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The Corporate Transparency Act—Has Your Business Started the Reporting Process?

Client Alert

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The Corporate Transparency Act (the “CTA”) may be familiar to entities formed or created in 2024, but for many entities that were formed or created prior to this year, the January 1, 2025, reporting deadline is quickly approaching. Since the reporting requirements for some entities may require an in-depth analysis or lead to a re-structuring of related entities, businesses are encouraged not to wait too late in 2024 to start the reporting process.

Companies That are Considered Reporting Entities

The CTA applies to a “reporting entity,” which is defined to include a corporation, limited liability company (LLC), or similar entity that is either:

1. created by the filing of a document with the secretary of state or a similar office under the laws of a State or Indian Tribe, or
2. formed under the laws of a foreign country and registered to do business in the U.S. by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.

This will cover almost all corporations, LLCs, and limited partnerships, whether formed under Michigan law or the law of another jurisdiction. Co-partnerships created in Michigan are not included, since those are not created by a filing with the state.

Reporting Deadlines

The deadline for a reporting entity to submit its initial report to the Financial Crimes Enforcement Network (commonly referred to as “FinCEN”) depends on when the entity was created or

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formed. For a reporting entity created or formed after January 1, 2024, the entity must file its initial report within 90 days of such formation date. (The deadline for a reporting entity formed after January 1, 2025 will be even shorter – only 30 days after formation.) However, a reporting entity formed before January 1, 2024 has until January 1, 2025 to submit its initial report. All reporting entities have an ongoing obligation to update their FinCEN report within 30 days of any change in information previously reported.

Exemptions to Reporting Requirements

The CTA specifically excludes 24 types of entities from the need to file reports. These exclusions generally cover entities otherwise subject to governmental oversight or that fall under broad threshold-based exclusions. Examples include issuers of securities subject to the Securities Exchange Act of 1934, banks subject to the Bank Holding Company Act of 1956, and U.S. insurance companies subject to supervision by a state insurance commissioner.

A significant threshold-based exclusion is for “large operating companies,” which are entities that (i) employ more than 20 employees on a full-time basis in the U.S., (ii) report over \$5M in gross receipts or sales in the aggregate on their federal tax returns filed in the previous year, and (iii) have an operating presence at a physical office within the U.S. Subsidiaries that are controlled or wholly owned by large operating companies (or certain other exempt companies) are also exempt from reporting.

Caution: Many reporting entities that are part of a large organization may assume that they are eligible for this exemption and so do not need to report. However, if a holding company exists at the top of the organizational structure, which is fairly common, the holding company often will not satisfy the 20-employee test for a large operating company and may not meet the “operating presence” test. Under this scenario, even though the subsidiary operating companies may qualify as large operating companies exempt from CTA reporting, the holding company would not be exempt.

Information to be Reported

Reporting entities must include the following information about their beneficial owners: (i) full legal name; (ii) date of birth; (iii) current residential address; and (iv) a unique identifier from an acceptable document or a FinCEN identifier assigned to a person pursuant to the CTA. Acceptable identification documents include a non-expired (a) U.S. passport, (b) identification document issued by a State, local government, or Indian Tribe for the purpose of identifying that individual, (c) driver’s license issued by a State, or (d) a foreign passport, if the individual does not have a document described in (a)–(c).

A “beneficial owner” is defined in the CTA as an individual who, directly or indirectly, owns or controls 25% or more of the ownership interest of the reporting entity or exercises substantial control over the reporting entity. There are some exclusions from the definition of a beneficial owner such as (i) a minor child whose parent or guardian reported information required by the CTA, (ii) nominees, intermediaries, custodians, or agents acting on behalf of another individual, or (iii) an employee whose control of an entity is derived solely from the employment status of the person.

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Caution: Although it may be fairly straightforward to determine who owns or controls 25% of an entity's ownership interest, determining the individuals who exercise "substantial control" can be much more challenging. Certain senior officers are automatically included, but the definition is otherwise quite vague and imprecise.

Penalties

A reporting violation may result in a civil penalty of up to a \$500 fine for each day of noncompliance, with a maximum fine of \$10,000, imprisonment for up to two years, or both.

For questions about the entity reporting requirements or Corporate Transparency Act, please contact the authors of this Client Alert.

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