

Private Company Report

Key Issues Impacting Private Companies

Overview

This edition of the Private Company Report highlights critical updates and regulatory changes affecting private companies, including the new beneficial ownership reporting requirements under the Corporate Transparency Act, CFIUS Report insights, California Privacy Protection Agency updates, the new California employment laws and significant litigation rulings. Staying informed on these topics is crucial for effective compliance and strategic planning.

Highlights include:

- **The Corporate Transparency Act:** A reference guide to beneficial ownership reporting requirements. For entities formed before January 1, 2024, your report is due by January 1, 2025.
- **CFIUS Report:** Insights from the latest report from the Committee on Foreign Investment in the United States.
- **California Privacy Protection Agency:** Latest updates on cybersecurity regulations and Enforcement Advisory on the importance of avoiding dark patterns.
- **California Employment Law:** Recently enacted legislation in California ushers in a new era of worker protections.
- **FTC Non-Compete Ban:** Federal Court strikes down non-compete ban.

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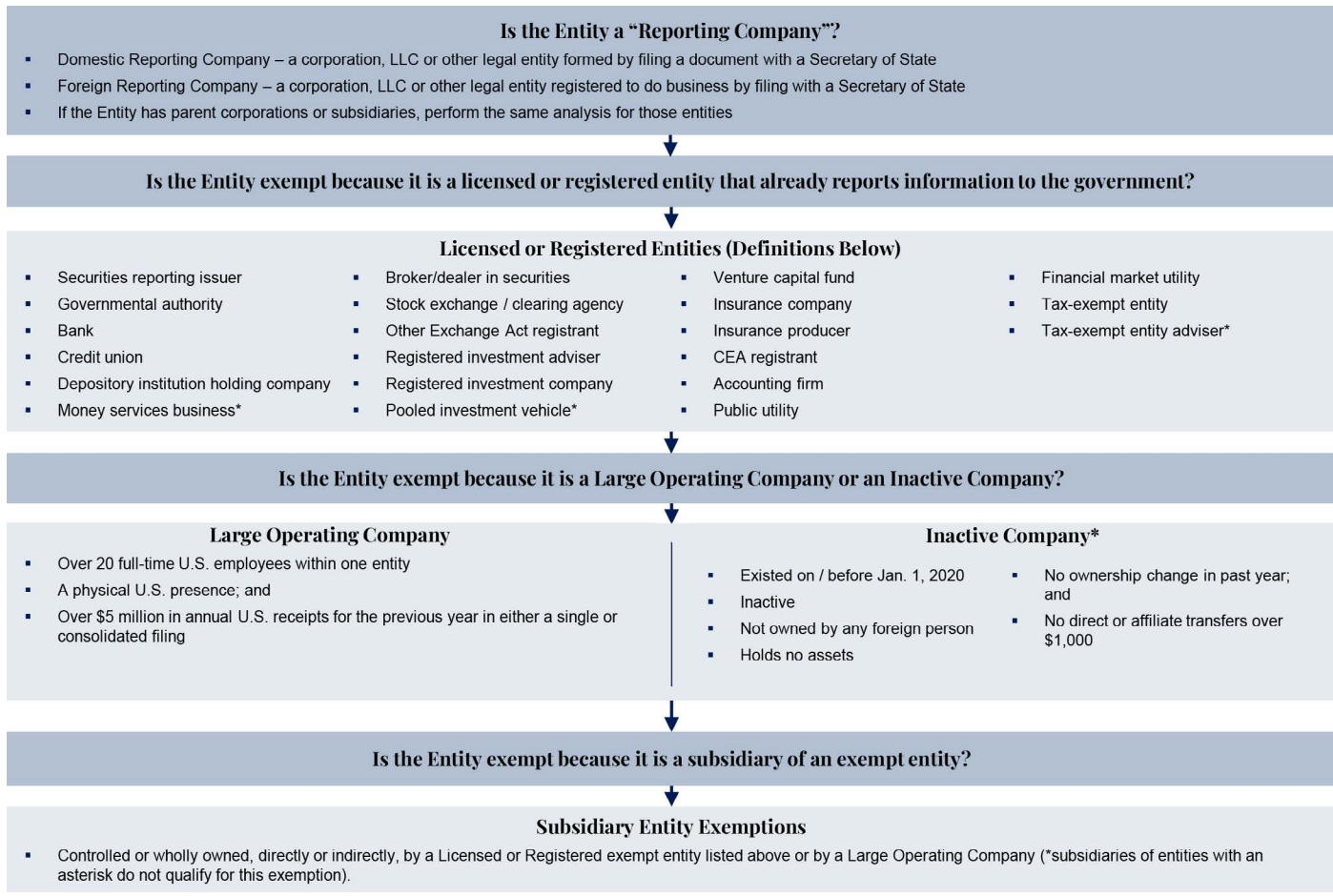
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Regulatory Updates

Corporate Transparency Act

Entities formed or registered to do business in the United States on or before December 31, 2023 will need to file a Beneficial Ownership Information (“BOI”) Report with the US Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) pursuant to the Corporate Transparency Act (“CTA”) by January 1, 2025, unless the entity is subject to an exemption to the reporting requirements. Entities formed or registered to do business in the United States on or after January 1, 2024 are required to report within 90 days of formation or registration if formed in 2024, and within 30 days of formation or registration if formed in 2025 or later.

Please see our reference guide below for a step-by-step flow chart to assist in determining if your entity needs to make a BOI filing.



<p>Reporting Company Filing Requirements</p> <ul style="list-style-type: none"> An entity that is a reporting company formed or registered before Jan. 1, 2024, must file a report on Beneficial Owners by Jan. 1 2025 but will not include Company Applicants in such report. An entity that becomes a reporting company between Jan. 1, 2024 and Jan. 1, 2025 has 90 days to file a report on Beneficial Owners and must include Company Applicants in such report (if formed after Jan. 1, 2024). An entity that becomes a reporting company after Jan. 1, 2025 must file the report on Beneficial Owners within 30 days and must include Company Applicants in such report (if formed after Jan. 1, 2024). 	<p>Beneficial Owners</p> <p>Any individual with 25% or more <u>ownership interest</u> or <u>substantial control</u></p> <p>Ownership Interest</p> <ul style="list-style-type: none"> Equity, stock, or voting rights Capital or profit interest Convertible instruments Option or privilege <p>Substantial Control</p> <ul style="list-style-type: none"> Senior officers Individuals with appointment or removal authority Important decision makers Any other person with substantial control
<p>Company Applicant</p> <ul style="list-style-type: none"> Any individual that forms or registers the company by filing the paperwork with the Secretary of State, including: <ul style="list-style-type: none"> the person who directly files the document with a Secretary of State or similar office, and if more than one person is involved in the filing of the document, the person who is primarily responsible for directing or controlling the filing. 	<p>Penalties for Reporting Failures</p> <ul style="list-style-type: none"> Civil: \$500 per day violation continues Criminal: \$10,000 & 2 years imprisonment

Licensed or Registered Exempt Entity Definitions

Securities reporting issuer. Any issuer of securities that is: (A) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or (B) Required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

Governmental authority. Any entity that: (A) Is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and (B) Exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

Bank. Any bank, as defined in: (A) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); (B) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or (C) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).

Credit union. Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Depository institution holding company. Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

Money services business. Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.

Broker or dealer in securities. Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).

Securities exchange or clearing agency. Any exchange or clearing agency, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q-1).

Other Exchange Act registered entity. Any other entity not described in paragraph (c)(2)(i), (vii), or (viii) of this section that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

Investment company or investment adviser. Any entity that is: (A) An investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or is an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and (B) Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.).

Venture capital fund adviser. Any investment adviser that: (A) Is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)); and (B) Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

Insurance company. Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2).

State-licensed insurance producer. Any entity that: (A) Is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and (B) Has an operating presence at a physical office within the United States.

Commodity Exchange Act registered entity. Any entity that: (A) Is a registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or (B) Is: (1) A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)); and (2) Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

Accounting firm. Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).

Public utility. Any entity that is a regulated public utility as defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

Financial market utility. Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).

Pooled investment vehicle. Any pooled investment vehicle that is operated or advised by a person described in paragraph (c)(2)(iii), (iv), (vii), (x), or (xi) of this section.

Tax-exempt entity. Any entity that is: (A) An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(ix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status; (B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or (C) A trust described in paragraph (1) or (2) of section 4947(a) of the Code.

Entity assisting a tax-exempt entity. Any entity that: (A) Operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in paragraph (c)(2)(ix) of this section; (B) Is a United States person; (C) Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and (D) Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

CFIUS 2023 Annual Report Shows Committee Continues to Evolve

On July 23, 2024, the Committee on Foreign Investment in the United States (“CFIUS”) released its annual report to Congress for calendar year 2023. CFIUS is an interagency body chaired by the Secretary of the Treasury that is empowered to review investment in the United States that could result in a foreign person acquiring control of, or in some cases, certain governance rights in connection with a minority investment in, a U.S. Business.

Key Takeaways:

- **CFIUS is becoming more aggressive in carrying out its monitoring and enforcement responsibilities:** CFIUS issued twice as many penalties in 2023 than it had in its entire history and undertook several investigations regarding potential violations of mandatory filing requirements. This sharp increase shows that CFIUS is prepared to be more aggressive in asserting its discretionary enforcement authority.
- **The number of JVNs and Declarations submitted to CFIUS decreased compared to recent years, but CFIUS continues to actively pursue “non-notified” transactions:** While the number of JVNs and Declarations filed with CFIUS in 2023 decreased significantly compared to 2022, CFIUS has enhanced its processes for identifying non-notified transactions. Parties to a transaction subject to CFIUS’s jurisdiction should carefully weigh the benefits and burdens of making a voluntary filing against the risks of disruption that could flow from foregoing a filing and then being contacted by Treasury after (and sometimes long after) the deal is closed.
- **The kinds of mitigation measures imposed by CFIUS continues to evolve to match the identified risks:** CFIUS adopted several new measures and conditions to mitigate risks identified by reviewed transactions in 2023.

For more detailed information on CFIUS’ 2023 annual report, please see our [client alert](#).

California Privacy Protection Agency Updates

CPPA Declines to Advance New Draft Regulations

The California Privacy Protection Agency (“CPPA”) Board has postponed the finalization of regulations related to cybersecurity audits, risk assessments, automated decision-making technology (ADMT) and insurance companies, as well as updates to existing regulations.

For more information on the draft regulations, please see our [client alert](#). Paul Hastings will continue to monitor any future progress regarding the draft regulations and updates to existing regulations.

CPPA Issues Warning to Businesses: Avoid Dark Patterns

On September 4, 2024, the CPPA issued an Enforcement Advisory on the importance of avoiding dark patterns, which the CPPA defines as a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision making or choice. Dark patterns include any activities that may delay or obscure the process for opting out of the sale or sharing of personal information or otherwise burden consumers with confusing language or unnecessary steps when exercising their privacy rights.

The Enforcement Advisory highlights the CPPA’s focus on ensuring consumer autonomy and choice and advises businesses to ensure their user interfaces are using language that is easy for consumers to understand and offers symmetrical choices when customers are making privacy decisions.

For more information on the CPPA Enforcement Advisory, please see our [client alert](#).

Employment Law Updates

California Ushers in a New Wave of Employment Laws

Over a dozen bills from the California Legislature have recently been signed into law, effective next year. As a result, many California employees will begin next year with new and enhanced rights related to wages, discrimination, retaliation, leave and workplace disclosures, among others.

Key Highlights:

- **Hours and Wage Adjustments:** Changes include, among other things, new protections for freelance workers, including setting out minimum requirements for contracts with hiring parties and non-retaliation protections, an increase in the minimum wage for all California employees to \$16.50 per hour, and new exemptions for certain restaurants from paying the fast food worker minimum wage.
- **Discrimination, Retaliation and Harassment:** Changes include a ban on “captive audience” meetings (i.e., mandatory political, anti-union or religious meetings held by employers during work hours), an expansion of leave and workplace protections for victims and survivors of violence, limitations on requiring prospective employees to have a drivers license in job applications, and protections from discrimination on the basis of “intersectionality” (i.e., a combination of protected characteristics), among other things.
- **Leave & Workers’ Compensation:** Changes include worker-friendly amendments to California’s paid family leave law and workers’ compensation laws.
- **Disclosure and Posting Obligations:** Changes include amendments to whistleblower posting requirements and disclosure requirements for social compliance audits.
- **Artificial Intelligence:** Changes include new restrictions on contracts involving the use of “digital replicas,” among other things.

For more details on the new California employment laws, please see our [client alert](#).

Litigation Spotlight

Federal Court Strikes Down FTC’s Non-Compete Ban

On August 20, 2024, the Northern District of Texas issued its final ruling in *Ryan, LLC. v. FTC*, finding the Federal Trade Commission’s Non-Compete Rule (the “Rule”), which would have prohibited most employee non-compete agreements, unlawful. As a result, the Rule did not take effect on its effective date of September 4, 2024.

For more information on the court’s decision, please see our [client alert](#).

Key Considerations for Private Companies Based on Recent Legal Updates

- **Regulatory Compliance and Risk Management:**
 - Have you evaluated whether your company is subject to the new beneficial ownership requirements under the Corporate Transparency Act? Have you taken steps to prepare for compliance with the new regulations?
 - Have you reviewed your risk management strategies in light of a more aggressive enforcement of CFIUS requirements and the CPPA’s increased focus on data privacy enforcement?
- **Employment Law and Workforce Management:**
 - Have you reviewed your policies to ensure compliance with the new California employee protection laws?



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