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Overview of New Reporting Requirements Under the Corporate Transparency Act

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WHAT IS THE CORPORATE TRANSPARENCY ACT

The Anti-Money Laundering Act of 2020, which is part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), established the Corporate Transparency Act (CTA). The aim of the CTA is to prevent financial crime, money laundering and the financing of terrorism through the use of shell companies. The CTA requires certain business entities (each defined as a "reporting company") to file, in the absence of an exemption, information on their "beneficial owners" with the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury (Treasury). The information will not be publicly available, but FinCEN is authorized to disclose the information to:

- U.S. federal law enforcement agencies.
- Certain other enforcement agencies, with court approval.
- Non-U.S. law enforcement agencies, prosecutors or judges based upon a request of a U.S. federal law enforcement agency.
- Financial institutions and their regulators, with consent of the reporting company.

REPORTING COMPANIES

A reporting company is any entity that meets the "reporting company" definition and does not qualify for an exemption. There are two categories of companies required to report: A "domestic reporting company" and a "foreign reporting company."

- A "domestic reporting company" is any company 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 (i.e. corporation, LLC, LLP, etc.).
- A "foreign reporting company" is any foreign company registered to do business in any U.S. state or tribal jurisdiction by the filing of a document with a secretary of state or similar office of the state or Indian Tribe.

If a company is neither a "domestic reporting company" nor a "foreign reporting company" because it does not meet either definition, or it qualifies for an exemption, then it is not required to file a BOI report with FinCEN.

EXEMPTIONS

The reporting rules under the CTA exempt 23 specific types of entities from the CTA's reporting requirements, with each exemption listed below. A general rule of thumb is that if an entity is already subject to a federal reporting requirement through a different regulatory scheme, it likely has an exemption available to it in regards to reporting under the CTA. An entity that qualifies for any of these exemptions is not required to submit BOI reports to FinCEN.

Types of entities exempt from the CTA's reporting requirements:

- A securities reporting issuer
- A governmental authority
- A bank
- A credit union
- A depository institution holding company
- A money services business
- A broker or dealer in securities
- A securities exchange or clearing agency
- An other registered entity under the Securities Exchange Act of 1934, as amended
- An investment company or investment adviser
- A venture capital fund adviser
- An insurance company
- A state-licensed insurance producer
- Commodity Exchange Act registered entity

- An accounting firm
- A public utility
- A financial market utility
- A pooled investment vehicle
- A tax-exempt entity
- An entity assisting a tax-exempt entity
- A large operating company
- A subsidiary of certain exempt entities
- An inactive entity

Of note, the CTA, and its associated regulations, define a "large operating company" (which would be exempt from reporting under the CTA) as one which satisfies ALL of the following requirements:

- The business must have a commercial, physical street address in the United States.
- The business must have 21 or more full-time employees (excluding full-time equivalent employees, part-time employees, independent contractors and leased employees).
- The business must have filed a prior year's federal income tax return demonstrating more than $5 million in annual, U.S.-only, gross receipts or sales.

BENEFICIAL OWNERSHIP

If your company is a reporting company, and not covered by one of the available exemptions, the next step is to identify its beneficial owners. A beneficial owner is any individual who, directly or indirectly exercises substantial control over a reporting company or owns or controls at least 25% of the ownership interests of a reporting company.

An individual exercises substantial control over a reporting company if the individual meets any of four general criteria:

1. The individual is a senior officer.
2. The individual has authority to appoint or remove certain officers or a majority of directors of the reporting company.
3. The individual is an important decision-maker.
4. The individual has any other form of substantial control over the reporting company.

Any of the following may be an ownership interest: equity; stock or voting rights; a capital or profit interest; convertible instruments; options or other non-binding privileges to buy or sell any of the foregoing; and any other instrument, contract or other mechanism used to establish ownership.

An individual might be a beneficial owner through substantial control, ownership interests, or both. Reporting companies are not required to report the reason (i.e., substantial control or ownership interests) that an individual is a beneficial owner.

A trustee of a trust can be a beneficial owner. A grantor or settlor of a trust who has the right to revoke the trust or withdraw its assets can be a beneficial owner. Even a trust beneficiary can be a beneficial owner if the beneficiary is the sole permissible recipient of income or principal from the trust or has the right to demand a distribution of or withdraw substantially all its assets.

REPORTABLE INFORMATION

Non-exempt reporting companies must submit BOI reports detailing information about the entity, its beneficial owners, and its company applicant (the individual who forms the entity). A non-exempt reporting company must report the following information about itself:

1. Full legal name
2. Any trade name or "doing business as" name
3. Complete current U.S. address
4. State, tribal or foreign jurisdiction of formation; or, for a foreign reporting company only, state or tribal jurisdiction of first registration
5. Internal Revenue Service Taxpayer Identification Number (TIN) (including an Employer Identification Number); or, if a foreign reporting company has not been issued a TIN, report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction

A non-exempt reporting company must also report the following information about each and every one of its beneficial owners (and its company applicant if the entity is formed on or after January 1st, 2024):

1. Full legal name
2. Date of birth
3. Complete current address
4. Unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents: a) U.S. passport; b) State driver's license; c) Identification document issued by a state, local government or tribe; d) If an individual does not have any of the previous documents,

foreign passport.

TIMELINE

The CTA's reporting requirements are effective January 1, 2024. FinCEN will begin accepting BOI reports electronically through its secure filing system on this date. BOI reports will not be accepted prior to January 1, 2024.

If a company already exists prior to January 1, 2024, it must file its initial BOI report by January 1, 2025. If a company is created or registered to do business in the United States on or after January 1, 2024, then it must file its initial BOI report within 90 days of receiving actual or public notice that its creation or registration is effective. On January 1, 2025, the 90-day reporting window for new companies will shift to a 30-day reporting window moving forward.

PENALTIES

It is unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information to FinCEN, or willfully fail to report complete or updated beneficial ownership information to FinCEN. Any person violating the reporting requirements of the CTA is liable for civil penalties of not more than $500 for each day that the violation continues and criminal penalties of imprisonment of up to two years and fines of up to $10,000.

Stinson attorneys can help companies, and their beneficial owners, evaluate whether they qualify for one of the 23 available exemptions, develop a secure and effective reporting policy and program, and navigate this evolving landscape over time.

For more information on the Corporate Transparency Act, please contact William Kearney, Jill Radloff, Clary Redd, Jim Sticha, Zachary Taylor or the Stinson LLP contact with whom you regularly work.

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