accessed [here](#).

¹⁷ A non-expired US passport, state driver's license or an identification document issued by a state, local government or Indian tribe are acceptable forms of photo ID. If an individual does not have any of the foregoing documents, a foreign passport would be sufficient photo ID.

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Who is a Beneficial Owner of a Reporting Company?



Any individual who, directly or indirectly:

- owns or controls at least 25% of the ownership interests¹⁸ of the Reporting Company; or
- exercises substantial control over the Reporting Company.

What is substantial control?

- An individual exercises substantial control over a Reporting Company if such individual meets any of the following general criteria:
- is a senior officer¹⁹;
- has authority to appoint or remove certain officers or a majority of directors (or similar body) of the Reporting Company;
- is an important decision-maker²⁰; or
- has any other form of substantial control over the Reporting Company.

Employee Exception to Beneficial Owner:

Employees meeting the following criteria will qualify for an exception from the Beneficial Owner definition:



1. such individual is an employee of the Reporting Company;



2. such individual's substantial control over, or economic benefits from, the Reporting Company are derived solely from his/her employment status; and



3. such individual is not a senior officer of the Reporting Company.

¹⁸ "Ownership interests" include stock, partnership interest, LLC unit, capital interest or profits interest in an LLC, convertible instrument and any option granted by the Reporting Company to acquire an ownership interest.

¹⁹ A "senior officer" is any individual holding the position or exercising the authority of a (i) president, (ii) CFO, (iii) general counsel, (iv) CEO, (v) COO or (vi) any other officer, regardless of title, who performs a similar function as these officers. If the Reporting Company is an LLC, this would be the manager(s).

²⁰ An "important decision maker" is any individual who directs, determines or has substantial influence over important decisions made by the Reporting Company, including decisions regarding the Reporting Company's (i) business, (ii) finances or (iii) structure.

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CTA Compliance Tips

Updates to BOI Report

- Reporting Companies must update and correct information when there are any changes to:
 - its Beneficial Owners, including any changes to the individuals serving as its senior officers;
 - information previously submitted for the Reporting Company (e.g., change in name or address); and
 - information previously submitted for the Beneficial Owners (e.g., new name, address or Photo ID; new Beneficial Owners meeting the 25% ownership threshold).

Note: It is not necessary to update Company Applicant information.

- An updated BOI Report must be filed no later than 30 days after the date on which the change occurred.
- Filing an update to a BOI Report requires filing a completely new report. In order to maintain consistency between various BOI Reports, Reporting Companies should keep a copy of the BOI Report that was previously filed.
- There is no annual filing requirement for the BOI Report.

Other Compliance Tips

- In order to facilitate identification of its Beneficial Owners based on the ownership threshold, Reporting Companies may consider adding (i) representations to their financing documents that investors would make as to their ownership structures and (ii) covenants to notify the Reporting Company of any changes to the investor's Beneficial Owners that may affect the Reporting Company's BOI Report.
- Reporting Companies should be aware of the beneficial ownership information that they provide to their banks and other financial institutions and any discrepancies with what they report to FinCEN under this new requirement.

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Frequently Asked Questions

Q: Would the corporate secretary or treasurer be considered “senior officers” for purposes of determining substantial control of the Reporting Company?

A: No, corporate secretaries and treasurers do not fall within the definition of “senior officer” and will not be considered to automatically have substantial control over the Reporting Company by virtue of their position. *Note: Individuals serving in these roles may still exhibit substantial control with respect to the Reporting Company depending on the circumstances (e.g., such individual is an important decision maker).*

Q: Do tax professionals and other similarly situated professionals with an agency relationship to a Reporting Company constitute “substantial control” for purposes of determining a Beneficial Owner when they perform services which include substantial influence?

A: No, FinCEN does not envision that the performance of ordinary, arms-length advisory or other third-party professional services to a Reporting Company would provide an individual with the power to direct or determine, or have substantial influence over, important decisions of a Reporting Company.

Q: Do options or other convertible instruments, such as SAFEs, count towards calculating ownership interests in a Reporting Company?

A: Yes, ownership interests of the individual are calculated at the present time; any options or similar interests are treated as exercised. If the present value is contingent upon certain events (e.g., milestone being met), it should be calculated as if the contingency is satisfied.

Q: What if there are changes to the information reported after the BOI Report is filed?

A: If there is any change to the information required to be reported for the Reporting Company or any Beneficial Owner, the Reporting Company must file an updated BOI Report no later than 30 days after the date on which the change occurred. *Note: There is no obligation to file an updated report for changes in information related to a Company Applicant.*

Q: What if there is an inaccuracy in the filed BOI Report?

A: If a Reporting Company identifies an inaccuracy in its BOI Report with respect to information regarding itself or any of its Beneficial Owners or Company Applicants, the Reporting Company must file an updated BOI Report correcting the inaccuracy no later than 30 days after the date that the Reporting Company becomes aware of the inaccuracy. *Note: There are no penalties for filing an inaccurate report if it is corrected within 90 calendar days of when the report was filed.*

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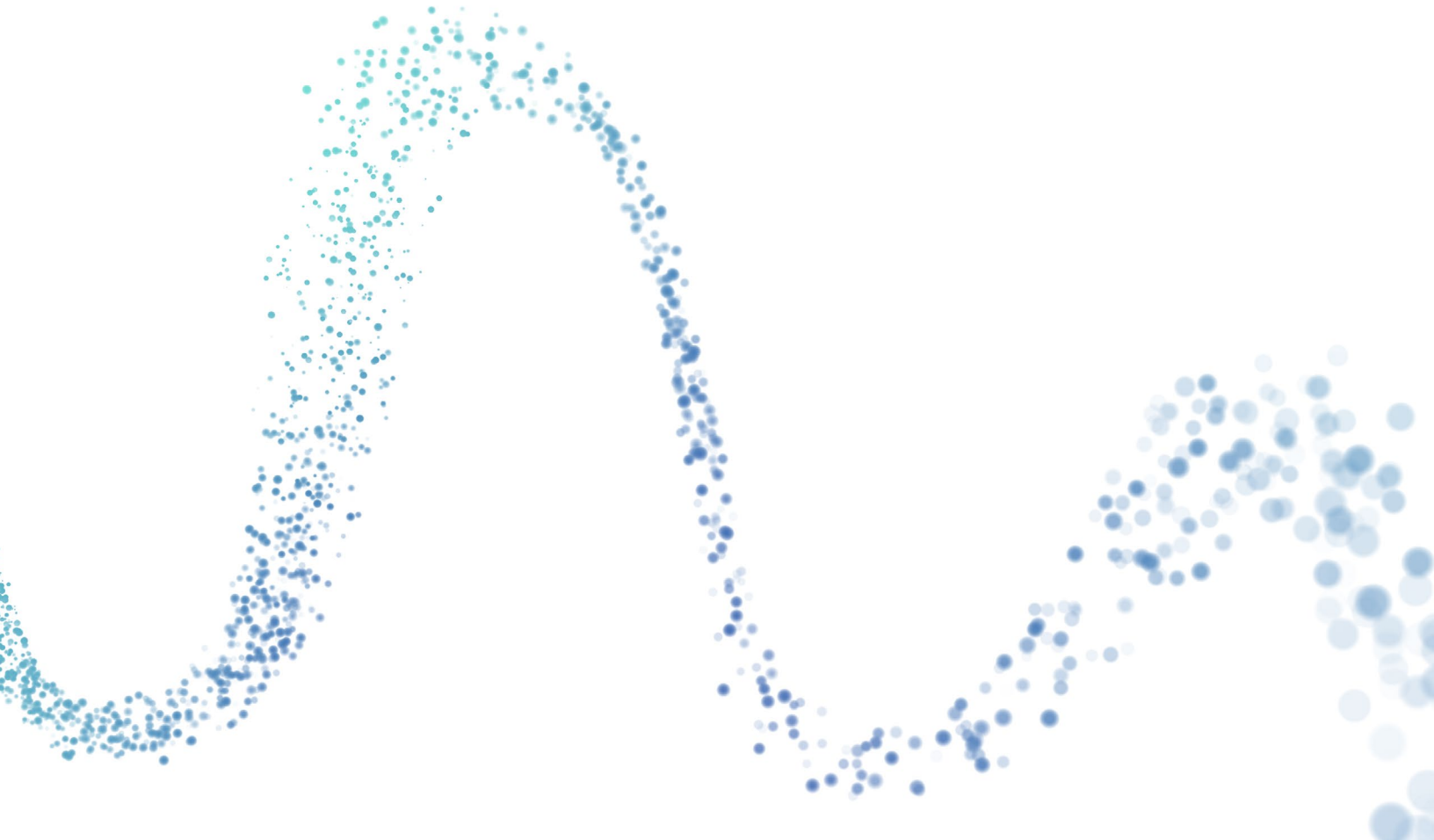


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The logo for O'Melveny, featuring a white circle with a dot inside, followed by the word "Melveny" in a bold, sans-serif font. The background is a gradient of blue and teal with white bokeh lights on the left side.

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