

BUSINESS AND TRANSACTIONS

INFORMATION MEMO

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The Corporate Transparency Act: How the Government's Fight Against Financial Crimes Affects Business Entities in America

Enacted Jan. 1, 2021, the Corporate Transparency Act (CTA), part of the Anti-Money Laundering Act of 2020, adds a new set of disclosures that business entities will be required to file with the federal government. Starting Jan. 1, 2024 for newly formed business entities, and Jan. 1, 2025 for business entities formed before 2024, the CTA requires certain business entities formed in the United States, as well as foreign entities operating in the United States, to report information concerning the beneficial ownership of those entities to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). The CTA aims to assist FinCEN in preventing money laundering, corruption, fraud, financial crimes and other forms of illicit use of the U.S. financial systems. All business entities—and their stockholders, owners, members and partners—should be familiar with the disclosure requirements enacted with the CTA, as noncompliance could result in significant monetary penalties.

Who is required to report? All domestic corporations, limited liability companies and all other business entities required to file with a State's Secretary of State (SOS) or similar governing body will be required to report. Disclosures will also be required from companies formed under foreign laws that are registered to do business in the U.S. by filing a document with a SOS or similar office. The act identifies 23 exceptions to this reporting requirement, including financial institutions, insurance companies, tax exempt entities, inactive entities, and large operating companies. A "large operating company" is defined as an entity that (1) employs more than 20 full-time employees, (2) has a physical office in the U.S., and (3) filed a Federal Income or Information Return in the U.S. for the previous year claiming over \$5 million in gross sales or receipts.

What information must be disclosed? Certified initial reports must include information on (1) the reporting company, (2) every beneficial owner, and (3) every company applicant, following the form and manner set out by FinCEN. A "beneficial owner" is any individual who owns or controls at least 25% ownership interest in a reporting company or who directly or indirectly exercises "substantial control" over the reporting company. An individual has "substantial control" if they: (1) are a senior officer, (2) have authority to appoint or remove officers or directors, (3) make decisions of high importance, or (4) have significant influence over the company. This broad definition is likely to lead to reporting of most high-level decision makers within a company. A "company applicant" is an individual who directly files documentation that creates the entity or directs the filing of documents creating the company. Up to two company applicants must be identified for reporting companies formed on or after Jan. 1, 2024. The report must include the following information of the reporting company:

1. The full legal name and any trade name or d/b/a;
2. A complete current address;

3. The state, tribunal, or jurisdiction of formation and registration; and
4. The Taxpayer Identification Number or Employer Identification Number of the reporting company.

Reporting companies are required to provide the following information of all beneficial owners (regardless of date of formation) and company applicants (if formed on or after Jan. 1, 2024):

1. Full legal name;
2. Date of birth;
3. Complete current address; and
4. Identifying number from an identification document such as a U.S. passport, U.S. driver's license, U.S. identification card or, if no U.S. issued document is available, a foreign passport, together with a photocopy of such document.

A change in the information of beneficial owners or company applicants, or other important company information such as a change in tax exemption status, must be reported to FinCEN within 30 days of such change.

Who will have access to the information provided? The reports required by the CTA will be available to federal agencies conducting law enforcement or national security activities. Financial institutions, with special permission from the reporting company, can also obtain the information. With personal information being required as part of the disclosures, the treasury is required to store the information in a secure nonpublic database with the highest level of security. FinCEN has begun developing the Beneficial Ownership Secure System to receive, store, and maintain beneficial owner information. This platform will serve as the medium for delivering the information to FinCEN starting Jan. 1, 2024.

What are the penalties for noncompliance? Failure to properly report, as well as the unauthorized disclosure of beneficial owner information, can result in civil or criminal penalties. Failure to comply with initial or updated reporting requirements is subject to a \$500 fine per day (up to \$10,000) and imprisonment for a maximum of 2 years. The unauthorized intentional disclosure of beneficial owner information is subject to a \$500 fine per day (up to \$250,000) and imprisonment for a maximum of five years.

Conclusion for clients. The CTA will have significant impacts on domestic and foreign business entities, as well as those who work to form those business entities. With new reporting requirements comes new burdens and obligations for entities formed and operating in the U.S. Determining obligations and reporting requirements is a fact specific inquiry that must be analyzed on an individual basis to ensure compliance with the act for new and existing companies. This is an ongoing process, as monitoring operations and ownership will be required to remain compliant with the CTA and FinCEN. Planning internal processes and data storage should be a priority for entities required to report under the CTA.

Further, certain types of documents, such as operating and employment agreements, should be updated to include language that requires: (1) disclosures of beneficial owner information to the reporting company, (2) obligations to update information, and (3) authorization for the reporting company to share information with FinCEN.

The CTA represents a shift in ideology on transparency and financial crime prevention within the U.S. government. Though the first of its kind, some states and other non-U.S. jurisdictions have proposed similar laws that would require more transparency surrounding business entities. The response and preparation for the CTA is vital for all effected entities, and awareness is key as similar laws could affect business entities in the future.

If you have any questions about any of the information contained in this memo, please contact Jeffrey Gleason, Michael Donlon, any attorney in Bond's business and transactions practice or the Bond attorney with whom you are regularly in contact.

**Special thanks to Associate Trainee David Burgio for his assistance in the preparation of this memo. David is not yet admitted to practice law.*

