NIESAR & VESTAL LLP

Law Alert

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Are You Ready To Comply With The Corporate Transparency Act?

The Corporate Transparency Act ("CTA"), a new federal filing requirement for many business entities, will be effective on January 1, 2024. The CTA was enacted as part of the Anti-Money Laundering Act of 2020. "Reporting Companies" will be required to file reports with the Financial Crimes Enforcement Network ("FinCEN"), identifying and providing information about their Beneficial Owners and Company Applicants. FinCEN issued a final rule (as amended, BOI Rule) on September 29, 2022, implementing Section 6403 of the CTA.

The deadline for filing initial beneficial ownership reports with FinCEN depends on when the entity was formed or, in the case of foreign (non-US) entities, first registered with a secretary of state. Companies formed prior to 2024 will have until January 1, 2025, to report. Entities that are formed or registered, as applicable, on or after January 1, 2024, are required to file a report within 90 calendar days of the date of formation or registration under applicable law from January 1, 2024, until December 31, 2024.

This law alert is intended to provide our clients and friends with a general summary of the main requirements arising out of the CTA and does not set forth an exhaustive list of all CTA-related requirements. We remain available to answer any questions or requests for clarifications you may have.

<u>What is a Reporting Company?</u> Except as noted under "Exempt Companies" below, a Reporting Company is (a) any company that is created by filing a document with the Secretary of State, or a similar office in any state, territory or federally recognized Indian Tribe, or (b) is a foreign-formed entity that is registered to do business in the United States. This clearly includes corporations, limited liability companies, limited partnerships, and certain business trusts. The principal focus of the CTA is on start-ups, small companies, and shell companies with limited to no operations, which are the entities generally perceived to be the types most often engaging in money laundering activities.

<u>Exempt Companies.</u> Sole proprietorships and general partnerships are not currently included within the definition of a Reporting Company because they are not formed by filing a document with a governmental agency.

The CTA currently provides 23 exemptions from the definition of a Reporting Company. Publicly-traded companies (as well as their wholly owned subsidiaries) are specifically exempted, as are many other entities already subject to regulatory ownership reporting requirements, such as banks, investment companies, investment vehicles managed by registered investment advisors, tax-exempt entities, and government entities.

Business entities that are neither publicly-traded nor qualify as a regulated exempt entity, will be exempt from the CTA reporting requirements if they meet **all** 3 of the following requirements of the **large operating company exemption**. The entity must have:

(a) more than 20 full-time employees in the United States;
(b) filed, in the previous year, federal income tax returns in the United States demonstrating more than $5 million in gross receipts or sales; and
(c) an operating physical location in the United States.

Because a newly formed entity will be unable to satisfy requirement (b) above, at least initially, it will be deemed a Reporting Company, notwithstanding its revenues or its number of employees.

Holding companies of business entities meeting the three-prong test above which do not have their own employees will not qualify for an exemption.

What Information Do the Reporting Companies Have To Report? Generally, a Reporting Company must provide information on the Reporting Company itself, its Beneficial Owners and its Company Applicants. Reporting Companies created before January 1, 2024, are not required to identify their Company Applicants.

What is a Beneficial Owner? A "Beneficial Owner" under the BOI Rule is defined as any individual who, directly or indirectly, either exercises substantial control over a reporting company or owns or controls at least 25% of the ownership interests of a reporting company. FinCEN's Small Entity Compliance Guide provides checklists and examples that may assist in identifying beneficial owners (*see* Chapter 2.3 "What steps can I take to identify my company's beneficial owners?").

Who Are the Company Applicants? These are up to 2 individuals who file or cause the filing of the document that creates the Reporting Company, including any individual who "directs or controls" that filing by another person. For purposes of the 2-person limit, the Company Applicants would be the person who files the formation document, plus the person most responsible for directing the formation of the company.

Who Must File the Report? The primary obligation to file the Report under the CTA with FinCEN appears to be on the entity subject to the reporting requirement, i.e., the Reporting Company itself.

Updating Reports. If the information in a Reporting Company's filed report becomes outdated, the Reporting Company is required to file an updated report within 30 days of the event causing the report to become outdated.

Penalties. Willful failure to timely report information concerning the Reporting

Company and complete beneficial ownership information to FinCEN, to update information that becomes outdated, or to willfully file false entity or beneficial ownership information, all may subject the Reporting Company or Company Applicant to a daily civil penalty, a criminal fine, or possible imprisonment.

If you have any questions regarding the CTA or any practical considerations arising out of the CTA, please feel free to contact Gerald Niesar (gniesar@nvlawllp.com), Carolina Aricu (caricu@nvlawllp.com) or Oscar Escobar (oescobar@nvlawllp.com).