

# advisory

## ARE YOU READY? THE CORPORATE TRANSPARENCY ACT BECOMES EFFECTIVE ON JANUARY 1, 2024

### Background

In November of 2021 and again in 2022, we published Client Advisories summarizing the Corporate Transparency Act (the “CTA”) and its impact upon both newly formed and existing business entities. The CTA was passed by Congress in early 2021, but the effective date was delayed while final Regulations were being developed. The purpose of the CTA is to establish reporting requirements for a wide range of business entities and to authorize the Financial Crimes Enforcement Network of the U.S. Department of Treasury (“FINCEN”) to maintain a data base of all information provided and to disclose such information to government authorities and certain financial institutions. The ultimate goal is to assist in combating money laundering, the financing of terrorism and other illegal activity. In order to accomplish this, the CTA requires a wide range of business entities to report personal information regarding the individuals who own, control or organize covered entities to FINCEN starting January 1, 2024.

### Who Must File as a Reporting Company?

The CTA requires domestic corporations, limited liability companies and other entities formed by a filing with a state secretary of state or similar office under the laws of a state or Indian tribe to file with FINCEN. It also requires a FINCEN filing by similar entities formed under the laws of a foreign country AND registered to do business in the U.S. by filing with a similar office under the laws of a State or Indian tribe. The CTA does include exemptions from the reporting requirements, but they are fairly narrow and given the penalties for non-compliance (fines of up to \$5,000 per violation and possible incarceration for up to 2 years) companies need to carefully analyze whether or not they qualify for an exemption.



### **Beneficial Owners and Applicants**

Under the CTA, reporting companies must report to FINCEN certain information regarding the company, certain personal information regarding its beneficial owners and, in the case of entities formed after January 1, 2024, information regarding the so-called “company applicant.” The term “beneficial owner” is defined under the CTA as an individual who, directly or indirectly, exercises *substantial control* over the reporting company or *owns or controls not less than 25% of the ownership interests of the entity*.

The information to be disclosed to FINCEN regarding beneficial owners includes each person’s (i) full legal name; (ii) date of birth; (iii) current residential or business street address and (iv) a unique identifying number from a recognized issuing jurisdiction or a FINCEN identifier.

### **When are FINCEN Filings Required to be Made?**

Filing deadlines are based on the formation date of the reporting company. A reporting company formed after January 1, 2024 must file within 90 days after it receives notice that it has been registered to do business or the secretary of state provides public notice of the entity’s registration. Entities already in legal existence on January 1, 2024, must file no later January 1, 2025.

### **Who has Access to the FINRA’s Data Base?**

Public access to FINCEN information regarding beneficial owners is NOT permitted. In general terms, access is limited to:

- Federal agencies engaged in national security, intelligence or law enforcement;
- With prior court approval, state and local law enforcement agencies;
- Financial institutions for certain specified purposes and the federal regulators which supervise those institutions;
- Certain foreign agencies that meet all of the stated criteria; and
- US Treasury employees whose official duties require such access.

*advisory***Some Practical Takeaways**

The CTA will impact a large number of existing entities, as well as many yet to be formed. Clearly, it is not too early to assess whether your company will be required to report and when. Developing internal processes to ensure timely compliance should also be on the company's "to do" list. Furthermore, it is worth noting that the filing deadline for follow-on reports is very short. In the event of a change to the beneficial ownership of a reporting company, whether due to a sale of the business, merger, death or learning that previously filed information was incorrect, updated reports must be filed within 30 days.

If you have questions or would like further information about the CTA, please contact PLDO Partner William F. Miller at 508-420-7159 or email [wmiller@pdlolaw.com](mailto:wmiller@pdlolaw.com).



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