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Corporate Transparency Act Implements New Beneficial Ownership Information Reporting Requirements

[The Corporate Transparency Act \(CTA\)](#) expands anti-money laundering laws and creates new reporting requirements for certain companies doing business in the United States. Beginning in 2024, many small businesses will be required to report information about their beneficial owners to the Financial Crimes Enforcement Network (“FinCEN”) to create a database for national security and law enforcement agencies.

The CTA was enacted on January 1, 2021, as part of the National Defense Authorization Act, representing the most significant reformation of the Bank Secrecy Act and related anti-money laundering rules since the U.S. Patriot Act. The CTA is intended to address and guard against money laundering, terrorism financing, and other forms of illegal financing by mandating certain entities (primarily small and medium size businesses) report “beneficial owner” information to the FinCEN.

The CTA authorizes FinCEN, a bureau of the U.S. Treasury Department, to collect, protect, and disclose this information to authorized governmental authorities and to financial institutions in certain circumstances.

What Entities are Subject to the New CTA Reporting Requirements?

The CTA requires domestic and foreign privately owned corporations, LLCs, partnerships, and other types of companies formed by a filing with a Secretary of State (“SOS”) or equivalent official to disclose information about their beneficial owners and/or controlling members. The CTA also applies to non-U.S. companies that register to do business in the United States through a filing with an SOS or equivalent official.

What Are the Exceptions

There are several exceptions to who is required to file under the CTA. Many of the exceptions are entities already regulated by federal or state governments and, as such, already disclose their beneficial ownership information to governmental authorities.

Another notable exception is for “*large operating companies*,” defined as companies that meet **all** of the following requirements:

- Employ at least 20 full-time workers in the United States
- Operate a physical office within the United States
- Reported gross revenue (or sales) over \$5 million of U.S.-sourced gross receipts on its prior year federal tax return

What Information Must Be Provided

Beneficial ownership information (BOI) must be reported for the reporting company's beneficial owners and (for entities formed or registered after 2023) company applicants.

BOI includes the following information for each individual:

- Full legal name
- Date of birth
- Street address
- Unique ID number from a non-expired U.S. passport, state driver's license, or other government-issued ID card

If the individual does not have any of those documents, then a non-expired foreign passport can be used. An image of the document showing the unique ID number must also be included with the report.

Who is Considered a "Beneficial Owner" of a Reporting Company

A beneficial owner is any individual who, directly or indirectly, exercises "substantial control" or owns or controls at least 25% of the company's ownership interests.

Individuals with substantial control are those with substantial influence over important decisions made by the reporting company. Senior officers (such as president, CFO, general counsel, CEO, COO, and any other officer who performs a similar function) are automatically deemed to have substantial control, as are individuals with the authority to appoint or remove senior officers and board members. There is no requirement that these individuals have actual ownership in the company to be considered a beneficial owner for reporting purposes.

In addition, individuals may exercise control directly or indirectly, through board representation, ownership, rights associated with financing arrangements, or control over intermediary entities that separately or collectively exercise substantial control.

CTA regulations provide a much more expansive definition of "substantial control" than in the traditional tax sense, so many companies may need to seek legal guidance to ultimately determine who are deemed beneficial owners within their organization.

2024 CTA Important Filing Dates

As of now, the CTA's reporting requirements will be phased-in:

All Existing Reporting Companies: Existing reporting companies created or registered before 2024 are required to submit their initial report by January 1, 2025. FinCEN is in the process of creating a secure electronic filing system via their website and will begin accepting reports as early as January 1, 2024.

All New Reporting Companies: Reporting companies created or registered after 2023 must submit their initial report within 90 days of the entity's formation or registration.ⁱ

If there is a change to previously reported information about the reporting company or its beneficial owners, an updated report must be filed within 30 days of the change.

How to Prepare for the CTA

With the CTA introducing a new and expansive reporting regime, now is the time to assess the new rules' implications for your organization.

We strongly encourage you to reach out to legal counsel with expertise in this area as soon as possible to assist your organization with the steps you need to take to ensure compliance with the CTA, if applicable.

As the CTA is not a part of the tax code, the assessment and application of many of the requirements set forth in the regulations, including but not limited to the determination of beneficial ownership interest, necessitate the need for legal guidance and direction. As such, since we are not attorneys, our firm is not able to provide you with any legal determination as to whether an exemption applies to the nature of your entity or whether legal relationships constitute beneficial ownership.

Note that penalties for willfully violating the CTA's reporting requirements include one or more of the following:

- **Civil penalties of up to \$500 per day that a violation is not remedied**
- **A criminal fine of up to \$10,000**
- **Imprisonment of up to two years**

For additional information regarding the beneficial ownership reporting requirements under the CTA, refer to [FinCEN's Frequently Asked Questions document](#) and [Compliance Guide](#).

As always, please feel free to contact us if you have any questions.

ⁱ On September 27, 2023, the Treasury issued a proposed rule that would give companies created or registered in 2024 a 90-day period after they're formed – up from the current 30 days – to report their ownership information (RIN 1506-AB62).