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The Corporate Transparency Act: Beneficial Owner Reporting Requirements for Private Companies

The Bottom Line

- The CTA takes effect Jan. 1, 2024, and will require certain companies to submit beneficial ownership and other information to FinCEN.
- Domestic business entities and foreign business entities registered to conduct business in a U.S. jurisdiction could be subject to the CTA's reporting requirements.
- Failure to comply with the CTA's reporting requirements can result in civil and/or criminal penalties.

When the Corporate Transparency Act (CTA) takes effect on January 1, 2024, it will create a new, confidential database of private companies' beneficial owners. Enacted by Congress in 2021, the CTA was designed to help thwart the use of shell companies for illicit activities, including money laundering, tax evasion and other illegal activities. The CTA requires "reporting companies" to provide information regarding the individuals that directly or indirectly own or control a reporting company to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

What is a "Reporting Company"?

There are two types of reporting companies:

- domestic reporting companies, which are all entities formed in the United States by the filing of a document with a secretary of state or an Indian tribe (notably, this does not include trusts) and
- foreign reporting companies, which exist under the laws of a foreign country but register to conduct business in any U.S. state or tribal jurisdiction by filing a document with a secretary of state or tribal authority.

CTA Exemptions

There are 23 detailed exemptions to the CTA's reporting requirements. In general, any company that is already subject to a comprehensive regulatory regime may be exempt. This list includes nonprofits, public companies, insurance companies, banks and other similarly regulated entities. Any subsidiary that is controlled or wholly owned, directly or indirectly, by most types of exempt entities may also be exempt.

Notably, there is an exemption for large operating companies, which are entities that (i) have more than 20 full-time employees in the United States, (ii) have an operating presence at a physical office within the United States, and (iii) filed a federal income tax or information return in the United States for the previous year demonstrating more than $5 million in domestic gross receipts or sales on a consolidated basis.

Companies that are inactive (including no business, no change in ownership, only *de minimis* funds transfers, and no ownership in any other entity or of other assets) may also be exempt from the CTA's filing requirements.

If a company has multiple entities in its organizational structure, the analysis of whether an entity is a reporting company under the CTA (and, if so, whether an exemption applies) must be done on each entity in the structure.

Required Information to Report

Each non-exempt reporting company will need to file a beneficial ownership information report with FinCEN disclosing its beneficial owners and company applicant(s).

A "beneficial owner" is an individual who exercises substantial control over a reporting company, or who owns or controls at least 25% of the ownership interests of a reporting company. There can be multiple beneficial owners, but there should always be at least one. Certain categories of people, such as minors, custodians and agents, and certain creditors, are carved out from the beneficial owner definition. Criteria for determining substantial control include:

1. being a senior officer,
2. having authority to appoint or remove officers or directors,
3. being an important decision maker and
4. holding any other form of substantial control.

The analysis is highly fact-dependent.

The requirement to report "company applicants" applies only to domestic entities formed on or after January 1, 2024, and foreign entities that register to conduct business in a U.S. jurisdiction on or after January 1, 2024. A reporting company may have up to two company applicants: (1) the person who directly filed the registration paperwork (which every company required to report must have) and (2) the person who controlled the filing of the registration paperwork (which required reporting companies may or may not have).

Both beneficial owners and company applicants will need to file personal information including name, date of birth, address and copies of identification documents.

Filing Deadlines

Beginning January 1, 2024, all non-exempt reporting companies in existence prior to that date must file initial reports with FinCEN by January 1, 2025. Non-exempt reporting companies that come into existence on or after January 1, 2024, will generally have 30 calendar days from receiving notice of initial creation or registration to file initial reports; however, FinCEN adopted a rule extending this deadline to 90 days for all non-exempt reporting companies that come into existence in 2024 (subject to certain exceptions). Following the filing of their initial reports, non-exempt reporting companies are required to report changes in beneficial ownership information within 30 days of such changes.

Consequences for Failure to Report

Willful failure to report or willful provision of false information may result in civil penalties of up to $500 each day and up to two years of imprisonment. Senior officers can be held responsible for an entity's failure to report.

For More Information

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