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What You Need To Know About The Corporate Transparency Act

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The Corporate Transparency Act (the "CTA") is a federal law with a filing requirement for almost every corporation, limited liability company, and limited partnership. The CTA requires that a Beneficial Ownership Information Report (the "Initial Report") be filed by the Reporting Company with FinCEN, the Financial Crimes Enforcement Network, a bureau of the U.S. Treasury. Failure to comply with the CTA's reporting requirements can result in significant civil and criminal penalties.

The due date for the Initial Report for your corporation, limited liability company, or limited partnership is:

- If the entity is already in existence on December 31, 2023 – due on January 1, 2025.
- If the entity is created from January 1, 2024 through December 31, 2024 – due 90 days after it is created.
- If the entity is created on or after January 1, 2025 – due 30 days after it is created.

Perhaps the most challenging due date occurs when there is a change in any of the information previously reported for the Reporting Company or a Beneficial Owner, such as a change in address. An Updated Report is due only 30 days after the change occurs, not 30 days after learning of the change.

When the Reporting Company becomes aware or has reason to know that an error was made on the Initial Report or an Updated Report, a Corrected Report is due 30 days after that.

There are civil and criminal penalties for willfully failing to timely file a complete and accurate Initial Report and any required Updated Report or Corrected Report. The civil penalty is not more than $500 per day. The criminal penalty is a fine of not more than $10,000, imprisonment for not more than 2 years, or both.

The requirement to file this Initial Report and any required Updated Report or Corrected Report comes from the CTA passed by bipartisan supermajorities in the House and the Senate on January 1, 2021. The purpose is to fight money laundering and terrorist financing, which are often run through small companies to mask the identities of the owners. Europe has had a similar measure in operation for many years.

When completing the Initial Report, there are three important terms from the CTA to keep in mind: the Reporting Company, a Beneficial Owner, and a Company Applicant.

The “Reporting Company” is the entity required to file the Initial Report, Updated Reports, and Corrected Reports with FinCEN. A Domestic Reporting Company is created by filing a document with the Secretary of State or a similar office. A Foreign Reporting Company is created in a foreign country and registered to do business in any State by filing a document with the Secretary of State or a similar office.

A “Beneficial Owner” is an individual who directly or indirectly owns or controls at least 25% of the Reporting Company or an individual who directly or indirectly exercises substantial control over the Reporting Company even if they do not have an ownership interest in the Company, such as a Trustee of a trust that owns an interest in the Reporting Company or senior officers of the Reporting Company even if they do not own an interest in the Reporting Company. It is important to keep in mind that a Beneficial Owner is always a natural person, never an entity. As a result, when an entity owns an interest in the Reporting Company you must keep drilling down to get to the natural persons who will be treated as the Beneficial Owners. Even after consulting the FinCEN website, you will find that there are many unanswered questions when you are examining the facts and circumstances while trying to determine who are the Beneficial Owners of a Reporting Company. Because of the potential penalties for failure to include a Beneficial Owner, a conservative approach may be the best.

A “Company Applicant” is an individual who filed the document with the Secretary of State that created the Reporting Company and an individual who was primarily responsible for directing or controlling the filing. There will be no more than two Company Applicants.

The Beneficial Ownership Information Report filed by the Reporting Company must include the following information:

- For the Reporting Company – the full legal name; any trade name or doing business as name; the complete current street address of the principal place of business of the Company; the State of formation; and the Employer Identification Number.
- For each Beneficial Owner – the full legal name; date of birth; complete current residential street address; and a photocopy of a non-expired U.S. passport, a non-expired State driver's license, a non-expired State ID with a picture on it, or if none of those exist then a non-expired foreign passport.
- For each Company Applicant – the same information as for a Beneficial Owner except if the Company Applicant formed the Reporting Company in the course of their business, then use the street address of the business. If the Reporting Company was already in existence on December 31, 2023, then the Company Applicant’s information is not included on the Initial Report.

Alternatively, Beneficial Owners and Company Applicants may provide that information directly to FinCEN instead of to the Reporting Company and obtain a FinCEN ID number, which is then included on the Initial Report instead of the detailed information. The online application form for a FinCEN ID became available on January 1, 2024, at https://fincenid.fincen.gov/landing and requires that the individual first create or sign in to a Login.gov account.

The FinCEN ID may be particularly useful to simplify the reporting process for:

- Beneficial Owners who have interests in many Reporting Companies.
- Beneficial Owners and Company Applicants who do not want to disclose confidential information to the Reporting Company.
- Company Applicants who frequently form Reporting Companies.
- Reporting Companies with many Beneficial Owners or those with at least one Beneficial Owner for whom it will be difficult to keep track of updated information for an Updated Report.

Because the FinCEN ID shifts the responsibility for updating the filed personal information to the Beneficial Owner, it may also shift the penalties for failing to do that.

There are twenty-three listed exemptions for entities that are not required to file an Initial Report. Most exemptions are for entities already subject to disclosure rules like publicly traded companies, banks, and tax-exempt entities.

The exemption for large operating companies may provide some relief. To be a large operating company, the following three tests must all be met: (1) more than 20 full time employees; (2) operating presence at a physical office within the U.S.; and (3) filed a Federal income tax or information return in the U.S. for the previous year demonstrating more than $5,000,000 in gross receipts or sales, excluding gross receipts or sales from sources outside the U.S.

Action Items

1. Have Reporting Companies establish CTA compliance procedures and clearly designate an owner, employee, or outside professional who will have the responsibility for timely filing the Initial Report and being the repository to receive the necessary information to file Updated Reports.
2. Beneficial Owners and Company Applicants should obtain a FinCEN ID.
3. If the Reporting Company has individuals who are not owners but are senior officers or others with substantial control of the Reporting Company, have an analysis done of the facts and circumstances to determine if they have to be included as Beneficial Owners on the Initial Report or Updated Reports.
4. Update shareholders agreements, LLC operating agreements, limited partnership agreements, and non-owner employment agreements with employees who have substantial control to require that Beneficial Owners provide and update the appropriate person with the information needed for filing an accurate and timely Initial Report and for filing accurate and timely Updated Reports or obtain and keep updated a FinCEN ID and provide that ID to the appropriate person designated by the Reporting Company.

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