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ATTENTION NEW VENTURES: CORPORATE TRANSPARENCY ACT TAKES EFFECT JANUARY 1

What is it?

Starting January 1, 2024, the Corporate Transparency Act (the Act) requires “Reporting Companies”, (i.e., certain business entities formed or operating in the United States) to register and begin reporting their beneficial ownership and control information with the Financial Crimes Enforcement Network (FinCEN)’s national registry. This legislation was enacted to address concerns related to money laundering and other methods of enabling illicit money through anonymous channels.

What do we need to report?

Initially, each Reporting Company will need to report information on their “Beneficial Owners”. Beneficial Owners include any individual who, directly or indirectly, owns at least 25% of the ownership interest of an entity or who meets the substantial control test outlined in the Act. Then, any change in the reported information must be reported by filing an amendment within thirty (30) days.

The specifics of these definitions address several different corporate, organizational and transactional structures. You should consult with a member of the New Ventures team to determine whether you may have any reporting obligations under the CTA and who is considered a Beneficial Owner.

Are there any exemptions?

The Act provides 23 categories of exemptions; however, the majority of startup and growth-stage companies will <u>not</u> meet those exemptions. Most exemptions relate to larger operating companies, publicly owned companies and companies regulated under separate reporting requirements.

When are reports due?

For entities formed before January 1, 2024, an initial report must be filed no later than January 1, 2025. For entities formed after January 1, 2024, an initial report must be filed no later than ninety (90) days after formation. For entities formed after January 1, 2025, an initial report must be filed no later than thirty (30) days after formation. After the initial filing, any change or correction to the reported information must reported by filing an amendment within thirty (30) days.

How Do I File? All Beneficial Owners and Company applicants should register for a FinCEN ID on or after January 1, 2024, by completing the electronic web form available on the FinCen.gov website. The registration will require each individual to report their full legal name, date of birth, residential or business address and provide a copy of a unique identifying number from an acceptable identification document (passport, driver’s license or other government-issued identification document).

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Filings can be made directly to FinCEN, however, there are several third-party service providers available to make the filing process easier. Many of our clients already use capitalization management platforms, such as Carta, which plans to offer features that facilitate filing reports and storing Beneficial Owner identification information. CT Corporation and similar technology-enabled registered agent services also plan to facilitate filings.

Who can access these reports? Beneficial ownership information is **not** publicly available. However, the Act does allow for certain federal, state and other governmental organizations to access this information for certain activities such as national security, intelligence, law enforcement, supervision of financial institutions and, in certain circumstances, with the consent of the company.

What if we don't file? The Act imposes significant civil and criminal penalties for non-compliance, which can include civil fines of up to $500 per day. Willful non-compliance can have even steeper penalties. In most instances, penalties compliance will be borne by the Reporting Company's controlling individual and/or Company Applicant.

We Can Help!

As mentioned above, we can help you navigate the CTA and its various requirements. Please contact a member of the New Ventures team to determine whether you may have any reporting obligations under the CTA and who is considered a Beneficial Owner.

Stay Tuned!

Some of the states, including major commercial centers such as New York and California, are getting into the action with state corporate transparency laws of their own. We expect these types of reporting requirements to become more common.

Resources:

- FinCEN website: Beneficial Ownership Information Reporting
- *Business Law Update,* March 2023: "Corporate Transparency Act Requires Filing Reports with FinCEN in 2024"
- Thompson Hine's ethics blog, *The Law for Lawyers Today:* "Corporate Transparency Act: Ethical Considerations for 2024"
- Thompson Hine Newsletter – Business Law Update – December 2023
- https://carta.com/blog/corporate-transparency-act-issue-brief/
- https://www.americanbar.org/groups/business_law/resources/business-law-today/2021-may/the-corporate-transparency-act/
- https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet