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DECEMBER 18, 2023 | PUBLICATION

Client Alert: Corporate Transparency Act to Take Effect January 1, 2024

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Beginning January 1, 2024, the first wave of reporting requirements under the new Corporate Transparency Act (CTA) will take effect and will require that most companies created on or after such date file a report with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). Companies formed prior to January 1, 2024 will be required to comply with reporting requirements of the CTA starting January 1, 2025.

Who Must Report?

Both domestic companies and foreign companies registered to do business in the United States, or any of its states, territories, or tribal jurisdictions, are categorized as "reporting companies" under the CTA and must comply with the CTA's reporting requirements.

The CTA provides 23 exemptions for larger, more highly regulated entities or entities subject to different ownership reporting requirements such as banks, nonprofits, public companies, and subsidiaries of exempt entities. However, the initial round of reporting will apply to most companies formed in 2024.

What Information is Reported?

Reporting companies formed on or after January 1, 2024 must report the following within 90 days of being formed:

- Information about the reporting company: full name of the reporting company, any trade name or "DBA," a complete current address (for U.S. companies, the principal place of business), the state or tribal jurisdiction of formation or registration, IRS Tax ID number and Employer Identification Number (EIN), or a tax ID number issued by a foreign jurisdiction and the name of the issuing jurisdiction.
- Information on certain major owners or members of management (Beneficial Owners): full legal name of the individual, date of birth of the individual, current address, and unique identifying number from either a U.S. passport; state, local, or tribal identification document; driver's license; or foreign passport if the individual does not possess any of the above documents.
    - An image of the document chosen with the identifying number shown.

- Additionally, for entities created or registered on or after the effective date, the company applicants must be reported. This includes both the paralegal and supervising attorney for entities whose formation documents were prepared at a law firm.

Importantly, any change to information reported about the Company or its Beneficial Owners must be reported within 30 days of the occurrence. Examples of changes that must be reported include a change of the company's address, a change in a Beneficial Owner's address or name, and a transfer of a beneficial owner's interest after death. Failure to file the initial report or to update the report with changes to Beneficial Owner information will result in penalties of $500 per day, with a maximum penalty of $10,000 and possible imprisonment for up to two years.

Who is a "Beneficial Owner" under the CTA?

Under the CTA, a Beneficial Owner is any individual who, directly or indirectly, either exercises substantial control or owns or controls at least 25 percent of the ownership interest of the reporting company. "Control" under the act is broadly applied to include: (i) individuals who serve as senior officers (president, c-suite officers, general counsel, or other officers serving a similar function) or have the authority to remove such positions and/or (ii) individuals who direct, determine, or have substantial influence over important decisions of the company, such as major expenditures, the nature and scope of the business, compensation schemes, or similar.

Examples of substantial control include being a member of the board of directors, ownership or control of a majority of the voting power of the reporting company, rights associated with any financing arrangement or interest in the reporting company, or similar.

Contact your Shumaker attorney for additional details and assistance filing your report.

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