The Federal Corporate Transparency Act Requires Entities to Report Their Ownership Beginning January 1, 2024

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New Federal law requires reporting of the ownership and organizers of many new entities (corporations, LLCs, etc.) formed on or after January 1, 2024, within 30 days after formation, and reporting of the ownership of many active existing entities formed prior to January 1, 2024. The law imposes significant penalties for failure to comply.

The good news is that banks and bank holding companies are exempt from the law. The bad news is that the law will apply to many of your customers and they may not be aware of it.

New reporting requirements under the federal Corporate Transparency Act ("CTA") for certain entities will go into effect starting January 1, 2024. The core purpose of the CTA is to allow the Financial Crimes Enforcement Network ("FinCEN") to collect information about "Beneficial Owners" and "Company Applicants" of entities that fall under the CTA's regulations to assist with pursuing financial crimes including money laundering.

When the CTA goes into effect, it will materially impact the process and procedures for formation of new entities and the administration of existing entities, unless one of the exemptions from the requirements of the CTA applies. A summary of the CTA and its reporting obligations is set forth below. Note that this is only a summary and not intended to be comprehensive. Affected persons should consult with their attorneys prior to January 1, 2024, to develop a plan for compliance with the CTA.

SUMMARY OF THE CTA

WHEN: The reporting obligations begin January 1, 2024. "Reporting Companies" formed prior to January 1, 2024 will have one year to file their initial report with FinCEN. Reporting Companies formed after January 1, 2024 must file their initial report within 30 days after formation. If any information regarding beneficial owners changes, the Reporting Company must file an update with FinCEN within 30 days.

WHO MUST FILE: The CTA requires only "Reporting Companies" to file reports with FinCEN. Reporting Companies include: (1) domestic corporations, LLCs or other entities created by the filing of a document with any government authority of a state, Indian tribe or U.S. territory; and (2) foreign corporations, LLCs, or such other similar entities that are registered to do business in a state, tribe or U.S. territory. The CTA exempts 23 categories of larger and/or already-regulated entities from the reporting obligations under the CTA. The most common exempt categories are listed at the end of this summary.

WHAT MUST BE REPORTED: The required reports must include certain information about the Reporting Company, its "Beneficial Owners" and, if the Reporting Company is formed after January 1, 2024, its "Company Applicants."

"Beneficial Owners" include any individual who, directly or indirectly, either (1) exercises "Substantial Control" over the Reporting Company; or (2) owns or controls more than 25% of the ownership interests of the Reporting Company.

Substantial Control of a Reporting Company is exercised by an individual if such individual: (1) serves as a senior officer; (2) has authority over the removal or appointment of any senior officer or a majority of the Board (or similar body); (3) has control over important decisions; or (4) has any other form of substantial control over the Reporting Company.

Company Applicants include any individual who either: (1) directly files the document creating or first registering the Reporting Company; or (2) is primarily responsible for directing or controlling such filing by another.

HOW REPORTS ARE TO BE MADE: FinCEN is working on a website where such reports can be filed.

WHO HAS ACCESS TO REPORTED INFORMATION: FinCEN will store the reported information on a secure, non-public data base. Disclosure of the information will be limited to various federal and state law enforcement agencies and financial institutions complying with government-imposed customer due diligence requirements.

PENALTIES: The CTA imposes civil and criminal penalties, including a fine up to $10,000 and/or imprisonment for up to 2 years, for any person who willfully fails to file required reports or provides false information in a report. Penalties may be imposed on the Reporting Company and certain individuals who cause the Reporting Company to violate the law. A 30-day cure period after discovery is provided to file corrective reports.

EXEMPT COMPANIES: A full list of companies exempt from reporting under the CTA is beyond the scope of this article. The most common exemptions are:

- Large operating companies – companies that:
  - Have more than 20 full time employees;
  - Have a physical office in the US; and
  - Reported more than $5 million in domestic gross receipts or sales in their last tax return.

- Public companies – issuers of securities registered with the SEC.

- Certain other highly regulated companies – including banks and their holding companies, broker/dealers, investment advisers, regulated utilities, etc.

- Tax-exempt entities – including charities, PACs, charitable trusts and certain of their advisers and service providers.

DOES THIS LAW AFFECT ME? The breadth and reach of this law will reach many people who think they are not the target of law enforcement agencies in any respect, such as money laundering, foreign investment, or organized crime. Anyone who uses entities in their business or personal affairs should either (1) determine with their attorney that they are exempt from the CTA, or (2) develop a plan for compliance with the reporting requirements of the CTA.