

**ALERTS**

# A Guide to the New York LLC Transparency Act

**April 19, 2024**

On March 1, 2024, New York Governor Kathy Hochul signed into law an amended version of the New York LLC Transparency Act (“NYLTA”),<sup>[1]</sup> requiring certain limited liability companies (“LLCs”) formed or authorized to do business in New York (each, a “NY Reporting Company”) to file a beneficial ownership information (“BOI”) report with the NY Department of State (“NY DOS”). Each NY Reporting Company will be required to disclose on its BOI report identifying information pertaining to each individual who directly or indirectly exercises substantial control or owns or controls 25 percent or more of the ownership interests of a NY Reporting Company (each, a “Beneficial Owner”) and the individuals involved in the NY Reporting Company’s formation or registration to do business in New York (each, an “Applicant”). Information reported to NY DOS will be maintained in a private database not accessible to the public. The NYLTA goes into effect on Jan. 1, 2026 and requires the NY DOS to promulgate regulations implementing the legislation.

The NYLTA closely parallels the requirements of the Corporate Transparency Act (collectively, with its implementing regulations, the “CTA”)<sup>[2]</sup>, the federal statute imposing similar requirements on certain legal entities known as “reporting companies,” and specifically incorporates a number of the CTA terms by reference. There are, however, important differences between the NYLTA and the CTA, as discussed below.

## Who is Impacted by the NYLTA?

The NYLTA adopts the CTA's definition of a "Reporting Company" but, unlike the CTA, which is applicable to all types of legal entities (e.g., LLCs, partnerships and statutory trusts), the NYLTA limits the definition of Reporting Company to LLCs formed or authorized to do business in New York state ("NY LLCs"). The NYLTA also incorporates the 23 exemptions to the definition of Reporting Company identified in the CTA. Accordingly, those NY LLCs that meet the definition of Reporting Company and do not qualify for at least one of the 23 enumerated exemptions identified in the CTA must file a NY BOI report. Unlike the CTA, the NYLTA requires LLCs that qualify for at least one of the 23 exemptions to file an attestation indicating the exemption being relied on.

## **Other Key Terms**

*Definition of Beneficial Owner.* The NYLTA adopts the CTA's definition of Beneficial Owner, which is broadly defined as any individual, who directly or indirectly (1) exercises *substantial control*<sup>[3]</sup> over the Reporting Company or (2) owns or controls 25 percent or more of the *ownership* interests<sup>[4]</sup> of the Reporting Company.

*Definition of Applicant.* The NYLTA adopts the CTA's definition of Applicant, which is an individual who: 1) directly files the document with a secretary of state or similar office that forms or registers the entity to do business in the US; and (2) is primarily responsible for directing or controlling the filing of the formation document or first registration document.

## **What Information Must Be Reported?**

Each NY Reporting Company must include the following information regarding its Beneficial Owners and Applicants in its BOI report: (1) full legal name; (2) date of birth; (3) current home or business street address; and (4) a unique identifying number from an acceptable identification document (e.g., US driver's license or US or foreign passport). While, under the CTA, individuals may obtain unique identifying numbers (i.e., FinCEN Identifiers) which may be provided to the Reporting Company in lieu of identifying information, under the NYLTA, there is no similar mechanism.

BOI reports must be filed electronically in a "form and manner" directed by the NY DOS. In its implementing regulations, the NY DOS is expected to provide more information about the form to be used for the BOI reports and where the reports must be electronically filed.

NY LLCs that are *otherwise* exempt from the definition of NY Reporting Company (e.g., fall within one of the 23 exemptions to the definition of CTA Reporting Company) must file an attestation of exemption indicating “the specific exemption claimed and the facts on which such exemption is based.” The NY DOS is expected to issue a form for this attestation of exemption, which must be signed and filed electronically under penalty of perjury. Under the CTA, there is no need to file any form indicating that the entity is exempt.

## **Key Dates**

*Effective Date:* Jan. 1, 2026.

*Existing Entities.* NY LLCs formed or authorized to do business in NY before January 1, 2026 must file their initial BOI report or attestation of exemption, as applicable, by January 1, 2027.

*New Entities.* NY LLCs formed or authorized to do business in NY on or after January 1, 2026 must file a BOI report or attestation of exemption, as applicable, within 30 days of an initial filing of articles of organization or an application for authority.

*Annual Statement.* All NY LLCs will be required to electronically file an annual statement with the NY DOS confirming or updating (1) BOI disclosure; (2) the street address of its principal executive office; (3) status as an exempt company, if applicable; and (4) any other information that may be required by the NY DOS. There is no similar requirement under the CTA to file an annual statement. In addition, unlike the CTA, the NYLTA does not require a NY Reporting Company to file an updated BOI report within 30 days of any change of BOI. However, the NYLTA does require a NY Reporting Company to correct any false or fraudulent BOI within 90 days of the filing and update any information as necessary in the annual statement.

## **Who Will Have Access to BOI?**

The NY DOS will maintain the information of beneficial owners in a secure nonpublic database. The information will be confidential, but may be disclosed by NY DOS (1) pursuant to the written request or consent of the beneficial owner; (2) by court order; (3) to officers or employees of another federal, state or local government agency where disclosure is necessary for the agency to perform its official duties; or (4) for a valid law

enforcement purpose. Recipients of BOI may not further disclose the information, except as authorized in law or as otherwise necessary for the performance of statutory duties. The NYLTA requires the NY DOS to establish provisions for sharing BOI with permitted agencies. Unlike the CTA BOI database, information maintained in the NY database will not be specifically available to designated financial institutions.

## **Violations and Penalties**

*Past Due and Delinquent Status.* NY LLCs that fail to file a BOI report, an attestation of exemption or an annual statement for a period exceeding thirty days will be marked “past due” in NY DOS records. If a NY LLC is marked as past due for longer than two years, then it will be marked as “delinquent” in NY DOS records. For each day an NY LLC is past due or delinquent, the NY attorney general may assess a penalty of up to five hundred dollars. A past due or delinquent mark will be removed from NY DOS when the NY LLC files a BOI report, files an attestation of exemption or annual statement that it missed, pays a \$250 fine or any other penalty imposed.

For delinquent entities, the NY state attorney general may investigate and may bring an action to dissolve or annul a delinquent LLC that failed to file its BOI report or attestation of exemption.

*Suspension.* In addition, where a NY LLC fails to file a BOI report or attestation of exemption, the NY LLC will also be suspended. Suspended entities will not be able to conduct business in NY until they file a BOI report or attestation of exemption. Once an entity files a BOI report or attestation of exemption, as applicable, the suspension will be annulled and all corporate powers, right, privileges, immunities, duties and liabilities will be restored.

*Fraudulent Disclosure.* The NYLTA also makes it unlawful for any person to knowingly provide, or attempt to provide, false or fraudulent beneficial ownership information. The NY attorney general may bring an action to annul or dissolve any entity found to have provided false or fraudulent information. A person will not be found in violation of providing false or fraudulent disclosure, if (1) the person “voluntarily and promptly” provides corrected information within ninety days of the submission and (2) the person did not willfully submit the information to evade reporting requirements.

Unlike the CTA, the NYLTA does not impose criminal penalties for failure to file a BOI report, an attestation of exemption or an annual statement, or for providing false or fraudulent information.

## Key Takeaways

Corporate transparency has become a priority for the New York Legislature. LLCs that currently do business in New York or plan to do so in the future should expect increased scrutiny of their beneficial owners. To ensure compliance, NY LLCs should proactively review and determine the applicable filing requirements which will come due commencing Jan. 1, 2027. Companies should carefully examine whether the entities within their organizational structures fall within the definition of a NY Reporting Company or qualify for an exemption. When a NY LLC identifies entities within its structure that are NY Reporting Companies, NY LLCs should also identify the information required for prompt filing of initial NY BOI reports for the NY Reporting Companies, including any attestations of exemption. In addition, NY Reporting Companies will need to remember to file their annual statements as well. For assistance in navigating the complex reporting requirements of the CTA and NYLTA, please contact your attorney at Schulte Roth & Zabel.

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[1] NY A.8544 / S.8059, available here. The prior version of the NYLTA (NY A.3484-A / S.995-B, available here) was amended by “chapter amendment,” which is an informal part of the New York legislative process allowing the governor to sign a bill with an agreement that the legislature will make certain amendments to the bill in the next legislative session.

[2] For a fuller discussion of the CTA, see our prior *Alerts*: (1) “Passage of Anti-Money Laundering Act of 2020 Includes Comprehensive BSA/AML Reform Measures,” available here; (2) The Corporate Transparency Act: The Private Funds Guide to Compliance With the Beneficial Ownership Reporting Rule,” available here; (3) “The Corporate Transparency Act: Key Considerations for Compliance With the Beneficial Ownership Reporting Rule,” available here.

[3] An individual exercises “substantial control” if they: (1) are a senior officer of the Reporting Company (i.e., the president, chief financial officer, general counsel, chief executive officer, chief operating officer or any other officer, regardless of official title, who performs a similar function or has such authority as these officers); (2) have the ability to appoint or remove any senior officer or a majority the board of directors (or similar body) of the Reporting Company; (3) direct, determine or have substantial influence over important decisions made by the Reporting Company, including decisions regarding the Reporting Company’s business, finances and structure; or (4) have any other form of substantial control over the Reporting Company

[4] Any individuals who own or control at least 25 percent of the “ownership interests” of the Reporting Company, which includes the five ownership interest types (1) equity, stock or voting rights; (2) capital or profit convertible instruments; (3) option or other non-binding; (4) privileges to buy or sell any of the foregoing; or (5) any other instruments, contract, arrangement, understanding, relationship or mechanism used to establish ownership.

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## Practices

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## Attachments

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