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Corporate Transparency Act Alert

By: MHH Corporate Practice Group

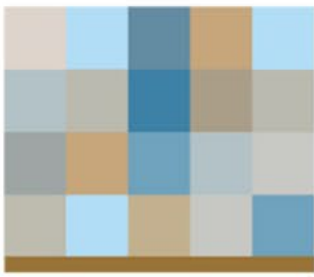
Enacted as part of the federal Anti-Money Laundering Act of 2020, the Corporate Transparency Act (“CTA”) requires all entities formed or operating in the United States, with limited exemptions, to disclose certain information regarding the entity, the entity’s beneficial owners, and those holding significant powers of control over the entity, including senior officers, directors and managers. Generally, the CTA requires business entities, including corporations, limited liability companies, limited partnerships, and other United States entities and foreign entities, to report specified types of information to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”).

What is the Corporate Transparency Act?

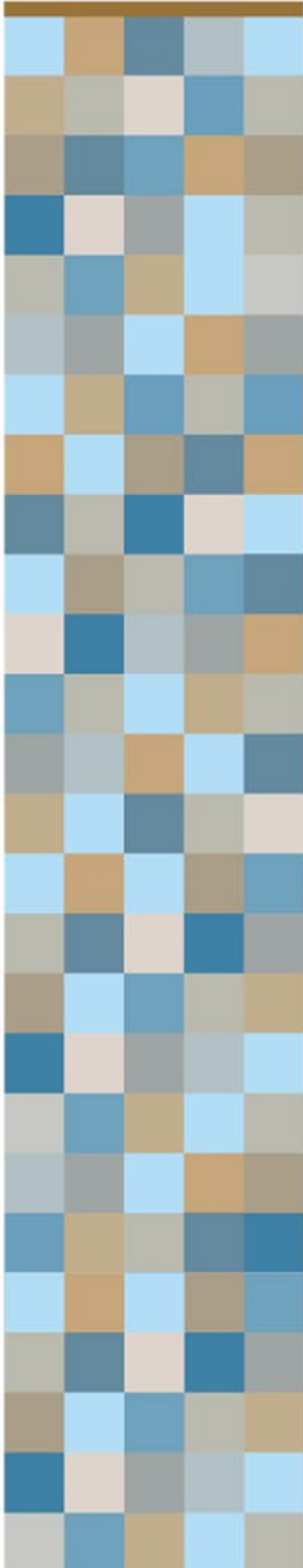
The CTA was enacted to provide a means to gather background information that would be available to law enforcement, national security agencies, and others in order to help prevent bad actors from hiding illicit money or other property in the United States. There are limitations contained in the CTA to safeguard the gathered information, and the information will only be made available to governmental agencies and specified others meeting certain criteria and following CTA and regulatory procedures. The CTA covers all entities formed through the filing of a document with a federal or state agency, such as the formations of corporations, limited liability companies, and limited partnerships, by the filing of a certificate or articles of formation or organization with a state Secretary of State. It doesn’t matter if the entity was first formed before or after the CTA became effective, although the filing deadline to report the required information with FinCEN is dependent upon whether the entity was formed prior to January 1, 2024, in calendar year 2024, or in any year thereafter. We address filing deadlines and exempted entities later in this Client Alert.

Exemptions to the Reporting Requirements of FinCEN

There are 23 types of entities that are exempt from the CTA reporting obligations. The premise for the exemptions is that the types of entities are already regulated by federal and/or state government, including banks, credit unions, accounting firms, tax-exempt entities, large operating companies, and inactive entities. The CTA defines a “large operating company” as an entity that: (i) directly employs more than 20 full time employees; (ii) has more than \$5,000,000 in gross receipts or sales; and, (iii) has an



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operating presence at a physical office within the United States. A wholly-owned subsidiary of a large operating company is also an exempt entity. Further, The CTA defines an “inactive entity” as an entity (i) in existence on or before January 1, 2020; (ii) not actively engaged in business; (iii) not having experienced an ownership change in the prior twelve months, and (iv) not holding any kind or type of assets. A full list of the entity exemptions can be found on FinCEN’s website.

What is Reportable?

There are three areas of information required to be reported to FinCEN. They consist of information concerning the entity, the person causing the formation of the entity, which the CTA refers to as the “Company Applicant,” and the “Beneficial Owners” of the entity. This information is provided to FinCEN in the entity’s “BOI Report.”

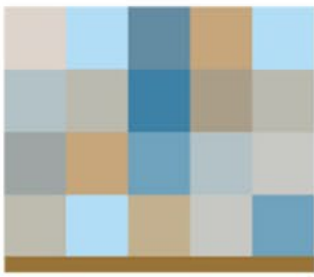
Beneficial Owner and Company Applicant Reporting

Generally, a Beneficial Owner is an individual who either directly or indirectly exercises substantial control over a company or an individual who owns or controls 25% or more of the entity’s equity, voting, or pecuniary interests in the entity. An individual can be a Beneficial Owner through substantial control, ownership interests, or both. The CTA requires an analysis that drills down to the ultimate individual owners, if there are entities in the ownership chain, the entity must determine the individual who own the entities in the chain. A reporting company may have several Beneficial Owners, and there is no maximum number of Beneficial Owners who can be reported.

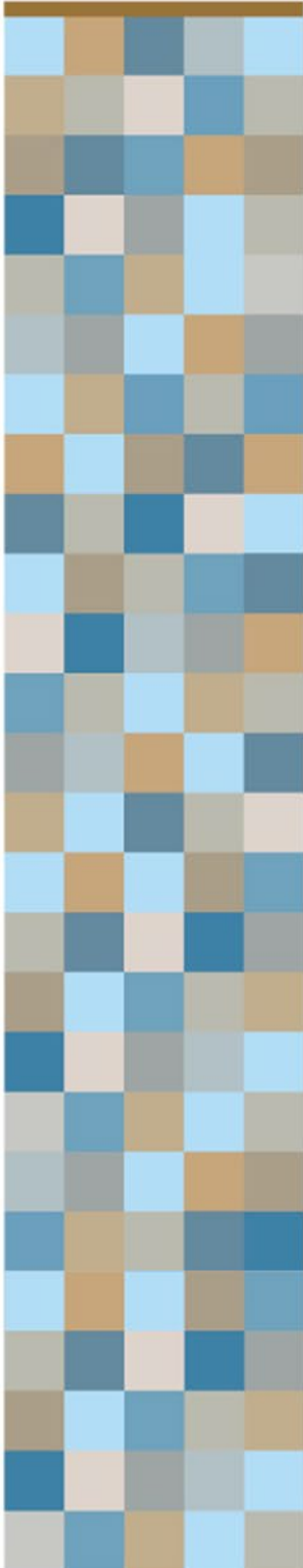
An individual exercises substantial control over a reporting company if the individual meets any of four general criteria: (1) the individual is a senior officer; (2) the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) the individual is an important decision-maker; or (4) the individual has any other form of substantial control over the reporting company.

A senior officer is any individual holding the position or exercising the authority of a President, CEO, CFO, COO, General Counsel, or any other officer, regardless of official title, who performs a similar function as these officers.

An important decision maker is an individual who directs, determines, or has substantial influence over important decisions regarding the reporting company, including but not limited to decisions regarding: (i) the nature and scope of the business; (ii) the selection or termination of business lines or ventures, or geographic focus; (iii) the entry into or termination, or fulfilment or non-fulfilment, of significant contracts; (iv) sale, lease, mortgage, or other transfer of any physical assets; (v) major expenditures or investments,



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issuances of any equity, issuance of any significant debt, or approval of the operating budget; (vi) compensation schemes and incentive programs for senior officers; (vii) reorganization, dissolution, or merger of the entity; (viii) amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; (ix) owning or controlling a majority of the voting power or voting rights of the reporting company; (x) substantial control over board representation; and (xi) blocking rights.

A Company Applicant is either: (i) the individual who directly files the document that creates the entity or first registers the entity with a governmental agency; and/or (ii) the person that is primarily responsible for directing or controlling the filing of the relevant document. No reporting company can name more than two Company Applicants in the reporting company's BOI Report. The naming of Company Applicants is only required with respect to entities that are first created or registered on or after January 1, 2024.

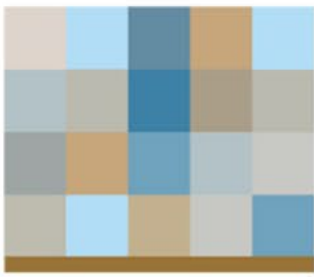
Information to be Reported

In addition to information concerning its Beneficial Owners and Company Applicants, the BOI Report is required to include the following information on the entity: (i) the full legal name; (ii) any trade or "doing business as" names; (iii) the complete current street address of its principal place of business (if in the United States), or, if outside of the United States, the current address that the company conducts its business in the United States (P.O. or "drop-off addresses are not acceptable); (iv) jurisdiction of formation or registration; and, (v) its taxpayer identification number. The filing company must also indicate whether it is filing an initial report, correction of a prior report, or an update to a prior report.

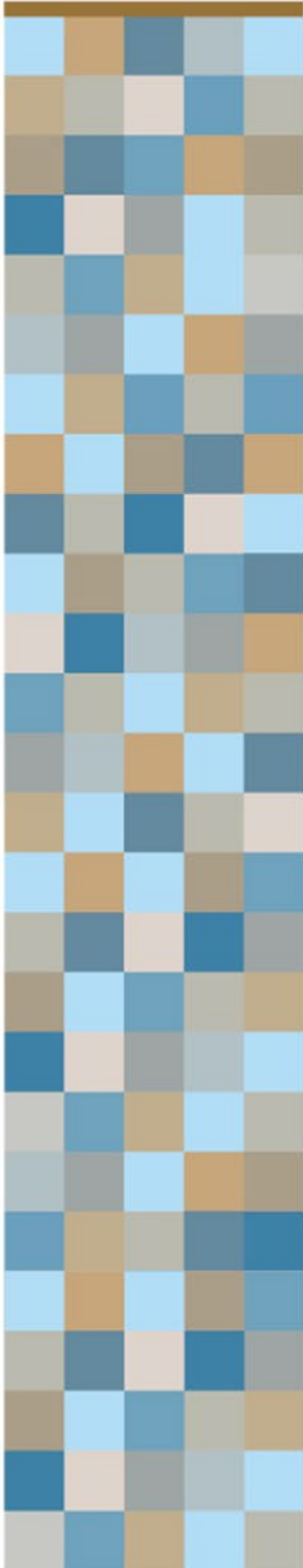
A reporting company will be required to report the following information for each individual who is a Beneficial Owner or Company Applicant: (i) full legal name, date of birth, and address; (ii) a unique identifying number from an acceptable identification document (i.e., a driver's license, state or local ID, U.S. passport); and (iii) the name and jurisdiction that issued the identification documents. A copy of the identification document must accompany the filing of the BOI Report.

When is a Company Required to File its Initial Report?

If the entity was created or registered before January 1, 2024, the entity's BOI Report is required to be filed no later than January 1, 2025. An entity that is created or registered during the 2024 calendar year must file its BOI Report within 90 calendar days after receiving actual or public notice that their company's creation or registration is effective. For calendar years 2025 and thereafter, the BOI Report deadline is reduced to 30 calendar days. An entity has 30 calendar days to report any changes to previously reported



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information (such as a change in senior officers or ownership interests) or to correct any inaccuracies in reported information after the reporting company becomes aware or has reason to know of an inaccuracy.

Who has Access to Reported Information and How Will FinCEN Protect this Information

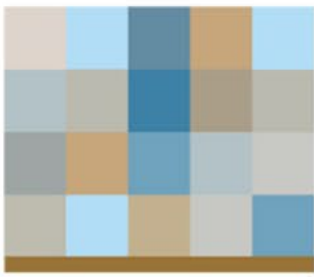
FinCEN is authorized to disclose BOI Report information to certain authorized government authorities, financial institutions, and other authorized users. These authorities, institutions and others are:

- (i) Federal agencies engaged in national security, intelligence and law enforcement activities;
- (ii) state, local, and tribal law enforcement agencies with court authorization;
- (iii) financial institutions when conducting legally required customer due diligence, provided they have customer consent to retrieve the information;
- (iv) federal and state regulators of financial institutions;
- (v) the U.S. Department of the Treasury; and
- (vi) foreign law enforcement agencies who submit a qualifying request for the information through a U.S. Federal agency.

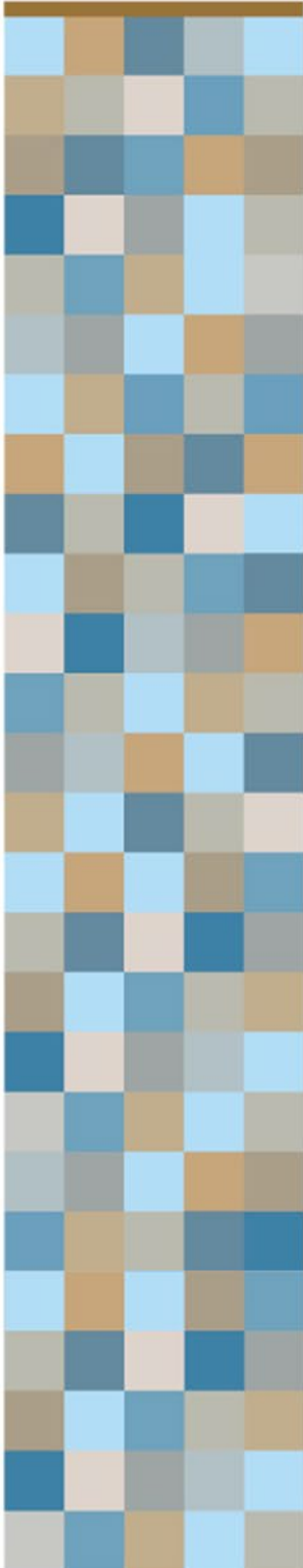
In order to protect the security of Beneficial Ownership information, FinCEN has implemented protocols to safeguard ownership information. FinCEN has built a secure IT system to store the information and establish processes and procedures to ensure that only authorized users can access reported information.

Penalties for Non-Compliance

FinCEN is responsible for enforcing the Corporate Transparency Act. The CTA provides for both civil and criminal penalties for any person who willfully provides, or attempts to provide false or fraudulent Beneficial Ownership information, or willfully fails to report complete or updated Beneficial Ownership information to FinCEN. Any person who violates the reporting requirement of the CTA will be liable for civil penalties of \$500 for each day that the violation continues and criminal penalties of imprisonment of up to two years and fines up to \$10,000. Senior officers of an entity that fails to file a BOI Report may be held accountable for that failure. Providing false or fraudulent Beneficial Ownership information could include providing false identifying information about an individual identified in a BOI Report, such as by providing a copy of a fraudulent identifying document.



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Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI Report or to report incomplete or false Beneficial Ownership information to FinCEN. For example, an individual who qualifies as a Beneficial Owner or a Company Applicant might refuse to provide information, knowing that a company would not be able to provide complete Beneficial Ownership information to FinCEN without it. Also, an individual might provide false information to a company, knowing that information is meant to be reported to FinCEN.

Moritt Hock & Hamroff Attorneys are Available to Assist

The Corporate Transparency Act has implications that could affect a large number of existing entities and the entities equity owners and managers. As indicated in this Client Alert, whether an entity is required to file a BOI Report and what information and individuals to identify in a BOI Report is not a simple task, especially for entities with multiple layers of operations and capital. Each entity and its ownership and management structure is unique. Issues dealing with equity interests held in trust, equity owners and others with voting or “blocking rights,” distribution waterfalls, etc. are likely. While the responsibility for the required disclosures is that of the entity, Moritt Hock & Hamroff will be happy to assist with the analysis of your entity to determine if your entity is required to report with FinCEN, and, if so, determining its Beneficial Owners and company applicants. The attorneys and staff at Moritt Hock & Hamroff LLP are well positioned to assist entities and individuals in complying with the CTA. If you have any questions or concerns about what you or your company needs to do to report, or to determine whether your company is exempt from reporting, please do not hesitate to reach out to your contact attorney here at MH&H.

Founded in 1980, Moritt Hock & Hamroff is a 90-attorney full service, AV-rated commercial law firm that provides a wide range of legal services to businesses, corporations and individuals worldwide from its offices in New York City, Garden City and Fort Lauderdale. The firm's practice areas include: closely-held/family business practice; commercial foreclosure; commercial lending & finance; condominium and cooperative services; construction; copyrights, trademarks & licensing; corporate, mergers and acquisitions, & securities; COVID litigation; creditors' rights, restructuring & bankruptcy; privacy, cybersecurity & technology; dispute resolution; employment; healthcare; landlord & tenant; litigation; marketing, advertising & promotions; not-for-profit; real estate; secured lending, equipment & transportation finance; sports law; tax; and trusts & estates.



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