

## The Corporate Transparency Act – An Overview

Monday, December 11, 2023

Beginning on January 1, 2024, the Corporate Transparency Act (the “CTA”) will impose filing and reporting obligations on certain entities, such as Delaware limited liability companies and Delaware limited partnerships, with civil and criminal penalties possible for noncompliance. For individuals utilizing Delaware entities within their estate planning or in connection with their personal investing or business interests, such obligations may impact the ongoing administration of these entities. Additionally, individuals currently considering the formation of such entities should be aware of these new potential reporting requirements.

The CTA requires certain entities formed (or registered to do business) by a filing with the Secretary of State or any similar office under the laws of a state or Indian tribe (a “Reporting Company”) to file a report with the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”). Reporting Companies include Delaware entities such as limited liability companies (“LLCs”), limited partnerships (“LPs”), and corporations, among others. Notably, Delaware trusts (other than Delaware statutory trusts formed in accordance with 12 Del. C. § 3801 *et seq.*) themselves are not considered Reporting Companies within the meaning of the CTA. There are 23 exceptions to the definition of a Reporting Company; if a Reporting Company falls into one of such exceptions, it is exempt from the obligations imposed by the CTA. The exceptions include, among others, tax-exempt entities, certain regulated entities (such as insurance companies and banks), and “large operating companies.”

If a Reporting Company is not subject to any exception, it is required to file a beneficial ownership information report (a “BOI Report”) with FinCEN. Currently, a Reporting Company formed on or after January 1, 2024 must file a BOI Report within 30 days of formation; however, for entities formed between January 1, 2024 and December 31, 2024, the filing deadline has been extended and such BOI Report is to be filed within 90 days of formation. A Reporting Company formed before January 1, 2024 will have until January 1, 2025 to file its BOI Report.

The BOI Report for all Reporting Companies must include (i) identifying information for the Reporting Company, such as name, address, and taxpayer identification number, and (ii) personal identifying information for beneficial owners of the Reporting Company (a “Beneficial Owner”). For a Reporting Company formed on or after January 1, 2024, its BOI Report must also include personal identifying information for the applicants of the Reporting Company (an “Applicant”). The personal identifying information for Beneficial Owners and Applicants includes each individual’s full legal name, date of birth, and current address, as well as a unique identifying number from, for example, a current passport or driver’s license along with a copy of such document (or, in lieu thereof, a “FinCEN identifier,” which may be obtained from FinCEN on or after January 1, 2024).



For purposes of the CTA, a Beneficial Owner is an individual who, indirectly or directly, either (i) exercises substantial control over the Reporting Company or (ii) owns or controls at least 25% of the ownership interests in the Reporting Company. If the qualifying ownership interest in the Reporting Company is held through a trust, the following individuals are deemed to have an ownership interest in the Reporting Company: (i) a trustee or other individual with the authority to dispose of trust assets (such as an investment advisor, distribution advisor, or trust protector), (ii) a beneficiary who is the sole permissible recipient of the trust's income and principal or has a demand right or withdrawal right of substantially all of the trust's assets, and (iii) a grantor or settlor who has the right to revoke the trust or otherwise withdraw the trust's assets. Also, for purposes of the CTA, an Applicant is the individual who (i) files the document that forms the Reporting Company, and/or (ii) is primarily responsible for directing or controlling such filing. A Reporting Company may have any number of Beneficial Owners, but it can have no more than two Applicants.

In addition to the initial filing, the reporting obligations of the CTA are ongoing, and certain events will trigger subsequent filing and reporting. The BOI Reports and any additional reports will be submitted directly to FinCEN—the exact submission process, however, has not yet been finalized.

If you hold a 25% or more interest in an entity directly or indirectly (such as through another entity or entities or through a trust or trusts), and/or if you exercise substantial control over such entity, including serving as a senior officer, manager, or director of such entity, the requirements of the CTA may apply to you. Failure to comply with the filing and reporting obligations of the CTA may result in enforcement of penalties that include fines of up to \$10,000 and imprisonment for up to two years. For more detailed information, FinCEN, among others, has made available further guidance, including FinCEN's "Small Entity Compliance Guide," which can be found [HERE](#).

If you think the CTA and its obligations may apply to you, you may wish to consult with your advisors regarding the available guidance and its potential application. Richards, Layton & Finger attorneys have been monitoring the CTA, and we are available to assist you with these matters.