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THE CORPORATE TRANSPARENCY ACT (CTA) 2023 UPDATE

The reporting requirements under the Corporate Transparency Act (CTA) will come into effect on January 1, 2024. The U.S. Treasury estimates that more than 32 million pre-existing entities and approximately 5 million new reporting companies annually over the next decade will have to register under the CTA.

The CTA was enacted on January 1, 2021 as part of the National Defense Authorization Act creating a federal beneficial ownership registry applicable to corporations, limited liability companies (LLCs) and most partnerships. Final regulations were issued on September 29, 2022, and most recently updated on September 27, 2023. Targeted at small and medium privately held business entities, the CTA requires these organizations to report their “beneficial owners” and “applicants” to the Financial Crimes Enforcement Network (FinCEN) in an attempt to prevent the use of shell companies to evade anti-money laundering rules or to hide other illegal activities.

WHO MUST REPORT?

The CTA imposes reporting requirements on corporations, LLCs, and other “similar entities” (e.g., limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLLPs)) that are either (i) created by filing a document with a secretary of state or a similar office under the law of a state or Indian tribe, or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a state or Indian tribe. The CTA does not apply to general partnerships or sole proprietorships. Trusts are not included under the CTA as reporting entities, although business statutory trusts (e.g., Delaware statutory trusts) may be required to report. While common law trusts are not themselves included, trustees, grantors or beneficiaries of such trusts may be captured under the “beneficial owner” definition (defined below). Entities required to report are called “**Reporting Companies**” under the CTA. The Reporting Company itself is responsible for the filing and certification of the report.

There are 23 Reporting Company exemptions, which include, for example, “large operating companies,” defined as any entity that (i) employs over 20 full-time employees in the United States, (ii) filed Federal income tax returns demonstrating more than \$5 million in gross receipts or sales in the previous year, and (iii) has an operating presence at a physical office within the United States.

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WHEN MUST THE INFORMATION BE REPORTED?

The CTA reporting requirements will come into effect on January 1, 2024, though the timeframe for reporting will depend on when a Reporting Company was formed (see table below).

Date of Formation	Timeframe for Reporting
Prior to January 1, 2024	Must report within 30 days of January 1, 2025
During the 2024 calendar year	Must report within 90 days of formation
January 1, 2025, or later	Must report within 30 days of formation

Additionally, a Reporting Company must file a supplemental report within one year of any change to its beneficial ownership. Changes that trigger this reporting requirement include (i) a change in substantial control of the Reporting Company, (ii) a change in contact details for a beneficial owner or company applicant, and (iii) beneficial ownership exceeding or dropping below 25%.

WHAT MUST BE REPORTED?

Reporting Companies must submit a report to FinCEN through an electronic portal being developed known as the Beneficial Ownership Secure System (BOSS) personal information regarding each “**beneficial owner**,” defined as any person who exercises “substantial control” over the entity or who owns or controls at least 25% of the entity, and “**company applicant**,” defined as the person who directly files a document to form or register a company or the individual primarily responsible for directing or controlling such filing (e.g., the paralegal who files the form and the attorney who directs the paralegal to file). An individual exercises “**substantial control**” if they satisfy any of the following factors: (i) they serve as a senior officer of the company; (ii) they have authority over the senior officers or majority of the board of a company; (iii) they have substantial influence over the company’s important decisions, or (iv) they have any other type of substantial control over the company.

If a trust owns 25% or more of a Reporting Company, the following individuals must report: (i) a trustee of the trust or other individual (if any) with the authority to dispose of trust assets, (ii) a beneficiary who (a) is the sole permissible recipient of income and principal from the trust, or (b) has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or (iii) a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust.

Beneficial owner exceptions include minor children, nominees, employees, creditors, and individuals with only a right of future inheritance. Furthermore, Reporting Companies existing or registered prior to January 1, 2024, are not required to report their company applicants.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

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For each beneficial owner and company applicant, Reporting Companies must provide: (i) full legal name; (ii) date of birth; (iii) current residential or business street address; (iv) unique identification number, which can be from a non-expired US passport, non-expired US or state government ID, non-expired driver's license or a foreign passport; and (v) an image of each beneficial owner or company applicant (e.g., passport photo).

WHO HAS ACCESS TO THE INFORMATION?

In general, the collected information will not be publicly available and cannot be obtained through a request under the Freedom of Information Act. Access to the information is thus limited to (i) certain departments within the federal government and (ii) circumstances in which the information is legally compelled pursuant to, for example, a grand jury subpoena or court-issued search warrant.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

Any person who willfully provides, or attempts to provide, false or fraudulent beneficial ownership information, or fails to file complete and accurate reports or fails to provide updated reports will face penalties of up to \$10,000 (accruing at \$500 per day that the report is outstanding) and/or imprisonment for up to two years.

GOING FORWARD

Entities should analyze whether they fall under the definition of a "Reporting Company" and, if so, what they must do to comply with the CTA. At a minimum, Reporting Companies should (i) implement a process for identifying and collecting reporting information from beneficial owners, (ii) update internal policies to timely report information, and (iii) create a system by which changes to reporting information are tracked and updated.

For additional guidance on the CTA and other related matters, please reach out to our Family Office and Strategic Investment Practice Group to discuss any questions related to compliance with the CTA as well as planning for near- and long-term solutions tailored to achieve your specific goals.