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Corporate Transparency Act Reporting Begins January 1, 2024, Impacting Many Small Businesses and Legal Entities

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The Corporate Transparency Act (CTA), which was enacted to curb money laundering, terrorism financing, and other illicit activities, becomes effective on January 1, 2024. The CTA will impose a new obligation on millions of business entities to report and maintain current information on their beneficial owners with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury.

Which entities are required to report?

Under the CTA, subject to certain exemptions, domestic entities, including limited liability companies, corporations and other entities, "that [are] created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian Tribe" are required to file a report with FinCEN. This definition of domestic reporting entity includes limited liability partnerships, business/statutory trusts, limited partnerships, and limited liability limited partnerships, among others.

Also subject to reporting requirements are foreign entities that have registered to do business in the United States by filing with a secretary of state or similar office of any state or tribal jurisdiction.

Which entities are exempt from reporting?

The CTA provides a list of 23 types of exempt entities that are not subject to these reporting requirements, most of which are already subject to state or federal supervision, such as public companies, banks and insurance companies.

Also included in the 23 types of exempt entities are "large operating companies." A company qualifies for the large operating company exemption if it:

- Employs more than 20 full-time employees in the United States;
- Has an operating presence at a physical office within the United States; and
- Has filed federal income tax returns in the United States in the previous year demonstrating more than $5,000,000 in gross receipts or sales sourced within the United States.

What information must be reported?

For all reporting entities, the CTA requires disclosure of the following information:

- Full legal name of the company;
- Any trade names or “doing business as” names;
- The business street address;
- The state or tribal jurisdiction where it is registered; and
- The U.S. or foreign tax identification number.

Reporting entities must also identify and disclose all individuals who are beneficial owners and, for entities formed on or after January 1, 2024, company applicants.

For each beneficial owner and company applicant, the reporting entity must disclose:

- Individual’s full legal name;
- Date of birth;
- Complete address;
- A unique identifying number from an approved document such as a passport or driver’s license; and
- An image of the approved document where the unique identifying number was obtained.

Company applicants who create or register entities in the ordinary course of their business may report their business address. All other individuals must report their residential street address.

Individuals and businesses who are beneficial owners or company applicants for numerous reporting companies may apply for a FinCEN identifier that can be submitted with company applications in lieu of submitting the personal information described above with each company application.

Who is a beneficial owner under the CTA?

A “beneficial owner” is any individual who meets either of the following criteria:

- Exercising substantial control over the reporting company; or
- Owning or controlling at least 25 percent of the ownership interest of the reporting company.

What qualifies as substantial control over a reporting company? The regulations set out a non-exhaustive list of the following indicative factors:

- Provides service as a senior officer of a reporting company;

- Has authority over the appointment or removal of any senior officer or a majority of the board of directors of a reporting company; and
- Directs, determines, or has substantial influence over, important decisions made by a reporting company.

There are carve outs for certain individuals who do not qualify as a "beneficial owner." Those individuals include:

- Minor children (in which case their legal guardian's or parent's information would be disclosed);
- Nominees or other intermediaries;
- Employees that are not senior officers;
- Holders of a future inheritance interest; and
- Creditors whose beneficial ownership derives through rights or interests for the payment of an established sum of money.

Who is a company applicant under the CTA?

The regulations describe a company applicant as any individual who files the document that forms the entity or first registers the entity to do business, including any individual who directs or controls the filing by another. This means family members, agents, employees, attorneys and paralegals who file on behalf of other individuals would need to be disclosed to FinCEN as an applicant in a company's report.

When are reports due?

For reporting companies filing for formation or registration on or after January 1, 2024, the company must submit their initial report with FinCEN within 30 calendar days of the date of formation or registration.

For reporting companies that are formed or registered prior to January 1, 2024, the company will have until January 1, 2025 to file an initial report with FinCEN.

What happens if any of the reported information changes?

To correct any information that was incorrect at the time of filing, the reporting company will have 30 calendar days from the date it knew or should have known that the information was inaccurate to file a corrected application. Such a correction must be timely made within 90 calendar days from the initial filing date in order to meet the limited statutory safe harbor for correcting inaccurate information.

Upon a change in any of the information previously submitted to FinCEN concerning a reporting company or its beneficial owners, reporting companies must file an updated report within 30 calendar days. The personal information of a company applicant does not need to be updated after the initial report.

What happens if a reporting company fails to report or provides false information to FinCEN?

The CTA makes it unlawful for anyone to provide false information or willfully fail to report or update beneficial ownership information to FinCEN. Any person violating their obligation to report to FinCEN may be subject to a civil penalty of up to $500 for each day a violation continues without being remedied, limited up to $10,000 per violation, imprisonment for up to 2 years, or both.

Takeaway

Entities that are required to report under the CTA should begin gathering the information necessary to file initial reports with FinCEN. If you have questions about what information you or your business entity is required to disclose, the business attorneys here at Lowndes are ready to help you navigate your reporting obligations.