



## **2024 NEW FEDERAL RULE – CORPORATE TRANSPARENCY ACT Sidney Werner – December 26, 2023**

**In 2021, Congress, in an effort to make it more difficult for bad actors to hide the flow of funds or assets through entities with opaque ownership structures, passed new legislation in the form of the Corporate Transparency Act (“CTA”). The CTA, which goes into effect January 1, 2024, will** require companies and the human beings behind the companies (both owners, principals, and those in control of the entities, called “beneficial owners”) to provide certain information through a beneficial ownership information report to a national data base of state filed entities in the U.S. The Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”), which will administer the database and use this information in its efforts to combat money-laundering, terrorism financing, tax evasion and other financial crimes.

**Companies will need to determine whether the CTA requires them to file beneficial ownership information reports to FinCEN for inclusion in the database. The purpose of this posting is to communicate to you the nature of the CTA, the general obligations thereunder, and offer our assistance if you should need it.**

### ***What does the Corporate Transparency Act require?***

The CTA requires almost all domestic and foreign limited liability companies, corporations, limited partnerships and limited liability partnerships with activity in the United States to file beneficial ownership information reports with FinCEN information identifying the entities and “beneficial owners”. Each reporting company must report the following information to FinCEN about itself:

- Legal name and any trade names
- Address
- Jurisdiction of formation or registration
- Taxpayer identification number

For each beneficial owner and applicant, reporting companies must report their:

- Name
- Date of birth
- Address
- ID number and a copy of a photo ID

### ***What is a “beneficial owner”?***

The identification of individuals who have substantial control of the entity so as to qualify as “beneficial owners” and require disclosure of their names and information can be complicated. The CTA defines a “beneficial owner” as:

- A person holding a 25% or greater interest in the company, by definition, has substantial control.
- A person who is a senior office, such as a president, CEO, COO, CFO, LLC manager, or general counsel of the company, or otherwise performs a similar function, regardless of title, has substantial control.
- Any person who directs, determines or has substantial influence over important decisions made by the company regarding business, finances or structure, has substantial control.
- Any person holding any other form of substantial control.

***What if a company’s “beneficial owners” change?***

Maintaining current and accurate reporting information with FinCEN is required. Any changes to or inaccuracies in reported information must be corrected by an updated beneficial ownership information report within 30 days of discovery. For example, a change of officers or directors, a change of address of any beneficial owner or the company, the death of any beneficial owner, or a change of ownership resulting in someone gaining or losing a 25% ownership position in the company must be reported within 30 days.

***Do companies need to file a beneficial ownership information report with FinCEN even if they file annual reports and taxes?***

Beneficial ownership information reports are different from annual reports to states or federal income tax returns. Those required to file beneficial ownership information reports will have to disclose their names, home addresses, driver’s license or passport and other information, even if they do not own an interest in the company.

***Are there companies exempt from filing beneficial ownership information reports?***

Some entities may qualify for exemption based on factors outlined in the CTA. It will be important to conduct a thorough analysis to determine whether your company is exempt from the reporting requirements. The exemptions generally apply to entities that are already heavily regulated.

A few notable exemptions include:

- Large operating companies, which are defined as companies that have:
  - more than 20 full-time employees (on a nonconsolidated basis),
  - a physical operating presence in the United States, and
  - reported more than \$5 million in gross receipts or sales on their tax return for the previous year (a consolidated tax return is permitted, but this exemption is not available for new entities that have not yet filed any tax returns).
- Public companies.
- Subsidiaries that are controlled or wholly owned, directly or indirectly, by certain designated exempt entities.
- Investment advisers that are registered with the SEC, investment advisers that are exempt from registration with the SEC because they solely advise venture capital funds and certain private funds.

***When is the deadline to file beneficial ownership information reports?***

Companies formed after January 1, 2024, must electronically file their report within 90 days of formation or be in non-compliance. Those formed before January 1, 2024, must electronically file their report by December 31, 2024. Unfortunately, the registration form is not yet available, FinCEN reports that it will make it available beginning January 1, 2024.

***Are there penalties for not filing?***

Those who violate the reporting requirements of the CTA face a civil penalty of up to \$500 per day for each day of non-compliance, and criminal penalties of up to \$10,000 and up to two years in prison. **Because of the severe penalties for non-compliance, anyone who may even be possibly affected should proactively address the requirements.**

***Do I need an attorney to help my company comply with the CTA?***

Those with simple beneficial ownership structures may choose to file a report with FinCEN without the assistance of an attorney. However, clients with more complex companies; those with holding companies and subsidiaries; those with multiple owners or those owned by other business entities; those uncertain as to how to identify who beneficial owners with substantial control are; or those simply uncomfortable with filing on their own, may want to seek legal or other assistance. Compliance will require substantial time. For example, FinCEN estimates that the average burden of reporting beneficial ownership interests as 650 minutes per response for a reporting company with complex beneficial ownership structures. The time required will not be so much in the preparation and filing of the reporting form as in the review of the company's documents and identification and collection of information about beneficial owners and company applicants. Each situation will require a different allocation of time.

**Please take the requirements of the CTA seriously. Our aim is to bring this newly enacted law to your attention so you are not caught off-guard. Even if you are an existing client of the firm, we will not be assisting you in complying with the CTA unless you contact us and enter into an engagement letter with us for this service. If you have any questions, you may contact John Waechter, Jon Mayhugh, Dionne Fajardo, or Sidney Werner in our corporate department at 727-898-7210.**