Corporate Transparency Act — Beneficial Ownership Information Reporting

The Corporate Transparency Act (CTA) was enacted 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 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 Financial Crimes Enforcement Network (FinCEN).

My firm is sending you this communication to provide you with some general information regarding the new reporting rules, as well as initial steps you should take to address the implications of the CTA for your business. This is not a comprehensive or authoritative resource.

As the CTA is not a part of the tax code, the assessment and application of the requirements in the regulations, including but not limited to the determination of beneficial ownership, necessitates the need for legal guidance.

Since I am not an attorney, assistance with beneficial ownership reporting is considered "unlicensed practice of law" and is not covered by my insurance provider.

As a result, my firm is unable to assist with any filings necessary for compliance with CTA. I cannot provide you with any legal determination as to whether an exemption applies or whether certain relationships constitute beneficial ownership.

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

FinCEN has also published an extensive Small Entity Compliance Guide you may find helpful.

Penalties for willfully violating the CTA's reporting requirements include (1) civil penalties of up to $500 per day that a violation is not remedied, (2) a criminal fine of up to $10,000, and/or (3) imprisonment of up to two years.

What entities are subject?

Entities required to comply with the CTA ("Reporting Companies") include corporations, LLCs, and other types of companies created by a filing with a Secretary of State ("SOS") or equivalent official. The CTA also applies to non-U.S. companies that register to do business in the U.S. Since the definition of a domestic entity under the CTA is extremely broad, additional entity types could be subject to CTA reporting requirements based on individual state law.

There are several exceptions to who is required to file. Many of the exceptions are entities already regulated by federal or state governments and as such already disclose their beneficial ownership information. There is also a specific exemption for certain large companies.

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Who is considered a “beneficial owner”?

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.

An individual exercises “substantial control” if the individual (i) serves as a senior officer of the company; (ii) has authority over the appointment or removal of any senior officer or a majority of the board; or (iii) directs, determines, or has substantial influence over important decisions made by the Reporting Company. Thus, senior officers and other individuals with control over the company are beneficial owners under the CTA, even if they have no equity interest in the company.

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.

Phase-in of reporting requirements

As currently promulgated, the CTA’s reporting requirements will be phased-in in two stages:

- All **2024 new** Reporting Companies — those formed on or after January 1, 2024 — must report required information **within 90 days** after their formation or registration. Beginning in 2025, new Reporting Companies will have 30 days.

- All **existing** Reporting Companies — those formed or registered before January 1, 2024 — must report required information **no later than** January 1, 2025.

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 business. Some questions and comments for your company to consider now, although not meant to be all inclusive, include:

- Is your company subject to the CTA or do you qualify for any of the exemptions?
- If your company is **not** exempt, how should you calculate percentages of “ownership interests” to determine whether any owners meet the 25%-ownership threshold? In many companies with simple capital structures, the answer will be obvious. It may be much less obvious, however, for companies with complicated capital structures or companies in which some ownership interests are held indirectly.
- How do you assess and determine each person who exercises “substantial control” over the company? There may well be multiple people who qualify, given the expansiveness (and vagueness) of the “substantial control” definition.
- What new processes and procedures should the company put in place to monitor future changes in its beneficial owners and reportable changes on existing beneficial owners that will require timely updated reports to FinCEN? Note that the types of information that must be provided to FinCEN (and kept current) for beneficial owners include the

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owner's legal name, residential address, date of birth, and unique identifier number from a non-expired passport, driver's license, or state identification card (including an image of the documentation). A word of caution, you will need to rely on beneficial owners to timely update you on reportable changes to their information (e.g., ownership changes, moves, marriages, divorces, etc.). As a result, a company's operative documents may need to be revised to include provisions related to the CTA such as representations, covenants, indemnifications, and consent clauses.

For additional information regarding the beneficial ownership reporting requirements under the CTA, refer to FinCEN's Frequently Asked Questions document at https://www.fincen.gov/boi-faqs.

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